



House of Commons
Justice Committee

Coronavirus (COVID-19): The impact on courts

Sixth Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Summary

This report examines the impact of Covid-19 on the courts and tribunals in England and Wales. The courts and tribunals in England and Wales have continued to function throughout the Covid-19 pandemic. The Lord Chancellor and Secretary of State for Justice, Robert Buckland QC, told us that this “singled out this jurisdiction in the world as a jurisdiction where justice could continue to operate”.¹

There has been a significant rise in the number of outstanding cases in the magistrates’ courts and the Crown Court. The numbers themselves are alarming but what matters is the rate at which the outstanding cases can be cleared. The Government, the judiciary and HMCTS are working closely on a multi-pronged recovery plan that involves setting up temporary courts, extending court hours, exploring options for changing arrangements for jury trials and maximising the use of technology.

The Lord Chief Justice, Lord Burnett, and government ministers have all acknowledged that a further increase in sitting days could go some way to alleviate the situation. Chris Philp, Parliamentary Under Secretary of State at the Home Office and Ministry of Justice, told us that an increase in sitting days was being discussed.

The courts have rapidly adopted remote hearings in response to the COVID-19 pandemic. The Judiciary and lawyers have largely been positive about the move to using video and audio channels. However, there is emerging evidence that remote hearings are less satisfactory for some lay participants (that is the parties - whether legally represented or acting as litigants in person, and witnesses) and vulnerable court users. Remote jury trials have not taken place in England and Wales.

Many of the measures taken to respond to Covid-19 represent an acceleration of the ongoing court reform programme which began in 2016. Any steps taken to increase the capacity of the courts to hear cases more effectively is to be welcomed. However, at present it is unclear to what extent the measures taken to respond to Covid-19 will become permanent and how they fit within the overall reform programme.

There have been a number of rapid reviews of the impact of remote hearings. However, there is considerable concern over the quality of data being gathered by HMCTS. It is vital that as the operation of courts and tribunals change so rapidly, every effort be made to ensure effective public debate over the impact on access to justice.

1 Introduction

1. This report examines the impact of Covid-19 on the courts and tribunals in England and Wales. The Committee pays tribute to everyone in the justice system who has enabled courts and tribunals to continue to function during this extraordinary period. On 22 May, the Lord Chief Justice, Lord Burnett of Maldon, told the Committee that the decision was taken in the early stages of the pandemic “to keep the wheels of justice turning”.² That has required an incredible effort from all involved to provide the service available while the most stringent public health measures were in force from 23 March 2020.

2. The Lord Chancellor and Secretary of State for Justice, Rt Hon Robert Buckland QC, told the Committee on 23 June 2020 that “the story of the crisis has been the ramping up the scale of the use of technology”.³ The Lord Chancellor is right to be satisfied that technology has enabled “justice to continue to operate”.⁴ However, behind this narrative, there are important lessons for the justice system to learn from the crisis caused by Covid-19. The Lord Chief Justice, the Lord Chancellor and Susan Acland-Hood, the Chief Executive of HM Courts and Tribunal Service, have all emphasised that each jurisdiction has adapted differently. It is, though, a matter of concern that some of the most public-facing elements of the justice system—the magistrates’ courts, the Crown Court and the family courts—appear to have fared the worst.

3. Even in those elements of the system which have operated at close to normal levels—for example some tribunal jurisdictions—lessons are there to be learned for the future, in terms, for example, of the practical impact of technology on access to justice or for how change is implemented in the justice system. In areas where technology has not been as helpful, such as jury trials, the crisis has exacerbated pre-existing concerns about the capacity, administration and infrastructure of the justice system in England and Wales.

4. Recognition of the significant achievements of the justice system in responding to Covid-19 should not obscure the scale of the challenges facing the courts. The number of outstanding cases in the magistrates’ courts and the Crown Court is a pressing concern.

5. Some of the changes made to courts and tribunals since March 2020 are likely to have long-term implications (see Box 1 for an outline of some major changes that have occurred since the pandemic began). Many were unavoidably subject to limited scrutiny and debate before they were enacted. It is therefore vital that all those changes made, whether technological or procedural or more fundamental, are now subject to rigorous evaluation. To conduct rigorous evaluation at pace, mechanisms for capturing the impact of reform must be built into the design from the beginning. There are reasons to be concerned that this is not happening as much as it should, which are set out in this Report.

6. We pay tribute to Her Majesty’s Court and Tribunal Service, the Judiciary and the staff who work in the courts of England and Wales for maintaining significant levels of service during the period since March 2020. We commend HMCTS and the judiciary for demonstrating how rapidly change can be successfully made in the delivery of justice across all jurisdictions.

2 [Q139](#)

3 [Q177](#)

4 For information on how other jurisdictions have used remote hearings during the crisis see: <https://www.nuffieldfjo.org.uk/files/documents/remote-hearings-in-light-of-covid-19.pdf>; for an account of how Australian courts have used virtual hearings see: Joe McIntyre, Anna Olijnyk and Kieran Pender, [Courts and COVID-19: Challenges and Opportunities in Australia](#), Australian Public Law (4 May 2020)

7. One of the clearest lessons of the crisis response since March 2020 has been how quickly the justice system can reform when needed. Her Majesty's Court and Tribunal Service (HMCTS) will need to continue to deliver change at pace in order to implement the recovery plan which is beginning to take shape. Continuing to do so without the spur of necessary emergency response will be a significant challenge in the long term.

8. *We recommend that HMCTS sets out how it intends to evaluate both the practical and qualitative effects of the changes carried out at pace in response to the Covid-19 pandemic. In particular, work must be done urgently to identify the effects of increased use of digital technology for the delivery of justice not only on the process and disposal of cases but on the results obtained for those whose cases and hearings have taken place; their perception on the fairness of the proceedings, regardless of outcome; and the barriers to access and understanding that may have arisen for both participants in cases and the wider public, including the media. We invite the Ministry of Justice to set out a timetable for obtaining that essential feedback.*

9. *We would also warn that changes introduced in response to an emergency should not be regarded as irreversible if they can be demonstrated to have impeded access to justice or resulted in less than optimal outcomes for those whom the justice system exists to serve.*

10. In this short report, it is not possible to provide a complete picture of the impact of Covid-19 on courts and tribunals in England and Wales, not least because of the complexity and diversity of jurisdictions. The Committee welcomes the fact that HMCTS is publishing weekly management statistics.⁵ However, we share frustration expressed by the Lord Chief Justice, and recent reviews of the courts system, at the absence of publicly available data on what is happening day to day. We recognise that the situation is improving but it is vital that as the use of technology increases, the quality of publicly available data improves.

5 HMCTS, [HMCTS weekly management information during coronavirus - March to May 2020](#) (Last accessed 13 July 2020)

Box 1: Covid-19 and the courts: a timeline

- 17 March 2020: The Lord Chief Justice announced that “no new trial should start in the Crown Court unless it is expected to last for three days or less. All cases estimated to last longer than three days listed to start before the end of April 2020 will be adjourned”.⁶
- 23 March 2020: The Lord Chief Justice announced that jury trials were suspended.⁷
- 25 March 2020: The Coronavirus Act 2020, which contained provisions enabling use of technology in courts and tribunals, was enacted.⁸
- 27 March 2020: HMCTS announced that the work of courts and tribunals would be consolidated into fewer buildings and that 157 priority court and tribunal buildings would remain open for essential face-to-face hearings. This represents 42% of the 370 Crown, magistrates, county and family courts and tribunals across England and Wales.⁹
- 10 April 2020: The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020, which make temporary changes tribunal procedure, came into force.
- 10 April 2020: The Employment Appeal Tribunal (Coronavirus) (Amendment) Rules 2020, which make temporary changes to the employment tribunal’s procedure, came into force.
- 14 April 2020: The President of the Family Division, Sir Andrew McFarlane announced a two-week rapid consultation on use of remote hearings in the family justice system. The results were published on 6 May 2020.¹⁰
- 14 April 2020: The Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020, which change the criminal procedure rules to facilitate video link hearings, came into force.
- 22 April 2020: The Equality and Human Rights Commission (ECHR) published interim findings from its inquiry into the experiences of disabled defendants in the criminal justice system.¹¹ This publication was a response to the rapid increase in the use of technology in the courts during the COVID-19 pandemic.

6 Lord Chief Justice, [Coronavirus \(COVID-19\): Jury trials, message from the Lord Chief Justice](#) (Last accessed 13 July 2020)

7 Lord Chief Justice, [Review of court arrangements due to COVID-19, message from the Lord Chief Justice](#) (Last accessed 13 July 2020)

8 Coronavirus Act 2020, [sections 53–57](#)

9 HMCTS, [HMCTS daily operational summary on courts and tribunals during coronavirus \(COVID-19\) outbreak](#) (Last accessed 13 July 2020)

10 Nuffield Family Justice Observatory, [Remote hearings in the family justice system: a rapid consultation, May 2020](#)

11 Equality and Human Rights Commission, [Inclusive justice: a system designed for all: Interim Findings](#), April 2020

- 1 May 2020: The Master of the Rolls, Sir Terence Etherton, commissioned a rapid review of the impact of COVID-19 measures on the civil justice system. The Civil Justice Council and the Legal Education Foundation published the results on 5 June 2020.¹²
- 11 May 2020: The Lord Chief Justice announced that a limited number of jury trials would resume in the week beginning 18 May 2020.¹³
- 8 June 2020: The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020, which introduces two new standard fees which are payable for asylum and immigration (non-asylum) cases, came into force.
- 25 June 2020: The Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020, which amend Part 55 of the Civil Procedure Rules 1998 to provide that all possession proceedings are stayed until 25 August 2020, came into force.
- 1 July 2020: HMCTS published its recovery update in response to the Covid-19 pandemic.¹⁴
- 3 July 2020: HMCTS' courts and tribunals tracker list stated that there are 288 open courts, 25 staffed courts and 28 suspended courts.¹⁵
- 17 July 2020: HMCTS' courts and tribunal tracker list states "we are no longer publishing the tracker list as most of our courts and tribunals buildings are now open in line with public health advice".¹⁶
- 20 July 2020: Jury trials have resumed in 54 Crown Courts.¹⁷

12 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020

13 Courts and Tribunals Judiciary, [Jury trials to resume this month](#) (Last accessed 13 July 2020)

14 HMCTS, COVID-19: [Update on recovery in courts and tribunals](#) (Last accessed 13 July 2020)

15 HMCTS, [Courts and tribunals tracker list during coronavirus outbreak](#) (Last accessed 13 July 2020)

16 HMCTS, [Courts and tribunals tracker list during coronavirus outbreak](#) (Last accessed 21 July 2020)

17 HMCTS, [Courts and tribunals tracker list during coronavirus outbreak](#) (Last accessed 21 July 2020)

2 The criminal courts

11. The magistrates' courts and the Crown Court have been hardest hit by the Covid-19 crisis. Magistrates' courts have not been able to operate at anything close to normal levels since lockdown began. Jury trials in the Crown Court were suspended for almost two months. Even before the Covid-19 crisis began, the number of outstanding cases in the magistrates' courts and the Crown Court was relatively, if not exceptionally, high.

