



House of Commons
Justice Committee

**Coronavirus (Covid 19):
The impact on the legal
professions in England
and Wales: Government
Response to the
Committee's Seventh
Report**

**Fifth Special Report of Session
2019–21**

*Ordered by the House of Commons
to be printed 13 October 2020*

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).

Current membership

[Sir Robert Neill MP](#) (*Conservative, Bromley and Chislehurst*) (Chair)

[Paula Barker MP](#) (*Labour, Liverpool, Wavertree*)

[Richard Burgon MP](#) (*Labour, Leeds East*)

[Rob Butler MP](#) (*Conservative, Aylesbury*)

[James Daly MP](#) (*Conservative, Bury North*)

[Sarah Dines MP](#) (*Conservative, Derbyshire Dales*)

[Maria Eagle MP](#) (*Labour, Garston and Halewood*)

[John Howell MP](#) (*Conservative, Henley*)

[Kenny MacAskill MP](#) (*Scottish National Party, East Lothian*)

[Kieran Mullan MP](#) (*Conservative, Crewe and Nantwich*)

[Andy Slaughter MP](#) (*Labour, Hammersmith*)

The following were also Members of the Committee during this session.

[Ellie Reeves MP](#) (*Labour, Lewisham West and Penge*) and [Ms Marie Rimmer MP](#) (*Labour, St Helens South and Whiston*)

Powers

© Parliamentary Copyright House of Commons 2020. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/copyright.

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

Committee reports are published on the Committee's website at www.parliament.uk/justicecttee and in print by Order of the House.

Committee staff

The current staff of the Committee are Nony Ardill (Legal Specialist), Chloë Cockett (Senior Specialist), Mark Doyle (Committee Media Officer), Seb Newman (Second Clerk), Su Panchanathan (Committee Operations Officer), Tracey Payne (Committee Specialist), Christine Randall (Committee Operations Manager), Jack Simson Caird (Assistant Counsel), Holly Tremain (Committee Specialist), and David Weir (Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 8196; the Committee's email address is justicecom@parliament.uk.

You can follow the Committee on Twitter using [@CommonsJustice](https://twitter.com/CommonsJustice)

Fifth Special Report

On 3 August the Justice Committee published its Seventh Report of Session 2019–21, *Coronavirus (COVID 19): The impact on the legal professions in England and Wales* (HC 520). The Government’s Response was received on 2 October and is appended to this Report.

Appendix: Government Response

The Government welcomes the report from the Justice Select Committee on Coronavirus (COVID-19): the impact on the legal professions in England and Wales. We are grateful for the time given and expertise shared by the Committee in producing and publishing the Report.

The COVID-19 outbreak has created a range of challenges for the legal profession and we are working closely with legal practitioners and other providers of legal support across the justice system, to understand and respond to their concerns.

In response to the pandemic, the Government announced an unprecedented package of support measures to assist those impacted by Coronavirus. Legal practitioners and firms have been able to access support from the Self-Employed Income Support Scheme (SEISS), the Coronavirus Job Retention Scheme, the Coronavirus Business Interruption Loan Scheme (CBILS) and the Bounce Back Loan Scheme.

Turning to the legal aid market, the Ministry of Justice and Legal Aid Agency introduced a range of measures to help legal aid providers to weather the coronavirus pandemic while maintaining access to justice for the most vulnerable in society. These include initiatives which support civil, family, and criminal legal aid practitioners to keep the justice system running:

- Expanding the scope and relaxing the evidence requirements for hardship payments in crown court cases – including reducing the threshold for work done to £450, rather than the previous £5,000.
- Pausing the pursuit of outstanding debts owed to the Legal Aid Agency.
- Suspending sanctions in relation to missed deadlines for delegated function applications, substantive amendments and appeals against LAA decisions.
- Holding regular meetings with key stakeholders, including legal aid practitioners and representative bodies, to assist in the rapid identification and resolution of issues.
- Publicising existing avenues of financial help for legal firms, such as the ability to apply for early payment for work already done on a case, and changing rules for payment on account for providers, benefitting cashflow in the short-term and ensuring that providers can claim the same amount of money for online hearings as they can for face-to-face hearings.