The Crown Court

12. Criminal Court statistics for England and Wales for 2019 show that, at the end of December, outstanding Crown Court cases had increased by 13% on the previous year from 33,113 to 37,434 cases.¹⁸ The Crown Court backlog grew by around 1,600 cases between February and May 2020. In the equivalent period in 2019, outstanding cases increased by 1,100 (this rate of increase is similar to what was observed throughout 2019). In other words, the backlog had already grown substantially in the year before the Covid-19 pandemic. By May 2020, the Crown Court backlog had reached around 40,900 cases, compared with 33,600 in May 2019. (These figures include all types of cases, including committals for sentencing, which can generally be cleared much faster than the time it takes to carry out a jury trial.)¹⁹

13. On 9 July 2020 HMCTS published the weekly management information that it uses to understand workload volumes.²⁰ This data cannot be directly compared with other statistics on outstanding cases published by HMCTS as it is recorded differently. The latest figure, for 21 June 2020, indicates that there were 41,599 outstanding cases in the Crown court. On average, the number of weekly disposals (cases dealt with) since 8 March 2020 has been around 56% of pre-Covid baseline, although the average weekly number of receipts (new cases coming in) has also been around 58% of pre-Covid level.

14. Ministers and the Lord Chief Justice have argued that the number of outstanding cases in the Crown Court should be seen in the context of unusual circumstances. On 4 May 2020, Chris Philp told the Committee that "receipts into the Crown Court are down 77% compared with the pre-coronavirus average".²¹ On 22 May 2020, the Lord Chief Justice told the Committee that the number of disposals in the Crown Court had gone up "because we have been able to deal with a lot of outstanding sentencing".²² The Government has also suggested that the number of outstanding cases is not exceptionally high in historical terms. Chris Philp told the committee on 4 May 2020 that the number of outstanding cases "is much lower than it was 10 or 15 years ago".²³ Susan Acland-Hood told us: "the backlogs or outstanding case loads are not higher than levels we have seen in the past".²⁴

18 Ministry of Justice, [Criminal court statistics quarterly, England and Wales, October to December 2019](#) (Last accessed 13 July 2020)

19 HMCTS, [HMCTS management information - May 2020](#) and August 2019, table 1

20 HMCTS, [HMCTS weekly operational management information March to June 2020](#), 9 July 2020

21 [Q120](#)

22 [Q138](#)

23 [Q126](#)

24 [Q185](#)

15. Since jury trials resumed in May 2020, social distancing guidelines have meant that each trial requires three court rooms rather than the usual one.²⁵ The Lord Chief Justice explained why:

The broad approach that we have adopted is to assume that any trial that would have occupied one court is likely to occupy three: one for the judge, jury, advocates and defendant; one for the press and any interested members of the public who attend; and of course we need a much larger room to enable the jury to gather and deliberate in private.²⁶

16. On 22 May 2020, the Lord Chief Justice told the Committee that: “it is probably not a bad rule of thumb, but no more than that, to assume that the number of jury trials accumulating at the moment is of the order of 1,000 a month”.²⁷ The Crown Court’s inability to process trials at anything close to the rate at which they are accumulating is a root cause of the problem facing the criminal justice system (the Government’s response to this is considered in Chapter 5).

17. The easing of lockdown measures will not necessarily improve this situation. As the magistrates’ courts begin to process more cases and Crown Court receipts go back towards normal levels, it seems likely that the number of outstanding cases will continue to rise unless Crown Court capacity is significantly increased. This point was made to the Committee by Robert Buckland on 23 June 2020.²⁸ The prospect of significant numbers of defendants and victims having to experience months of delay before their cases are heard is concerning.

The magistrates’ courts

18. Magistrates’ courts deal with more than 90% of criminal cases in England and Wales. They have continued to operate in some form throughout the Covid-19 pandemic. A number of magistrates’ courts have remained open to process urgent work, including overnight hearings. Much of this work was processed by professional District Judges rather than lay magistrates. At the height of the crisis in late March and early April, the committee was told that “there was a period of about three to four weeks, running from the end of March or the beginning of April until the third or fourth week in April, when, essentially, no magistrates’ court trials took place at all”.²⁹ Trials in magistrates’ courts began to be listed in late April. On 4 May 2020 Chris Philp told the Committee that in that week 197 magistrates court trials had been listed. He added that “the average number of magistrates court trials that were effective pre-coronavirus was at about the 800 mark”.³⁰

19. Using the official monthly management figures it is possible to put the current situation in context with the number of outstanding cases in recent years. At the end of May 2020, there were 416,600 outstanding cases in the magistrates’ courts, which is the highest backlog in recent years. The backlog previously peaked at 327,000 outstanding cases in 2015. The recent increase is mainly the result of there having been far fewer disposals than usual between the end of February and the end of May 2020, when the

25 [Q143](#)

26 [Q143](#)

27 [Q143](#)

28 [Q194](#)

29 [Q109](#)

30 [Q109](#)

courts were going into lockdown. During this time, the backlog in the magistrates' courts backlog grew by nearly 99,000. The number of disposals in April 2020 was around 20% of what it had been in a typical month in 2019. The number of new cases received by the magistrates' courts in May was around 60% of usual volume. The growing backlog is caused by more cases coming in than are being cleared.³¹

20. This analysis was confirmed by figures in the new weekly HMCTS statistics. Those set out that in the magistrates' courts the pre-Covid-19 baseline of outstanding cases was 407,129. On 21 June 2020 that figure was 510,559, a more significant rise in cases than in the Crown Court.³² The build-up is the result of disposals being around 43% of pre-Covid baseline level on average per week since 8 March 2020, while receipts have stayed at around 63% of pre-Covid level.³³

21. On 23 June 2020, the Lord Chancellor told the Committee that he was confident that "we can manage the magistrates case load backlog this year".³⁴ The Justice Committee conducted two inquiries on the Magistracy in 2015–19, and both reports noted with concern the "Government's failure to develop an adequately funded, overarching national strategy for the magistracy".³⁵ *We invite the Ministry of Justice to demonstrate how it intends to work with the magistracy in order to deliver its recovery plan.*

Conclusion

22. **The Covid-19 pandemic has had a major impact on the operation of the criminal justice system.**³⁶ By contrast with some parts of the civil justice system, technology has not provided solutions to enable trials to go ahead in the magistrates' courts and the Crown Court at anything close to normal levels. The number of outstanding cases create the ingredients for a significant crisis in the criminal justice system. Victims of crime will have to wait longer to know whether they will get justice. Defendants awaiting trial will spend longer on remand in custody or out on bail in the community.

23. We are particularly concerned about the effect delays will have on defendants turning 18. Delays in getting to court may increase the possibility of those who committed their offence at 17, being dealt with in the adult system, as they turn 18 whilst awaiting trial. Delays may mean that their first court appearance may not take place until they have turned 18, and thus they face being convicted as adults, which could mean longer sentences and rehabilitation periods. There is a vast gap between the youth and adult criminal justice system, and those in this position may find that they lose access to crucial youth offending services, such as diversion schemes. The Ministry should set out how many defendants currently find themselves in this position, and what is being done to address this issue.

31 HMCTS, [HMCTS management information - May 2020](#) and August 2019, table 1), House of Commons Library, [Court statistics for England and Wales](#), December 2019

32 [Q187](#)

33 HMCTS, [HMCTS weekly operational management information March to June 2020](#), 9 July 2020

34 [Q186](#)

35 Justice Committee, Eighteenth Report of Session 2017–19, [The role of the magistracy: follow-up](#), HC 1654, p.42–43

36 In a Court of Appeal case decided on 30 April, [R v Manning](#) [2020] EWCA Crim 592, Lord Burnett, the Lord Chief Justice, set out some principles to inform how judges approach sentencing during the Covid-19 pandemic: "The current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence".

24. The Lord Chief Justice criticised the quality of the data available to help manage the response to the crisis:

What we have discovered, as we have been trying to delve down into all the figures, is that because of the rather haphazard systems that still operate in a lot of our courts it has been extremely difficult to get reliable data.

What I have been trying to find out—we have not got there quite yet, I am afraid—is to identify with much more clarity how many trials we have, how many are trials with defendants awaiting trial in custody, and how many are defendants awaiting trial on bail.³⁷

It is remarkable that in 2020 basic data on how many cases are in progress and how many trials due is not yet available to the Lord Chief Justice, but the absence of data of requisite quality is a familiar issue within the justice system. We are as concerned as predecessor Committees at the prevalence of this issue across a range of areas: sentencing, diversity and the use of technology. We invite the MoJ and HMCTS to set out, with a timeline, how the provision of basic management information for those running the courts and tribunal system, of the type sought by the Lord Chief Justice, is to be achieved.

25. Phil Bowen, Director, Centre for Justice Innovation, told us that in the case of children and young people:

As the Committee probably knows, we do not know yet what the backlog is specifically for young people under the age of 18, because the Courts Service does not produce data on backlogs specific to youth courts.³⁸

The Committee are concerned that HMCTS does not produce data on backlogs specific to the youth courts. We recommend that the Ministry and HMCTS confirm whether this data is collected and if not, why not. If this data is collected, the Ministry and HMCTS should publish this data separately from data relating to the adult court system.

26. To respond to this unprecedented crisis, HMCTS will have to increase the capacity of the magistrates' courts and the Crown Court. It is regrettable that after 10 years of court closures, more progress has not already been made to enable court hearings in alternative venues. In 2019, our predecessor committee noted that since 2016 “there has been surprisingly little progress in developing alternative court venues to mitigate the impact of court closure”.³⁹ **One of the core lessons of this crisis is that the courts which are the front line of criminal justice need to run in such a way that their capacity can be increased in response to demand. Closing courts and reducing court capacity before implementing reforms that can increase capacity, either through technology, staffing or changes to the estate, left the criminal justice system in a difficult place going into this period of crisis.**

27. Chapter 5 examines the solutions proposed to deal with the specific problem of jury trials. The Committee is confident that solutions can be found to get the number of

37 [Q143](#)

38 Oral evidence taken on 30 June 2020, [HC 306](#), Q170 [Phil Bowen]

39 Justice Committee, Eighteenth Report of Session 2017–19, [The role of the magistracy: follow-up](#), HC 1654, para 101

outstanding cases down. However, it is imperative that the changes made are sustainable so that the criminal justice system is better placed to weather any future crisis. Now is the time to increase capacity for the long term.

3 Civil courts and tribunals

28. The story of impact of the Covid-19 crisis on the civil courts and tribunals has been different from the experience of the criminal courts. Digital technology has enabled certain civil jurisdictions to operate close to normal pre-Covid-19 levels. On 22 May 2020 the Lord Chief Justice told the Committee that “in the High Court and in the business and property courts around the country, in the region of 80% of the ordinary business is being transacted”.⁴⁰ However, certain civil jurisdictions, notably the Family Court and the Employment Tribunal, have seen a rise in the number of outstanding cases since the beginning of the Covid-19 pandemic.

29. Even if certain civil jurisdictions are not accumulating the same rate of outstanding cases as the criminal courts, they are nonetheless facing major challenges, some caused by Covid-19, others that are pre-existing and which have been exacerbated by the crisis. Many of these challenges need carefully crafted solutions that can be delivered quickly. In this short section it is not possible to cover all civil jurisdictions, and instead we have focused on a small number. Chapter 4 on technology also addresses the impact of Covid-19 on civil jurisdictions.

The Family Court

30. On 23 June 2020, the Lord Chancellor and Secretary of State for Justice, Robert Buckland QC, told the Committee that he was “concerned” about the backlog in both public and private family law cases.⁴¹ HMCTS’ weekly management information shows that as of 24 May 2020 there were 13,504 outstanding public family law cases (a rise of 1,209 from the pre-Covid-19 baseline) and 47,011 private family law cases (a rise of 4,706 from the pre-Covid-19 baseline).⁴² On 22 May, the Lord Chief Justice told the Committee that “the position is less rosy” in private than in public family law.⁴³

31. In the Family Court, it is clear that the Covid-19 crisis has caused problems that technology cannot mitigate. On 9 June 2020, the President of the Family Division, published ‘The Family Court and Covid 19: the Road Ahead’.⁴⁴ Sir Andrew McFarlane reported his concerns at the number of cases that continued to come into the Family Court which was already “attempting to process an unprecedented level of applications relating to children”.⁴⁵ The report highlights that after an initial dip at the beginning of the lockdown, receipts in the Family Court have continued at normal levels overall, but have risen significantly in certain areas, such as domestic abuse injunctions.⁴⁶ Sir Andrew McFarlane’s report contained a stark warning:

The reality to be faced is that the Family Court must now, for a sustained period, seek to achieve the fair, just and timely determination of a high volume of cases with radically reduced resources in sub-optimal court settings.⁴⁷

40 [Q138](#)

41 [Q199](#)

42 HMCTS, [HMCTS weekly operational management information March to June 2020](#)

43 [Q138](#)

44 Sir Andrew McFarlane, [The Family Court and COVID 19: The Road Ahead](#), June 2020

45 Sir Andrew McFarlane, [The Family Court and COVID 19: The Road Ahead](#), June 2020, para 8

46 Sir Andrew McFarlane, [The Family Court and COVID 19: The Road Ahead](#), June 2020, para 7

47 Sir Andrew McFarlane, [The Family Court and COVID 19: The Road Ahead](#), June 2020, para 9

To meet this challenge, the report outlines that the Family Court will need “a very radical reduction in the amount of time that the court affords to each hearing”.⁴⁸

Tribunals

32. On 4 May 2020 Chris Philp gave an update on the number of outstanding cases in tribunals:

Receipts into the immigration tribunal are down by 88%, but the disposals—the actual cases decided—are down by only 55%. As a consequence, the outstanding caseload is flat to slightly down. You get that sort of picture across all tribunals. Receipts are down hugely and disposals are down a bit, so the outstanding caseload is fairly flat.⁴⁹

33. Tribunals have made extensive use of remote hearings. On 23 June 2020, Susan Acland-Hood explained that certain tribunal jurisdictions have been able to have substantive hearings on audio and video, which have meant that they have been “operating at close to full capacity”.⁵⁰

34. On 23 June 2020, Susan Acland-Hood reported that in relation to employment tribunals HMCTS had “not been able to get technology engaged, for regulatory and legislative reasons”.⁵¹ HMCTS’ weekly management information states that as 24 May 2020 there were 35,078 outstanding single claims in the Employment Tribunal, up by 3,891 from the pre-Covid baseline of 30,687.⁵²

35. There have been a range of changes made to the operation of tribunals to adapt to Covid-19 through both statutory instruments and practice directions.⁵³

36. On 9 April 2020, the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 came into force. This statutory instrument temporarily enables tribunals to make a decision on the basis of papers without the parties’ consent and to conduct remote hearings in private if it is not practicable for that hearing to be broadcast or accessed by a media representative. The Joint Committee on Statutory Instruments asked the Government to explain whether such measures were consistent with the statutory requirement that “the tribunal system is accessible and fair”.⁵⁴ The Government explained in response that the provisions are intended to operate only as a temporary “fall back” and are therefore consistent with the statutory requirement.⁵⁵

37. There have been other permanent changes to the way that tribunals work in response to Covid-19. The Civil Legal Aid (Remuneration) (Amendment) (Coronavirus) Regulations 2020, which came into force on 8 June 2020, introduce two new standard fees for asylum and immigration (non-asylum) appeals to the First-tier Tribunal (Immigration

48 Sir Andrew McFarlane, [The Family Court and COVID 19: The Road Ahead](#), June 2020, para 43

49 [Q129](#)

50 [Q178](#)

51 [Q199](#); for information on employment tribunals response to Covid-19 see: Courts and Tribunals Judiciary, [Employment Rules and Legislation: Practice Directions](#) (Last accessed 13 July 2020)

52 HMCTS, [HMCTS weekly operational management information March to June 2020](#)

53 Courts and Tribunal Judiciary, [Coronavirus \(COVID-19\) advice and guidance](#) (Last accessed 13 July 2020)

54 Joint Committee on Statutory Instruments, [Eleventh Report of Session 2019–21](#), HL 61, HC 75-xi, para 6.2 and Appendix 6

55 Joint Committee on Statutory Instruments, [Eleventh Report of Session 2019–21](#), HL 61, HC 75-xi, para 6.2 and Appendix 6

and Asylum Chamber) which use the new online procedure. These fees are a product of the acceleration of the digitisation of the First-tier Tribunal (Immigration and Asylum Chamber) in response to the coronavirus pandemic. The House of Lords Secondary Legislation committee criticised the timing of the consultation on these changes, which began on the day the instrument was laid, describing that as “poor practice”.⁵⁶ The Immigration Law Practitioners’ Association has also criticised the Government’s approach to consultation on this regulation, and has argued that it will “inevitably deter people from taking on the more complex cases” and “that the proposed fixed fee will do irreparable harm to the sector”.⁵⁷ Whether this is correct will become clear in due course, but **the Committee is concerned that Covid-19 should not be used as an excuse for bringing in permanent changes without prior consultation and suitable evaluation of their effects.**

56 Secondary Legislation Scrutiny Committee, [Sixteenth Report](#) of 2019–21, HL Paper 68, para 42.

57 ILPA, [ILPA’s statement on the new immigration and asylum legal aid fixed fee](#) (18 May 2020)

4 Technology and the courts

38. The Covid-19 pandemic has necessitated a significant increase in the role of technology in the justice system in England and Wales. The ongoing HMCTS reform programme, ‘Transforming our Justice System’, which began in 2016, aimed to radically enhance the role of technology.⁵⁸ However, when the Covid-19 pandemic struck in 2020 the court system was still, in terms of the use of technology, “virtually below sea level”, according to Professor Dame Hazel Genn of UCL.⁵⁹

39. This makes it even more remarkable that courts and tribunals managed to move so quickly to turn digitally-enabled remote hearings into the ‘new normal’. HMCTS data shows that the numbers of cases heard each day in England and Wales with the use of audio and video technology increased from fewer than 1,000 in the last week of March 2020 to approximately 3,000 by mid-April.⁶⁰ On 24 April 2020, 90% of the 3,200 hearings taking place that day were through audio or video.⁶¹ The Committee recognises that this is an substantial achievement.

40. A further positive is that recent evidence suggests high satisfaction with remote hearings in the civil justice system, at least among practitioners. A study by the Civil Justice Council and the Legal Education Foundation into the impact of Covid-19 measures found that 71.5% of more than 1,000 lawyers surveyed described their experience as positive or very positive.⁶² However, the study received only 11 complete responses from lay users of the civil justice system.⁶³ As a result the authors suggest that there is an “urgent need to capture the types of management information that facilitate the conduct of research into the experience of lay users and litigants in person”.⁶⁴ **While legal practitioner satisfaction with the use of digital technology in the civil courts is welcome, there is an absence of data so far on how that has affected lay users who are using the system or their satisfaction with the process and outcome of their hearings.**

41. The increase in the use of technology in courts and tribunals remains a matter for consideration. Before the Covid-19 pandemic, in November 2019, the Justice Committee’s report on *Court and Tribunal Reform*, concluded that:

Poor digital skills, limited access to technology, low levels of literacy and personal disadvantages experienced by particular groups create barriers to access to digital justice services. HMCTS has not taken sufficient steps to address the needs of vulnerable users, particularly as regards an absence of adequate legal advice and support.⁶⁵

58 Ministry of Justice, [Transforming Our Justice System](#) (2016)

59 House of Lords Select Committee on the Constitution, [Oral evidence: Constitutional implications of Covid-19](#) Wednesday 3 June 2020

60 HMCTS, [Courts and tribunals data on audio and video technology use during coronavirus outbreak](#) (Last accessed 13 July 2020)

61 HMCTS, [Courts and tribunals data on audio and video technology use during coronavirus outbreak](#) (Last accessed 13 July 2020)

62 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 5.64

63 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 6.1

64 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 1.21

65 Justice Committee, Second Report of Session 2019, [Court and Tribunal reforms](#), HC 190, para 39

We remain concerned that the use of technology in courts and tribunals may not always be tailored to the needs of the most vulnerable users of the justice system.