- Increased the opportunities for civil legal aid barristers to claim payment on account, and increased the cumulative amount they can claim on account.

Additionally, we announced in August that we would be taking forward the policy proposals from the accelerated areas of the Criminal Legal Aid Review (CLAR) that practitioners told us mattered most. The accelerated areas allowed us to inject up to £51million into criminal legal aid.

Throughout this challenging time, we have been innovative and adapted our ways of working to ensure that the courts kept running during the pandemic and access to justice is maintained, including a significant increase in the use of digital solutions. This has enabled us to increase the number of hearings we were able to hear, and since the pandemic thousands of remand hearings have been heard via video, enabling hearings to continue to take place despite the limitations of social distancing.

As the CJS legal system recovers from COVID-19, we want to continue improving how the courts use technology and are committed to monitoring and evaluating the impact of the use of video and audio.

We're investing record amounts, with £153m to improve court and tribunal buildings – the biggest single investment in court estate maintenance for more than 20 years – and we're spending £80m on a range of emergency measures to tackle the impact of Covid-19, including the recruitment of 1,600 additional staff. Our 17 Nightingale Courts will provide 32 extra court rooms to increase capacity and plexiglass screens in over 300 existing courtrooms have enabled us to safely open 250 Crown Court rooms for jury trials.

As one of the first among other comparable jurisdictions globally to resume jury trials, we are pleased that there have been good signs of recovery in our courts. As of 14 September 2020, we are handling over 100 jury trials Crown Courts – clearing over 1700 cases each week - and magistrates are beginning to dispose of more cases than are coming in. Magistrates' courts are now dealing with most business type hearings. Since August magistrates' courts have been completing more cases than have been received and the number of sittings are almost at pre-covid levels.

The progress made to introduce online access to services through reform has made a substantial difference in maintaining the operation of the courts and tribunals, enabling work to continue where reform is more advanced, and underlining the wider value of reform in supporting a more resilient and adaptable service. Those services which have already been reformed, notably divorce, probate, Social Security and Child Support, Immigration and Asylum, and jurisdictions using CE-File have proved more resilient to the impact of the pandemic and still been able to process thousands of applications.

Additionally, HMPPS has been working to increase video capacity in prisons in response to the increased demand. This includes expanding video conferencing capacity at those sites already supporting courts and the Parole Board, focusing particularly on prisons where current provision falls well short of demand. We will also be adding new capacity at sites that do not have existing capability or where the equipment is no longer fit for purpose. We expect to deliver a 50 per cent increase in capacity in the local and reception estate by the end of the financial year. We will also increase capacity in the training and

resettlement estate, where the majority of prisoners of interest to the Parole Board are held. The first such additional links are already in operation at HMPs Leeds and Wormwood Scrubs.

As well as increasing video across prisons, we will be standardising and extending operating hours for prison video for local and reception prisons that service the courts and have a remand population. This will be instrumental in increasing the number of video slots to meet the demand of defence practitioners, or other professionals. It will enable access to video from 08:00 to 18:00 Monday to Friday and for some prisons will include Saturday access. These extended hours are intended primarily to meet the increase in demand from defence practitioners and other professionals whose virtual meetings with prisoners are critical for case progression. However, we will also be offering continuous cover throughout the normal court day, so that courts can continue sitting without breaking proceedings for the current extended lunch period. In terms of face-to-face legal visits, we now have an Exceptional Delivery Model in place as part of recovery planning which prisons and youth custody establishments are implementing to ensure those visiting are able to do so safely. The ability to offer face-to-face legal visits will also help to ease pressure on constrained video conferencing resources.