42. As many of us have found in our own working lives, the effectiveness of digitally enabled meetings and hearings depends on a range of factors, including the suitability of the platform, the quality of the hardware and internet connection being used by the participants, and the digital skills of the participants. The Lord Chief Justice, Lord Burnett, told us on 22 May 2020, that judges had found that “the quality of the kit matters a great deal”.⁶⁶ All users of the justice system during the crisis are likely to endorse the Lord Chief Justice’s observation. It is a simple truism that professionals within the system - primarily judges and lawyers - are likely to have better access to high-quality equipment, and more experience, familiarity and digital skills than lay users whose contact with the justice system may be fleeting.

43. This chapter seeks to identify some of the most prominent issues around the impact of technology on access to justice which have been raised with the Committee.

Vulnerable users

44. The Lord Chief Justice sought to reassure us that the shift to digital delivery of justice will not disadvantage those who have difficulties with remote hearings and that he is committed to safeguarding the interests of vulnerable court users:

The general proposition is that, when we are back into normal times, nobody will be forced to use digital engagement with the courts if they are not able to do so. That is always an absolutely fundamental starting point. That will not change.

One of the things that everybody who conducts hearings is conscious of is that vulnerable court users, and vulnerable people with vulnerabilities caused by a range of different circumstances, need to be treated with particular care. Young people comprise a group where there is a large number of vulnerable people. A large number of people in the court system have mental difficulties and again can be very vulnerable. Of course, in some of the tribunal contexts—the social entitlement chamber and so on—again there can be great vulnerability.

[...] At the moment the difficulty for some of the vulnerable is that they are not able to engage in or use this sort of [video] facility, or even the telephone. To give examples, we have heard so much of this in the family courts, where there are a lot of litigants in person. They are often living in fairly deprived circumstances. It is unreal to suppose that they have good broadband connections, computers and so on to be able to attend a hearing remotely.⁶⁷

45. The Chief Executive of HMCTS, Susan Acland-Hood, gave a similar message in relation to people with disabilities taking part in remote hearings. She told us:

66 [Q153](#)

67 [Q159](#)

What we are trying to do is to make sure that people understand that nobody for whom remote participation is difficult is required to participate remotely.⁶⁸

46. John Bache, Chair of the Magistrates Association, was, however, more cautious:

We have concerns, and have had concerns for a long time, particularly about more vulnerable witnesses. There are obvious problems. Not everybody has access to video conferencing, but all of this is being worked through [...] One particular problem that concerns us is the ability of the defendant to get confidential advice from their advocate. That is a problem. It is not insurmountable, but it is an obvious problem. The other thing that concerns us is that some people are not able to express themselves as well over video. Body language is important.⁶⁹

47. Elspeth Thompson of Resolution also raised concerns about lay party participation in remote family hearings:

There are a lot of issues with remote hearings, particularly for parents in care proceedings whose only device to access them is a mobile phone, sometimes a cracked mobile phone, at home. If they are trying to access court bundles, you cannot do that on a phone. We have been trying to take bundles round to clients' houses so that they can look at them in that way, but it is all very temporary.⁷⁰

48. Some of that concern is reflected in the review of remote hearings in the Family Court by the Nuffield Family Justice Observatory:

Significant concerns were raised about the fairness of remote hearings in certain cases and circumstances, and there were some worrying descriptions of the way some cases had been conducted to date. These concerns chiefly related to cases where not having face-to-face contact made it difficult to read reactions and communicate in a humane and sensitive way, the difficulty of ensuring a party's full participation in a remote hearing, and issues of confidentiality and privacy. Specific concerns were commonly raised in relation to specific groups: such as parties in cases involving domestic abuse, parties with a disability or cognitive impairment or where an intermediary or interpreter is required.⁷¹

49. Concerns reported by organisations and individuals with experience of working with and advocating for court users to the civil justice rapid review included:

- a) That lack of communication from court staff prior to hearings and a decline in the amount of administrative support available at court during COVID-19 was impacting disproportionately on lay parties and litigants in person, causing anxiety and distress;

68 [Q115](#)

69 [Q76](#)

70 [Q104](#)

71 Nuffield Family Justice Observatory, [Remote hearings in the family justice system: a rapid consultation](#), May 2020, p 1

- b) That many lay clients and litigants in person would be unable to access the technology and resources needed to effectively participate in remote hearings;
- c) That the requirement to create and submit e-bundles would create particular challenges for many litigants in person;
- d) That practices adopted by lawyers to communicate with their clients during hearings relied on lay parties having access to multiple devices and good standards of written comprehension, creating barriers to effective participation; and
- e) That a combination of restricted access to legal advice due to COVID-19 and difficulties with navigating unfamiliar technology alongside unfamiliar legal processes compounded pre-existing practical and emotional barriers to effective participation.⁷²

50. The Equality and Human Rights Commission has said that the use of video hearings in England and Wales can significantly hinder communication and understanding for people with learning disabilities, autism spectrum disorders and mental health conditions.⁷³ In its interim report the Commission says:

Almost all the criminal justice professionals in England and Wales who we interviewed felt that use of video hearings does not enable defendants or accused people to participate effectively, and reduces opportunities to identify if they have a cognitive impairment, mental health condition and / or neuro-diverse condition. This is partly due to poor sound and image quality, which can make communication harder for everyone. These problems are even worse for the group our inquiry looks at [defendants and accused persons with disabilities], as video-links create separation—the defendant or accused person cannot see the whole court room and everyone in it.⁷⁴

The report recommends that the Ministry of Justice and HMCTS should establish a clear evidence base on the impact of court reform for disabled defendants and address existing barriers for disabled defendants before any further measures are introduced or extended.

51. Evidence from the Children’s Rights Alliance for England and the Youth Justice Legal Centre, part of Just for Kids Law, drew attention to the impact on video hearings on child defendants:

We are extremely concerned that the increase in video link hearings for child defendants, both during the coronavirus and subsequently, severely compromises a child’s rights to a fair trial and their ability to effectively participate.⁷⁵

72 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, p 10

73 Equality and Human Rights Commission, [press release](#), 22 April 2020

74 Equality and Human Rights Commission, [Inclusive justice: a system designed for all: Interim Findings](#), April 2020, p 9

75 Justice Committee inquiry on Coronavirus (COVID-19): [The impact on prison, probation and court systems from the Children’s Rights Alliance for England and the Youth Justice Legal Centre](#), part of Just for Kids Law, para 4

52. Their evidence outlined that the starting point for children should be fundamentally different:

As a minimum we consider that lawyers should be either physically present with the child or, at the very least, able to have a video conference with the child during this time. The importance of building rapport and trust with a child, recognising non-verbal cues and identifying communication, social or learning difficulties are all impeded by the use of video link. The default position should be that children should never appear via video link for non-administrative hearings.⁷⁶

Evaluation

53. **We welcome assurances from the Lord Chief Justice and the Chief Executive of HMCTS that no one unable to engage digitally with the court and tribunal system will have to do so. There must be a particular focus on the interests of more vulnerable court users, including children, disabled people and those with specific communication needs. This is not simply a matter of the most high-tech kit and strongest wifi. HMCTS must ensure adequate engagement, comfort and comprehension on the part of all court users, irrespective of their computer skills and knowledge of legal process; this may require a physical hearing if justice is to be delivered to them fairly. The interests of vulnerable court users must be protected, including those of people with disabilities. Even the most high-tech kit and strongest wi-fi are no proof against the engagement, comfort and comprehension of those whose computer skills and knowledge of legal process may require a physical hearing if justice is to be delivered to them fairly.**

54. The 2019 Justice Committee report on court and tribunal reform drew attention to the importance of rigorous evaluation of the impact of increased reliance on technology. That report noted that much more could be done to “evaluate the impact of the reforms on vulnerable and excluded groups”.⁷⁷ The Committee commends judicial leadership for commissioning reviews of the impact of remote hearings in both the civil courts and the family courts.

55. On 5 June 2020, the Civil Justice Council and the Legal Education Foundation published the results of the rapid review of the impact of Covid-19 measures on the civil justice system.⁷⁸ The review identified the following factors that led to satisfaction with remote hearings:

- a) agreeing with the outcome of the hearing;
- b) not experiencing technical difficulties;
- c) participating in a fully video hearing (compared to an audio hearing);
- d) having greater experience of remote hearings;

76 [Justice Committee inquiry on Coronavirus \(COVID-19\): The impact on prison, probation and court systems from the Children’s Rights Alliance for England and the Youth Justice Legal Centre, part of Just for Kids Law](#) Para 7

77 Justice Committee, Second Report of Session 2019, [Court and Tribunal reforms](#), HC 190, para 210

78 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020

- e) participating in a hearing at the start of the crisis and participating in a hearing that did not involve a litigant in person.
- f) Costs hearings were more likely to be experienced positively than interlocutory hearings, and
- g) enforcement hearings, appeals and trials were less likely to be experienced positively than interlocutory hearings.⁷⁹

The review's authors conclude that these findings suggest tentative support for reserving remote hearings for matters where the outcome is likely to be less contested, where the hearing is interlocutory in nature and for hearings where both parties are represented.⁸⁰

56. Despite their broad satisfaction with remote hearings, lawyers who responded to the review of the impact of COVID-19 measures on the civil justice system also expressed concerns:

...the majority of respondents felt that remote hearings were worse than hearings in person overall and less effective in terms of facilitating participation—a critical component of procedural justice. Respondents also found remote hearings to be more tiring to participate in than physical hearings, particularly those that proceeded by video. Findings also suggest that remote hearings may not necessarily be cheaper to participate in, which may be counter to assumptions about relative costs being lower.⁸¹

57. In the rapid review for the Family Court, the respondents were evenly balanced in terms of their overall positive and negative reactions to remote hearings. Most thought that remote hearings were justified for certain cases in the current circumstances; some felt that this way of working could continue for certain cases in the future.⁸²

58. There have been repeated calls for further reviews and for more detailed data on the impact of remote hearings. The report commissioned by the Civil Justice Council reported that:

Many respondents highlighted the urgent need to improve the quality and quantity of data and information available regarding the operation of the civil justice system. Recommendations were made in relation to both the management information produced by HMCTS and primary legal information (listings, case documents and judgments). Many respondents emphasised the urgent need for evaluation.⁸³

The report recommended that HMCTS should capture the following information:

79 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, p 8–9

80 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, p 8–9

81 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, p 9

82 Nuffield Family Justice Observatory, [Remote hearings in the family justice system: a rapid consultation](#), May 2020, p 8

83 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 9.1

- What hearings are taking place e.g. matters relating to constitution of claim, interlocutory, trial, appeal, costs, enforcement.
- What types of cases are proceeding e.g. personal injury, commercial, etc.
- What mode is being used e.g. paper, fully audio, partly audio, fully video, partly video, in person.
- Where are hearings taking place (geographic location).
- What technology is being used (telephone, Skype for Business, Microsoft Teams, Kinly, Cloud Video Platform etc).
- Is the case proceeding in private or in public?
- Technical issues experienced (none/moderate/serious).
- Outcome of hearing e.g. adjournment/settled prior to hearing etc.⁸⁴

Without such basic information, systematic evaluation of the effectiveness of remote hearings, and their impact of access to justice will remain difficult.

59. The Equality and Human Rights Commission's report on the Criminal Justice system expressed concerns about the lack of data currently available on the use of remote hearings and has encouraged the Government to begin collecting this data now to inform its use in the future.⁸⁵

60. Ellie Cumbo, Head of Public Law at the Law Society, told the Committee on 4 May 2020 that HMCTS has no data on the quality of hearings:

There are numbers now available on how many hearings are taking place, whether by video, by telephone, or in some cases, still face to face. What they are not able to do yet is explain what types of hearing those have been: whether or not they involved witness evidence; whether or not vulnerable parties were involved; and whether or not all those involved would consider those hearings to be a success.⁸⁶

In the circumstances of the Covid-19 pandemic it is understandable that HMCTS has prioritised delivering remote hearings over systematic evaluation. However, there is a risk that if the ability to conduct such evaluations is not embedded into the system at this stage, then it will be difficult to determine whether the changes made to adapt to Covid-19 should be adopted permanently.

61. We concur with the view of the Lord Chief Justice, Lord Burnett of Maldon, when he told us:

84 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 9.4

85 Equality and Human Rights Commission, [Inclusive justice: a system designed for all: Interim Findings](#), April 2020, p 13

86 [Q72](#)

What has to happen, and is happening, is that information will be gathered about the experience of the use of these [video and audio] facilities so that careful decisions can be made about where they work, where they are good, where they do not work so well and where they do not really work at all.⁸⁷

We must ensure that we are in a position, as soon as possible, to be able to evaluate what we have been doing so that we know, as John Bache, Chair of the Magistrates Association, put it: “whether it is sensible to carry on doing it”.⁸⁸

62. The Committee is concerned that as yet there has been no judicially or government commissioned, review of the increased use of remote hearings in criminal cases in either the magistrates’ courts or the Crown Court during the pandemic.

63. On 30 April 2020, HM Courts and Tribunals Service (HMCTS) announced that:

HMCTS is bringing in a new video platform (Cloud Video Platform) to enable all parties in a criminal hearing to take part remotely—allowing all magistrate and crown courts in England and Wales to hold secure hearings, making it easier to make sure justice continues to be served. Most criminal cases are heard in magistrate courts and this technology—available for cases such as remand, custody time limit, and sentencing hearings—will help move people through the criminal justice system in these unprecedented times. This technology will not be used for jury trials, and a judge will decide whether it is appropriate to use in any other hearing on a case-by-case basis.⁸⁹

64. We asked the Chief Executive of HM Courts and Tribunals Service, Susan Acland-Hood, about this on 23 June 2020, and she told us that the new platform, Cloud Video Platform (CVP), had been rolled out to criminal courts and that the platform allowed for confidential communications between clients and lawyers separately from the links for the hearing itself.⁹⁰ She said the new platform was about to be rolled out for civil and family hearings.⁹¹

65. The Justice Committee raised concerns about the use of video links and video hearings in criminal cases in its October 2019 report, *Court and Tribunal Reforms*, and recommended further research on their impact on justice outcomes.⁹² ***In light of the Equality and Human Rights Commission’s recent findings, we recommend that the Ministry of Justice commission an urgent review that evaluates the effect of Covid-19 measures in the magistrates’ courts and the Crown Court.***

87 [Q154](#)

88 [Q80](#)

89 HMCTS, [New tech will help keep the criminal justice system moving during COVID-19 pandemic](#), 30 April 2020

90 [Q199](#)

91 For more information on the Cloud Video Platform and the timeline for its rollout see: HMCTS, [HMCTS online event, 15 July 2020: Use of remote hearings to maintain justice during the coronavirus outbreak](#) (Last accessed 21 July 2020)

92 Justice Committee, Second Report of Session 2019, [Court and Tribunal reforms](#), HC 190, para 88

Open justice

66. It can be difficult to provide members of the press or public with access to remote hearings. This is recognised in the Civil Justice in England and Wales Protocol Regarding Remote Hearings:

The hearing can be made open to the public, if technically possible, either by the judge(s) or the clerk logging in to the hearing in a public court room and making the hearing audible in that court room, or by other methods. But in the exceptional circumstances presented by the current pandemic, the impossibility of public access should not normally prevent a remote hearing taking place.⁹³

67. Susan Acland-Hood, the Chief Executive of HM Courts & Tribunals Service, wrote to the Committee on 27 April 2020:

The feedback we received demonstrated a mixed picture with some good examples of where the media had been provided with remote access to hearings, while other examples raised concerns about the timeliness of requests being handled.

As a result of this feedback, we have issued more specific guidance to HMCTS staff on how to handle media requests to gain remote access to a hearing. This came into force on 17 April. We believe that, while many courts are facing staffing pressures because of the crisis, this should help ensure that media requests are picked up and processed in a timely way.⁹⁴

68. The Civil Justice Council and the Legal Education Foundation’s study on the impact of Covid-19 measures in the civil justice system reported the following on open justice:

Journalists and court reporters who responded to the survey reported that they have largely been able to attend hearings where they have wished to do so—no respondents reported that their access had been refused.⁹⁵

The findings from the consultation revealed a divide between the upper and lower courts in terms of the amount of the amount of information published.⁹⁶ This concern was echoed on 29 May 2020 by a coalition group of campaigning organisations, academics and open justice advocates, who noted in a letter that “members of the public—including many of the signatories to this letter—have encountered severe obstacles when trying to observe the justice process, particularly in the lower courts”.⁹⁷

93 Judiciary of England and Wales, [Civil Justice in England and Wales Protocol Regarding Remote Hearings](#) (26 March 2020)

94 [Letter from Susan Acland-Hood, CEO of HMCTS, to the Chair of the Justice Committee on Open Justice, 27 April 2020](#)

95 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 1.24

96 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, para 1.25

97 Letter on Open Justice, [‘We need to protect open justice during the Covid-19 emergency’](#), The Justice Gap, 29 May 2020

69. On 9 June 2020, the Lord Chief Justice, Lord Burnett, wrote to the Committee. He noted that “HMCTS are not collecting data on how many members of the public are connecting to listen to proceedings, and there are no plans to do so”.⁹⁸ He set out some difficulties in providing electronic access to hearings for the wider public:

A serious issue is that it is not possible to control recording or broadcasting other abuse by members of the public. Decisions are taken on a case by case basis by judges in balancing that risk against the need for openness. Accredited journalists are clearly more familiar with the law and the penalty for breaking it. **The requirement for open justice is generally satisfied by journalists being admitted (emphasis added).** However, the demand for public access as things stand has been very limited and so this may be something of a moot point.⁹⁹

This point suggests that the application of the principle of open justice to remote hearings has to be fully worked through. *We recommend that HMCTS commissions research to establish how the principle of open justice should apply to remote hearings. That should include research into how the public—not just the media—can ‘attend’ hearings. In the context of the emergency service being provided during the pandemic, but only in that context, we accept the Lord Chief Justice’s statement that the requirement for open justice is generally satisfied by journalists being admitted to hearings. A restoration of full public access to hearings is, however, necessary to the provision of open justice as soon as circumstances permit it. There is a danger during this extraordinary period that the principle’s role within the justice system will be eroded by accident.*

Conclusion

70. We broadly welcome the greater use of technology which is an intrinsic part of HM Courts and Tribunals Service’s reform programme. HM Courts and Tribunal Service, the Judiciary, Magistracy, and legal professionals have done extremely well to keep the court system ticking over despite the restrictions imposed during the pandemic. A high proportion of hearings have gone ahead remotely in particular areas, such as for commercial cases. However, we would not like to see remote hearings maintained permanently without further assessment of the experiences and satisfaction of lay participants, including their access to the necessary technology and comprehension of proceedings. We are particularly concerned that disabilities or poverty can make it very difficult for some people to access justice properly via remote hearings.

71. There is a risk that technology exacerbates the sense of there being a two-tier justice system. The appellate courts at the top of hierarchy have moved fairly seamlessly to remote hearings. Large commercial law firms have welcomed the shift to remote hearings and advocated for the expanded use of remote hearings in commercial litigation.

72. At the coalface of the justice system, in the criminal justice system and the Family Court, technology has played a positive role in enabling the wheels of justice to turn where they otherwise might not have. However, in terms of the overall impact of technology, our

⁹⁸ [Letter from Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales to the Chair of the Justice Committee, dated 9 June 2020, regarding open justice](#)

⁹⁹ [Letter from Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales to the Chair of the Justice Committee, dated 9 June 2020, regarding open justice](#)

sense is that it carries many more risks for those who are the most vulnerable users of the justice system. The magistrates' courts and the Crown Court are ill-equipped to adapt to using technology when compared to appellate courts tacking commercial cases.

73. It is particularly worrying that when it comes to evaluating the impact of technology, we know the least about those who are most in need of support. We support the call from the authors of the Civil Justice Review who state that “the most pressing priority relates to the need to understand the experience of non-professional court users, particularly those who are considered vulnerable under existing law and practice directions, those with protected characteristics and those who are litigants in person”.¹⁰⁰

74. We recommend that HMCTS set out a policy to ensure that court users, particularly those who are or may be considered vulnerable, are sufficiently able to follow and participate in virtual processes. This policy should specify how such checks are to be carried out and which official of the court is responsible for making them. A report should be made by that official to judges or others conducting proceedings to the effect that participants are able to understand what is being done and participate as appropriate before proceedings commence or continue.