Looking ahead, we will continue to keep a close eye on the legal aid market to ensure access to justice is maintained. We are continuing to work closely with legal practitioners and other providers of legal support across the justice system, as we have since the beginning of the pandemic. In particular, we are engaging with them in relation to our proposals for the ongoing Legal Aid Means Test Review, which is due to be published in Spring 2021 on Criminal Legal Aid and Civil Legal Aid. Alongside this, we are looking into the sustainability of the civil legal aid system and will consider the delivery and contractual model for civil legal aid within this work. As part of our response to the Criminal Legal Aid Accelerated Areas consultation, we announced that the next phase of the review would include an independently led review of the market, to ensure it can meet demand now and into the future, provide an effective and efficient service that ensures value for money for the taxpayer, and continue to provide defendants with high-quality advice from a diverse range of practitioners. Alongside this we continue to look at the current fee schemes to ensure they keep pace with wider reforms across the justice system.

Thank you to the Committee for the work and insight that has gone into this report and the recommendations. We have taken time to consider the conclusions and recommendations set out in the report and have included the annex below.

RT HON ROBERT BUCKLAND QC MP

Annex – response to recommendations

Recommendation

2. There have been positive developments in providing online solutions to providing court services, but pending full roll out of HMCTS's cloud video platform, we recommend that the Ministry of Justice sets out the steps it is taking to ensure that lay parties to hearings have access to the technology they need so that they can communicate well, and confidentially, with their lawyers. We also recommend that the Ministry of Justice reviews how well remote hearings have worked for all participants in all jurisdictions before rolling them out further. (Paragraph 12)

Response

- The Ministry of Justice has been innovative and adapted our ways of working to ensure that the courts kept running during the pandemic, including a significant increase in the use of digital. Not only have we increased the amount of cases heard via video and audio during this crisis, we have also worked to improve these digital hearings through a national rollout of Cloud Video Platform (CVP). This has enabled us to increase the number of hearings we were able to hear, and since the pandemic thousands of remand hearings have been heard via video, enabling hearings to continue to take place despite the limitations of social distancing.
- Guidance is available on GOV.UK for joining telephone and video hearings. HMCTS has also published guidance for legal practitioners who are involved in video enabled criminal hearings.
- HMCTS have reviewed the implementation of remote hearings in response to COVID-19. This included observations of recorded hearings and interviews with a range of users to quickly identify issues and help improve the processes.
- There will be a further evaluation of the use of remote hearings during the pandemic, to help inform our use of audio and video technologies in the longer-term. The findings will help address issues around the experience for users, the administrative support needed for hearings, technology and audio-video quality standards. The findings are planned to be available in early 2021.
- The evaluation will include analysis of monitoring data, user surveys, and qualitative interviews with different types of users. It will collect evidence on the volumes, characteristics and outcomes of remote hearings. It will explore whether users face barriers to its use, and if so, how these vary for different users.
- The evaluation will explore whether experiences, perceptions (including of fairness) and outcomes vary by mode of hearings for a range of user groups. However, it will be extremely difficult to isolate the sole impact of audio and video technology from the wider context, as so many changes have occurred in tandem due to the pandemic. Once the public health emergency is over, a further evaluation will be needed to explore the impact of audio and video hearings on outcomes for users.

- HMCTS have reviewed the implementation of remote hearings in response to COVID-19. This included observations of recorded hearings and interviews with a range of users to quickly identify issues and help improve the processes.
- As the legal system recovers from COVID-19, we want to continue improving how the courts use technology and are committed to monitoring and evaluating the impact of the use of video and audio on court users.
- HMPSS has been working to increase video capacity in prisons in response to the increased demand. As mentioned in the covering letter this includes expanding video conferencing capacity in prisons and standardising and extending operating hours for prison video for local and reception prisons that service the courts and have a remand population. Regarding, face-to-face legal visits, we now have an Exceptional Delivery Model in place as part of recovery planning which prisons and youth custody establishments are implementing to ensure those visiting are able to do so safely.