100 The Civil Justice Council and the Legal Education Foundation, [The impact of COVID-19 measures on the civil justice system: Report and recommendations](#), May 2020, p 84

5 The recovery plan

75. On 24 March 2020 the Lord Chancellor and Secretary of State for Justice, Robert Buckland QC, told the Committee that he would work closely with the judiciary to ensure that “we have a recovery plan so that whenever this ends [...]—we are ready with listings and allocations at the right time”.¹⁰¹ Since that statement, the impact of Covid-19 on the courts has become clearer and the number of outstanding cases, as set out in Chapter 2, has caused considerable concern.

76. On 23 June 2020, Robert Buckland told us that the outstanding cases in the magistrates’ courts and the Crown Court will be brought under control:

We need to remember the fact that we want to deal with this case load in the next few months rather than in years. That is an important point as well. Lots has been said about years and years of case load. Not true. Any suggestion of two or three or, as I saw today, five years is wrong. We are confident that we can manage the magistrates case load backlog this year.

The Crown Court is somewhat more complex, but we think we can, with all the measures that we have talked about, or a combination of them, deal with the problem by Easter 2021.¹⁰²

We welcome the Government’s clear commitment to an ambitious timetable for getting the number of outstanding cases under control. Our concern is not so much the absolute number of outstanding cases or hearings but rather that the Government can demonstrate that there is a clear plan to reduce the rate at which outstanding cases are accumulating which does not compromise the core principles of our justice system.

Jury trials

77. The Committee was concerned to learn that the Government was contemplating suspending jury trials and replacing them with “the disposal of either-way trials in the Crown Court by a judge sitting with two magistrates”.¹⁰³ We recognise that this proposal has not been adopted as Government policy, but was merely one of a number of options being considered. Nevertheless, the proposal itself was in conflict with what Chris Philp MP, Parliamentary Under Secretary of State for the Courts, told us on 4 May 2020:

[T]here is categorically no question at all, under any circumstances, of the right to jury trial being removed. It is a fundamental right. It goes back centuries in our history, and it will never be removed at all.¹⁰⁴

78. He added that the Government might consider “allowing a minimum jury size of seven rather than nine”. On 23 June 2020, the Lord Chancellor told us he was “attracted by that proposition”. The Lord Chancellor explained that the option of a judge and two magistrates was only being contemplated for a limited range of cases, namely those cases that fit in “the either way category” which can be tried in either the magistrates’ courts or the Crown Court, but which either through a defendant’s choice or the magistrate’s decision, end up in the Crown Court.¹⁰⁵

101 [Q15](#)

102 [Q186](#)

103 The Lord Chief Justice, Lord Burnett, [speaking](#) to Radio 4’s Law in Action Programme on 16 June.

104 [Q120](#)

105 [Q184](#)

79. We welcome the fact that the Government “is canvassing and developing policy options” on future provision of jury trials. However, we regret that this process appears to be going on behind closed doors through informal discussions rather than through a transparent policy process. The committee notes that the Scottish Government produced a discussion paper on criminal trials during COVID-19 to inform parliamentary discussions in April 2020.¹⁰⁶ The Scottish courts are going in a different direction, by relying on virtual courts for summary criminal cases. *We do not believe replacement of some types of jury trial with trial by judge and magistrates is appropriate.*

Increasing capacity

80. Susan Acland-Hood, the Chief Executive of HMCTS, outlined to the Committee on 23 June 2020 concerns over the capacity of the courts:

The challenge at the moment, as I was describing a little earlier, is that certainly at 2 metres social distancing, and even at 1 metre, if we use the full capacity of the court system we have, we are still well below the level where we can get our disposals to equal the level of receipts we expect to see, so the backlog will continue to grow for the foreseeable future unless we do something different.¹⁰⁷

81. On 23 June 2020, the Lord Chancellor and the Chief Executive of HMCTS, Susan Acland-Hood, explained that the Government’s priority in terms of reducing the rate at which the number of outstanding cases is growing is to take the following steps:

- to establish alternative accommodation (which the Government are calling “Blackstone courts”);
- to open all courts;
- to extend court hours; and
- to hear as much suitable work by audio or video.

On 1 July 2020, HMCTS published a report, ‘COVID-19: Overview of HMCTS response’, which provided some details on the recovery plan. We welcome the commitment to “listen to feedback from judges, staff and users to improve the way we work in the short term, and gather data and other evidence to support continuous improvement”.¹⁰⁸

82. The report states that the court and tribunal reform programme is “continuing alongside the pandemic response”.¹⁰⁹ That is to be welcomed. However, the committee is concerned that the precise nature and scope of the reform programme is now rather unclear. In light of the extraordinary measures taken to respond to Covid-19, ***the Committee recommends that the court and tribunal reform programme is reformulated in order to facilitate debate and engagement over which previously planned or newly introduced measures will be kept for the long term.*** It is vital that long-term decisions are taken after consultation with all relevant stakeholders. It would be beneficial if HMCTS could

106 Scottish Government, [Criminal trials during COVID-19 outbreak](#) (14 April 2020)

107 [Q185](#)

108 HMCTS, [COVID-19: Update on recovery in courts and tribunals](#) (1 July 2020)

109 HMCTS, [COVID-19: Update on recovery in courts and tribunals](#) (1 July 2020)

outline how the extraordinary measures taken fit within the overall reform programme. ***Our understanding is that the programme has been “accelerated”, which we welcome. We would be interested to know what this acceleration means for the overall timescale and the long-term goals of the programme.***

83. Appearing before the previous Justice Committee in October 2019, the MoJ Permanent Secretary, Sir Richard Heaton, said that the reform programme was still expected to conclude by 2023 and that annual savings were anticipated to be close to the original target of £244 million (Q80). On 22 May 2020, the Lord Chief Justice noted with regret in his evidence to us that there have been delays in the HMCTS reform programme. He noted that delays can be caused when there is “cheeseparating on the money”.¹¹⁰ On 1 July 2020, the Lord Chancellor wrote to the Committee to confirm that £142 million of capital funding for courts and tribunals has been secured.¹¹¹ The Lord Chancellor’s letter noted that this is the “single biggest investment in the maintenance of our courts for over 20 years”.¹¹² This is a welcome development. ***The Committee would welcome an update on how much further investment there will be in the reform programme following the measures taken to respond to Covid-19.***

Court sitting days

84. Before the Covid-19 pandemic and its impact on the courts, the Lord Chief Justice acknowledged that a backlog of cases was inevitable, but placed the responsibility for determining the extent of the backlog on the Government:

It is inevitable that there will be a backlog in any court because it takes time for the parties to be ready for a case to be heard. But the judiciary would like to see cases tried in all jurisdictions as soon as reasonably practicable after the parties in them are ready to start and so any backlog beyond that level is not a matter of judicial decision, it is a matter which the Executive decides for its own reasons.¹¹³

85. In an attempt to tackle the rising backlog of cases, in February 2020, the Ministry of Justice announced that it would increase the allocation of Crown Court sitting days for the first half of 2020/21 by 4,700 to a minimum of 87,000.¹¹⁴ However, the Criminal Bar Association noted that despite the increase, the number of sitting days was 10,000 fewer than in 2019 and 27,000 fewer than in 2015/16.¹¹⁵

86. As we set out in Chapter 2, Covid-19 has had a substantial impact on the number of court sitting days available and the number of cases outstanding. On 4 May, Chris Philp, Parliamentary Under Secretary of State at the Home Office and Ministry of Justice, told us that on 26 April 2020, the outstanding caseload in the Crown court was 35,679.¹¹⁶

110 [Q160](#)

111 [Letter from the Lord Chancellor and Secretary of State for Justice to the Chair of the Justice Committee \(dated 1 July 2020\)](#)

112 [Letter from the Lord Chancellor and Secretary of State for Justice to the Chair of the Justice Committee \(dated 1 July 2020\)](#)

113 HMCTS, [Lord Chief Justice annual press conference 2020](#), 28 February 2020, p. 3

114 HC Deb, 5 February 2020, cW

115 [“Crown court sitting days increase; nowhere near enough” - criminal bar](#), The Law Society Gazette, 5 February 2020

116 [Q122](#)

87. The Lord Chief Justice and Government ministers have all acknowledged that a further increase in sitting days could go some way to alleviate the situation. Chris Philp, Parliamentary Under Secretary of State at the Home Office and Ministry of Justice told us that an increase in sitting days was being discussed, but also set out the negotiations process by which decisions about court sitting days is decided:

[...] The number of Crown Court sitting days as a baseline in the current financial year was committed to by the Lord Chancellor as an absolute minimum of 87,000 sitting days, with a view to revising it further upwards by the concordat process. The Crown Court sitting days in the last financial year, 2019–20, were increased in year, but were around the 83,000 mark. A 4,000 increase has been agreed already, with potentially more to come. The concordat process would have taken place in March/April time but has now been postponed to September because of the current circumstances. That will be discussed between the Lord Chancellor and the Lord Chief Justice in about September. Quite a few of the Crown Court sitting days that might have happened in the course of April, May and June probably will not happen, so they can be carried forward into the back half of the year. On top of that, there is a discussion about an increase beyond 87,000.¹¹⁷

88. The Lord Chief Justice told us on 22 May 2020 that there was a need for further sitting days,¹¹⁸ while on 23 June 2020, the Lord Chancellor and Secretary of State for Justice also set out his view on the need to increase sitting days and tackle the backlog:

The way in which the negotiations work, as I think you know, is based on the year-on-year allocations in the different jurisdictions. It is not a multi-year exercise because flows change; they ebb and they flow. A decision was made before my time, for example, on criminal hearings in the year 2019–20, which, frankly, was overtaken by events, and could not have been foreseen by those who made the calculations on which the decision was made back in late 2018/early 2019. Having said that, for this year the exercise is wholly academic. We need to find as much space as possible, use as much time as possible and get as many sittings as possible to get on with the work.¹¹⁹

89. We welcome the Lord Chancellor’s moves to increase the number of court sitting days after significant reductions in recent years. More court sitting time will be an essential element among steps to deal with the growing number of outstanding cases in the court and tribunal system. We take this opportunity to announce that we will on the day this Report is published launch a full new inquiry into Court Capacity.

90. We were pleased to hear that the Government’s plans to address these issues are not limited to solely increasing sitting days when the Lord Chancellor and Secretary of State for Justice set out his plans for alternative ways to further increase the capacity of the courts.

There are a number of options that we have been looking at for some time: first and foremost, maximising the space we have, and we have already talked about what might be done with the 1-metre rule coming in; and, secondly,

117 [Q122](#)

118 [Q144](#)

119 [Q201](#)

it is looking at increasing that capacity. That is why from a very early stage I was a strong advocate of what were known as Nightingale courts; we are calling them Blackstone courts to give them a bit of legal context.

The work that has been done by HMCTS, by the judges, and by practitioners once again to identify alternative accommodation is already yielding fruit. I have been able officially to sign off a number of alternative venues this week, which we want to get up and running over the next few months. I need to scale that operation up dramatically, and to unprecedented heights, if I am not just going to deal with the current backlog but to manage it in a position that I think is sustainable for the long term. I need also to look at court hours, making sure that we maximise the court sitting day, to stagger appearances by both practitioners and court users, and therefore sit as long as we can on perhaps even more days of the week than we do at the moment, so that we manage the backlog.¹²⁰

91. All these suggestions are laudable, but they come with their own benefits and drawbacks. In the 2015–17 Committee’s report *The role of the magistracy*, the Committee found that there while there were no objections “in principle” to pop-up courts, there were concerns about a potential lack of appropriate security in non-standard court buildings,¹²¹ as well as concerns about the negative impact of an increased travel time, caused by court closures, on magistrates and court users.¹²² We fully expect that any changes to working practices would affect all court users, in some cases positively and in others negatively.

92. Furthermore, the Lord Chief Justice also noted several problems with the physical court and tribunal estate, setting out in the Lord Chief Justice’s Report 2019 that there are problems with the age and condition of buildings and problems with getting issues fixed quickly. He noted that these issues can affect hearings in the courts, causing them to be adjourned.¹²³

93. On 19 July, the Government announced the opening of 10 ‘Nightingale courts’.¹²⁴ The rapid establishment of these temporary courts is a positive development. The added capacity is much needed. The decision to open these courts should prompt a reevaluation of the Government’s approach to the estates reform programme. The dramatic reduction in the size of the courts’ estate in England and Wales over the past ten years looks increasingly difficult to justify. The Justice Committee’s 2019 report on court and tribunal reform argued that the default position should be that “supplementary venues be established in every area where there has been a court closure in the past 10 years”.¹²⁵ Nightingale courts are described as temporary but ***HMCTS should explain the long-term role of supplementary venues and should also set out how Covid-19 will change the long-term approach to the estates reform programme.*** The National Audit Office’s 2019 report on court reform noted that “future closures depend on the extent to which HMCTS can

120 [Q184](#)

121 Justice Committee, Sixth Report of Session 2015–16, *The role of the magistracy*, HC 165, paras 90 - 91

122 Justice Committee, Sixth Report of Session 2015–16, *The role of the magistracy*, HC 165, paras 88 - 89

123 Judiciary of England and Wales, *The Lord Chief Justice’s Report 2019*, 5 November 2019, p. 10

124 Ministry of Justice and HMCTS, [10 ‘Nightingale Courts’ unveiled](#) (19 July 2020)

125 Justice Committee, Second Report of Session 2019, [Court and Tribunal reforms](#), HC 190, para 129

reduce demand by moving hearings out of court and improving efficiency”.¹²⁶ The impact of Covid-19 on the justice system means that the case for future closures will have to be fundamentally re-evaluated.

94. Access to justice is a fundamental right, and as the backlog of cases increases, more and more people are waiting for their day in court. We welcome the Government’s attempts to reduce the backlog by thinking beyond simply increasing sitting days, but any new initiatives must not merely remove one barrier to justice and replace it with another. Therefore, we urge the Government to ensure that access to justice remains at the heart of its proposals and works with all court users as it develops its plans to tackle this problem. Furthermore, it will be necessary to ensure that problems with the physical court estate are addressed, otherwise any attempts at addressing these issues will be sabotaged by the Government’s own court reform programme. We invite the MoJ and HMCTS to set out a comprehensive plan for how the backlog in unheard cases will be dealt with, including details of additional provision of court premises and sitting hours, proposed timelines for reducing the backlog and estimates of when the number of cases outstanding will be returned to pre-Covid-19 levels or lower.

Conclusion

95. On 22 May 2020 in his evidence to us, the Lord Chief Justice, Lord Burnett made a striking statement on the health of the courts as they went into the Covid-19 crisis:

The need for new funds extends well beyond just the criminal justice system. What we have learned over the last couple of months is what happens when systems and parts of an organisation are starved of funds that deny an opportunity to update in a pretty routine way. For example, had we had the ability for parties to lodge their papers online in the county court or in some of the family courts, much more work would have been capable of being done. You ask me about when I have discussions with the Lord Chancellor about this. As you will appreciate, the Lord Chancellor and I meet very frequently. I suspect any of his officials who are watching this will have smiled when you asked that question, because there is barely a meeting that goes by without my mentioning resources and the need for there to be proper funding of the administration of justice. It has been underfunded for years and years. The consequences of that underfunding are coming home to roost.¹²⁷

When we put this statement to the Lord Chancellor, he responded that last year saw the “largest rise in many years last year, a rise of nearly 5% in the revenue budget”.¹²⁸ He added that at the highest level in Government there was “an understanding the consequences that the expansion of our police force” will have for the justice system.¹²⁹

96. The response to the Covid-19 pandemic has shown that dynamic change can be achieved within the justice system. It is remarkable to reflect on the extent of the modernisation that has been achieved in a three-month period, when the most basic

126 National Audit Office, [Transforming courts and tribunals—a progress update](#), (2019) para 3.9

127 [Q157](#)

128 [Q202](#)

129 [Q202](#)

digitisation has taken decades. *We commend the Lord Chancellor to capitalise on the momentum built up over the last four months to build the capacity of the court and tribunal system for the long term.*

Conclusions and recommendations

Introduction

1. We pay tribute to Her Majesty's Court and Tribunal Service, the Judiciary and the staff who work in the courts of England and Wales for maintaining significant levels of service during the period since March 2020. We commend HMCTS and the judiciary for demonstrating how rapidly change can be successfully made in the delivery of justice across all jurisdictions. (Paragraph 6)
2. One of the clearest lessons of the crisis response since March 2020 has been how quickly the justice system can reform when needed. Her Majesty's Court and Tribunal Service (HMCTS) will need to continue to deliver change at pace in order to implement the recovery plan which is beginning to take shape. Continuing to do so without the spur of necessary emergency response will be a significant challenge in the long term. (Paragraph 7)
3. *We recommend that HMCTS sets out how it intends to evaluate both the practical and qualitative effects of the changes carried out at pace in response to the Covid-19 pandemic. In particular, work must be done urgently to identify the effects of increased use of digital technology for the delivery of justice not only on the process and disposal of cases but on the results obtained for those whose cases and hearings have taken place; their perception on the fairness of the proceedings, regardless of outcome; and the barriers to access and understanding that may have arisen for both participants in cases and the wider public, including the media. We invite the Ministry of Justice to set out a timetable for obtaining that essential feedback.* (Paragraph 8)
4. *We would also warn that changes introduced in response to an emergency should not be regarded as irreversible if they can be demonstrated to have impeded access to justice or resulted in less than optimal outcomes for those whom the justice system exists to serve.* (Paragraph 9)

The criminal courts

5. *We invite the Ministry of Justice to demonstrate how it intends to work with the magistracy in order to deliver its recovery plan.* (Paragraph 21)
6. The Covid-19 pandemic has had a major impact on the operation of the criminal justice system. By contrast with some parts of the civil justice system, technology has not provided solutions to enable trials to go ahead in the magistrates' courts and the Crown Court at anything close to normal levels. The number of outstanding cases create the ingredients for a significant crisis in the criminal justice system. Victims of crime will have to wait longer to know whether they will get justice. Defendants awaiting trial will spend longer on remand in custody or out on bail in the community. (Paragraph 22)
7. It is remarkable that in 2020 basic data on how many cases are in progress and how many trials due is not yet available to the Lord Chief Justice, but the absence of data of requisite quality is a familiar issue within the justice system. We are as concerned

as predecessor Committees at the prevalence of this issue across a range of areas: sentencing, diversity and the use of technology. *We invite the MoJ and HMCTS to set out, with a timeline, how the provision of basic management information for those running the courts and tribunal system, of the type sought by the Lord Chief Justice, is to be achieved.* (Paragraph 24)

8. The Committee are concerned that HMCTS does not produce data on backlogs specific to the youth courts. *We recommend that the Ministry and HMCTS confirm whether this data is collected and if not, why not. If this data is collected, the Ministry and HMCTS should publish this data separately from data relating to the adult court system.* (Paragraph 25)
9. One of the core lessons of this crisis is that the courts which are the front line of criminal justice need to run in such a way that their capacity can be increased in response to demand. Closing courts and reducing court capacity before implementing reforms that can increase capacity, either through technology, staffing or changes to the estate, left the criminal justice system in a difficult place going into this period of crisis. (Paragraph 26)

Civil courts and tribunals

10. The Committee is concerned that Covid-19 should not be used as an excuse for bringing in permanent changes without prior consultation and suitable evaluation of their effects. (Paragraph 37)

Technology and the courts

11. While legal practitioner satisfaction with the use of digital technology in the civil courts is welcome, there is an absence of data so far on how that has affected lay users who are using the system or their satisfaction with the process and outcome of their hearings. (Paragraph 40)
12. We welcome assurances from the Lord Chief Justice and the Chief Executive of HMCTS that no one unable to engage digitally with the court and tribunal system will have to do so. There must be a particular focus on the interests of more vulnerable court users, including children, disabled people and those with specific communication needs. This is not simply a matter of the most high-tech kit and strongest wifi. HMCTS must ensure adequate engagement, comfort and comprehension on the part of all court users, irrespective of their computer skills and knowledge of legal process; this may require a physical hearing if justice is to be delivered to them fairly. The interests of vulnerable court users must be protected, including those of people with disabilities. Even the most high-tech kit and strongest wi-fi are no proof against the engagement, comfort and comprehension of those whose computer skills and knowledge of legal process may require a physical hearing if justice is to be delivered to them fairly. (Paragraph 53)
13. The Committee is concerned that as yet there has been no judicially or government commissioned, review of the increased use of remote hearings in criminal cases in either the magistrates' courts or the Crown Court during the pandemic. (Paragraph 62)