Recommendation

4. *It is important that the legal professions properly represent the society they serve, not least because they form a large part of the pool from which the Judiciary is drawn. The MOJ should set out what it will do to make sure that coronavirus restrictions on the justice system do not disproportionately affect the incomes of Black, Asian and minority ethnic or state-educated legal professionals, nor reduce their ability or desire to enter and work in the courts and tribunals system. (Paragraph 21)*

Response

- We will continue to review conditions for practitioners of all backgrounds as the volume of work in courts resumes to pre-COVID levels.
- As part of the next phase of the ongoing Criminal Legal Aid Review there will be an independently-led review which will review the entire criminal legal aid system. This review will aim to ensure that defendants receive high quality representation by a diverse set of practitioners, both now and in the future, and will consider measures to improve the diversity of the criminal legal aid profession.

Recommendations

12. *We recommend that the Ministry of Justice considers the Bar Council's proposals for using alternative evidence (other than tax returns) for bringing new barristers and returning practitioners within the remit of the Self-Employed Income Support Scheme and that it report back to us on whether it decides to adopt the proposals and, if not, provide the reasons for that decision. (Paragraph 37)*

15. *On 23 June, we asked Robert Buckland about business rates relief, and he suggested that his requests to the Treasury were unlikely to be fulfilled but that he was looking for other imaginative solutions. The Ministry of Justice should consider how it can help those self-*

employed practitioners whose profits are just above the £50,000 threshold and how it can help legal services providers with their business rates, and, if it decides to do neither, should provide us with its reasons for those decisions. (Paragraph 41)

Response

- The Government has introduced a range of measures to support firms and self-employed individuals impacted by Coronavirus. The legal sector has been able to access several of these measures which, alongside the support from the Ministry of Justice and Legal Aid Agency, have helped maintain access to justice for the most vulnerable in society.
- The Self-Employed Income Support Scheme (SEISS) requires self-employed individuals to have submitted their Income Tax Self-Assessment tax return for the tax year 2018–19 to be eligible. This was a difficult decision and it was taken for practical reasons, to minimise the opportunity for fraudulent activity, as the 2018–19 tax returns are the most reliable and up-to-date record of self-employed income.
- Regarding business rates, the Government has provided enhanced support to the retail, hospitality and leisure sectors through business rates relief given the direct and acute impacts of the COVID-19 pandemic on those sectors and their inability to use their premises during the crisis. While some businesses that are not eligible for business rates relief may be affected by COVID-19, such as legal firms, those businesses have benefitted from the wider business and employment support package.
- A range of further measures to support all businesses, including those not eligible for the business rates holiday were also made available, including the Bounce Back Loan Scheme, the Coronavirus Business Interruption Loan Scheme, the Coronavirus Job Retention Scheme, and deferring Value Added Tax (VAT) payment for a limited period.
- We will continue to work closely with legal practitioners and other providers of legal support to monitor the legal aid market as demand increases in the courts and the Treasury's schemes draw to a close, to understand how firms are responding to COVID-19 and will take the necessary action to maintain access to justice.

Recommendation

13. We recommend that the Ministry of Justice considers the Law Society's detailed proposals for payment and repayment of monthly payments (to solicitors' firms and not-for-profit providers) and that the Ministry of Justice reports back to us on whether it decides to adopt the proposals and, if not, provide the reasons for that decision. (Paragraph 38)

Response

- The Government has carefully considered the Law Society's proposals. However providers of Legal Aid are affected differently according to their business model. The Standard Monthly Payment (SMP) is utilised only by a small proportion of providers and represents only a proportion of typical revenue of an individual organisation. Accordingly, SMP as a means of contractual relief would give an inconsistent application of support to a limited number of providers that may bear no relation to the overall financial circumstances of the organisation in question.
- However, providers should continue to talk to Legal Aid Agency contract managers about their individual circumstances.
- We are continuing to monitor the financial health and sustainability of the legal aid sector, and will consider appropriate means of support as necessary.