14. *In light of the Equality and Human Rights Commission’s recent findings, we recommend that the Ministry of Justice commission an urgent review that evaluates the effect of Covid-19 measures in the magistrates’ courts and the Crown Court. (Paragraph 65)*
15. *We recommend that HMCTS commissions research to establish how the principle of open justice should apply to remote hearings. That should include research into how the public—not just the media—can ‘attend’ hearings. In the context of the emergency service being provided during the pandemic, but only in that context, we accept the Lord Chief Justice’s statement that the requirement for open justice is generally satisfied by journalists being admitted to hearings. A restoration of full public access to hearings is, however, necessary to the provision of open justice as soon as circumstances permit it. There is a danger during this extraordinary period that the principle’s role within the justice system will be eroded by accident. (Paragraph 69)*
16. It is particularly worrying that when it comes to evaluating the impact of technology, we know the least about those who are most in need of support. We support the call from the authors of the Civil Justice Review who state that “the most pressing priority relates to the need to understand the experience of non-professional court users, particularly those who are considered vulnerable under existing law and practice directions, those with protected characteristics and those who are litigants in person.” (Paragraph 73)
17. *We recommend that HMCTS set out a policy to ensure that court users, particularly those who are or may be considered vulnerable, are sufficiently able to follow and participate in virtual processes. This policy should specify how such checks are to be carried out and which official of the court is responsible for making them. A report should be made by that official to judges or others conducting proceedings to the effect that participants are able to understand what is being done and participate as appropriate before proceedings commence or continue. (Paragraph 74)*

The recovery plan

18. We welcome the fact that the Government “is canvassing and developing policy options” on future provision of jury trials. However, we regret that this process appears to be going on behind closed doors through informal discussions rather than through a transparent policy process. The committee notes that the Scottish Government produced a discussion paper on criminal trials during COVID-19 to inform parliamentary discussions in April 2020. The Scottish courts are going in a different direction, by relying on virtual courts for summary criminal cases. *We do not believe replacement of some types of jury trial with trial by judge and magistrates is appropriate. (Paragraph 79)*
19. *The Committee recommends that the court and tribunal reform programme is reformulated in order to facilitate debate and engagement over which previously planned or newly introduced measures will be kept for the long term. It is vital that long-term decisions are taken after consultation with all relevant stakeholders. It would be beneficial if HMCTS could outline how the extraordinary measures taken fit within the overall reform programme. Our understanding is that the programme*

has been “accelerated”, which we welcome. We would be interested to know what this acceleration means for the overall timescale and the long-term goals of the programme. (Paragraph 82)

20. *The Committee would welcome an update on how much further investment there will be in the reform programme following the measures taken to respond to Covid-19. (Paragraph 83)*
21. *We welcome the Lord Chancellor’s moves to increase the number of court sitting days after significant reductions in recent years. More court sitting time will be an essential element among steps to deal with the growing number of outstanding cases in the court and tribunal system. We take this opportunity to announce that we will on the day this Report is published launch a full new inquiry into Court Capacity. (Paragraph 89)*
22. *HMCTS should explain the long-term role of supplementary venues and should also set out how Covid-19 will change the long-term approach to the estates reform programme. (Paragraph 93)*
23. *Access to justice is a fundamental right, and as the backlog of cases increases, more and more people are waiting for their day in court. We welcome the Government’s attempts to reduce the backlog by thinking beyond simply increasing sitting days, but any new initiatives must not merely remove one barrier to justice and replace it with another. Therefore, we urge the Government to ensure that access to justice remains at the heart of its proposals and works with all court users as it develops its plans to tackle this problem. Furthermore, it will be necessary to ensure that problems with the physical court estate are addressed, otherwise any attempts at addressing these issues will be sabotaged by the Government’s own court reform programme. We invite the MoJ and HMCTS to set out a comprehensive plan for how the backlog in unheard cases will be dealt with, including details of additional provision of court premises and sitting hours, proposed timelines for reducing the backlog and estimates of when the number of cases outstanding will be returned to pre-Covid-19 levels or lower. (Paragraph 94)*
24. *We commend the Lord Chancellor to capitalise on the momentum built up over the last four months to build the capacity of the court and tribunal system for the long term. (Paragraph 96)*

Formal minutes

Wednesday 22 July 2020

Members present:

Sir Robert Neill, in the Chair

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|--------------|------------------|
| Paula Barker | Dr Kieran Mullan |
| Rob Butler | Andy Slaughter |
| Maria Eagle | |

Draft Report (*Coronavirus (COVID-19): The impact on courts*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 96 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 8 September at 1.45 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Tuesday 14 April 2020

| | |
|--|------------------------|
| Katie Lomas , National Chair, Napo; Ian Lawrence , General Secretary, Napo | Q1–8 |
| Justin Russell , Chief Inspector of Probation, HM Inspectorate of Probation, Chief Inspector, HM Inspectorate of Probation | Q9–19 |
| Mark Johnson , Chief Executive Officer, User Voice; Helen Berresford , Director of External Engagement, NACRO | Q20–25 |
| Lucy Frazer QC MP , Minister of State, Ministry of Justice; Jo Farrar , Chief Executive, HM Prison and Probation Service; Amy Rees , Director General of Probation and Wales, HM Prison and Probation Service | Q26–58 |

Monday 04 May 2020

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| John Bache JP , National Chairman, Magistrates Association; Ellie Cumbo , Head of Public Law, Law Society | Q59–86 |
| Amanda Pinto QC , Chair, The Bar Council; Bill Waddington , Chairman, Criminal Law Solicitors Association; Simon Davies , President, Law Society; Elspeth Thomson , Co-chair, (family justice professionals group), Resolution | Q87–108 |
| Chris Philp , Parliamentary Under Secretary of State, Ministry of Justice; Susan Acland-Hood , Chief Executive, HM Courts and Tribunals Service; Alex Chalk , Parliamentary Under Secretary of State, Ministry of Justice; | Q109–136 |

Friday 22 May 2020

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| Rt Hon The Lord Burnett of Maldon , Lord Chief Justice, Judiciary of England and Wales | Q137–175 |
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Tuesday 23 June 2020

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| Robert Buckland , Lord Chancellor and Secretary of State, Ministry of Justice; Susan Acland-Hood , Chief Executive, HM Courts and Tribunals Service; Dr Jo Farrar , Chief Executive, HM Prison and Probation Service | Q176–243 |
|---|--------------------------|

Written evidence

- 1 [A Criminal Barrister](#)
- 2 [Arthur Michael Robinson](#)
- 3 [Chartered Institute of Legal Executives](#)
- 4 [Children's Rights Alliance for England the Youth Justice Legal Centre, part of Just for Kids Law](#)
- 5 [Clinks: Impact on the voluntary sector](#)
- 6 [Clinks: Briefing for Justice Committee](#)
- 7 [Criminal Justice Alliance](#) 5 June 2020
- 8 [Criminal Justice Alliance](#) 2 April 2020
- 9 [Fair Trials](#)
- 10 [Howard League for Penal Reform: Women in prison](#)
- 11 [Howard League for Penal Reform: Briefing for Justice Committee](#)
- 12 [Independent Advisory Panel on Deaths in custody](#)
- 13 [INQUEST](#)
- 14 [JUSTICE: Briefing for Justice Committee](#)
- 15 [JUSTICE: Ensuring fairness in socially distanced trials](#)
- 16 [Law Centres Network](#)
- 17 [Law Society's Junior Lawyers Division](#)
- 18 [Legal Aid Practitioners](#)
- 19 Rt Hon Lord Burnett of Malden, [Lord Chief Justice of England and Wales](#), dated 10 June, Open Justice
- 20 [Magistrates Association](#)
- 21 Ministry of Justice
- 22 Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, dated 7 July 2020: [Impact of COVID-19 on criminal enforcement](#)
- 23 Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, dated 28 May 2020: [CPT Statement of Principles](#)
- 24 Lucy Frazer QC MP, Minister of State for Justice, dated 10 June 2020: [Reforms to probation services](#)
- 25 Lucy Frazer QC MP, Minister of State for Justice: [Covid-19 plans for easing of restrictions](#)
- 26 Lucy Frazer QC MP, Minister of State for Justice dated 26 May 2020: [HMPPS reporting of staff cases of Covid-19](#)
- 27 Lucy Frazer QC MP, Minister of State for Justice dated 28 May 2020: [Covid-19 testing for prison and probation staff](#)
- 28 Lucy Frazer QC MP, Minister of State for Justice dated 28 May 2020: [Deployment of temporary accommodation across the prison estate as part of Covid-19 mitigation plan](#)

- 29 Lucy Frazer QC MP, Minister of State for Justice dated 28 May 2020: [Covid-19 in prisons: family contact](#)
- 30 Chris Philp MP, Parliamentary Under-Secretary of State, Ministry of Justice, 17 June 2020: [Release of HMMCTS weekly operational management information](#)
- 31 Chris Philp MP, Parliamentary Under-Secretary of State, Ministry of Justice, 3 June 2020: [Changes made to mitigate the impact of Covid 19 on the courts and tribunal system](#)
- 32 [NACRO](#)
- 33 Sir Robert Neill, Chair, Justice Committee to Lord Chancellor, dated 8 April 2020: [evidence session on 7 April 2020](#)
- 34 [Prison Governors Association](#)
- 35 [Prison Reform Trust](#): 21 May 2020
- 36 [Prison Reform Trust](#): 14 May 2020
- 37 [Prison Reform Trust](#): Briefing for Justice Committee
- 38 [Public and Commercial Services Union](#)
- 39 [Reducing Reoffending Third Sector Advisory Group](#)
- 40 [Revolving Doors Agency](#)
- 41 [Standing Committee for Youth Justice](#)
- 42 [Switchback](#)
- 43 [Transform Justice](#): Issues in the criminal courts
- 44 [Transform Justice](#): Briefing for Justice Committee
- 45 [Unlock](#)
- 46 [Women in Prison](#): Briefing for Justice Committee
- 47 [Women in Prison](#): additional material on planning for release
- 48 [Young Legal Aid Lawyers](#)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2019–21

| | | |
|-----------------------|---|--------|
| First Report | Appointment of Chair of the Office for Legal Complaints | HC 224 |
| Second Report | Sentencing Council consultation on changes to magistrates' court sentencing guidelines | HC 460 |
| Third Report | Coronavirus (COVID-19): The impact on probation services | HC 461 |
| Fourth Report | Coronavirus (Covid-19): The impact on prisons | HC 299 |
| Fifth Report | Ageing prison population | HC 304 |
| First Special Report | Prison Governance: Government Response to the Committee's First Report of Session 2019 | HC 150 |
| Second Special Report | Court and Tribunal Reforms: Government Response to the Committee's Second Report of Session 2019 | HC 151 |
| Third Special Report | Transforming Rehabilitation: Follow-up: Government Response to the Committee's Nineteenth Report of Session 2017–19 | HC 152 |