Recommendation

14. *We recommend that the Ministry of Justice considers further grants for law centres and other not-for-profit legal services providers that are at risk of collapse. The Ministry of Justice should report back to us with its decision and provide its reasons if it decides not to provide such grants, and state what provision it will make for users of the centres that cease operations.* (Paragraph 39)

Response

- We agree with the Committee that Law Centres and other not-for profit providers play a vital role in helping people in communities across England and Wales access justice and resolve their legal problems. Over the past few months, the importance of these services has been brought into sharp focus and many providers have gone above and beyond to ensure vulnerable people across society can continue to get the help they need.
- That is why, as a priority, the Government secured £5.4m in emergency grant funding to not-for-profit providers to ensure the people in the communities they serve can continue to access the help they need.
- We are also continuing to work with our delivery partners - the Access to Justice Foundation and the Law Centres Network - and practitioners from across the not-for-profit advice sector to ensure people across England and Wales are effectively supported to access justice, as part of our wider work on legal support.
- More broadly, we also continue to move forward with our £3.1m Legal Support for Litigants in Person (LSLIP) programme, a two-year grant funding pot also being delivered in partnership with the Access to Justice Foundation. The new programme is designed to provide services at local, regional and national levels with the aim of understanding more about how they can combine to help vulnerable litigants in person. To date, more than £500,000 of grants have been awarded to a number of charities to provide the new national-level services:

- Support Through Court (STC) and RCJ Advice – who are piloting a new remote support initiative, as well as adding new referral routes to STC’s existing telephone helpline.
 - LawWorks – who will scale up their Free Legal Answers (FLA) website, which enables people on low incomes and not eligible for legal aid to access free, initial legal advice provided by registered pro bono solicitors.
 - Law for Life – who will add new resources to their Advicenow website to assist people to deal with a range of legal problems, as well as creating new guidance to help individuals appear in virtual courts effectively.
- A further £2 million of funding from the programme will be awarded to smaller not-for-profit organisations at regional and local levels this autumn. Distribution of this funding was moved back in order to give those organisations more time to manage the impacts of the COVID-19 pandemic and put together their proposals.

Recommendation

16. *We urge the Ministry of Justice and the Legal Aid Agency to continue to be creative as to how legal aid is administered so that the legal professions are not further damaged by inflexible processes and contractual requirements on top of the problems arising directly from the coronavirus crisis. (Paragraph 42)*

Response

- The Legal Aid Agency meets with representative bodies on a bi-monthly basis to discuss the operation of the civil and crime legal aid contracts as well as other legal aid processes, including how they may be improved. The Ministry of Justice will continue to work closely with the Legal Aid Agency to ensure a flexible and supportive approach.
- The LAA recently published revised Crown Court Fee Guidance and new/updated claim forms to support the package of Criminal Legal Aid Review accelerated measures. This followed a number of constructive meetings with provider groups to refine and improve the guidance
- As set out in the covering letter, the Legal Aid Agency has adopted a range of measures - including revising certain contractual requirements - as part of its COVID response. They will continue engaging with representative bodies on the extent to which they should carry on going forward.
- The next phase of the Criminal Legal Aid Review will include an independently led review of the market, to ensure it can meet demand now and into the future, provide an effective and efficient service that ensures value for money for the taxpayer, and continue to provide defendants with high-quality advice from a diverse range of practitioners. Alongside this we continue to look at the current fee schemes to ensure they keep pace with wider reforms across the justice system. In addition to this, we are continuing to review criminal legal aid in the

police station and magistrates' court in the context of wider justice reform and are looking into the sustainability of the civil legal aid system and will consider the delivery and contractual model for civil legal aid within this work.