



House of Commons  
Justice Committee

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**Court and Tribunal  
reforms: Further  
Government response to  
the Committee's Second  
Report of Session 2019 and  
Coronavirus (Covid-19):  
The impact on courts:  
Government response to  
the Committee's Sixth  
Report of Session 2019–21**

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

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

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### Committee staff

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

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## Seventh Special Report

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The Justice Committee published its Second Report of Session 2019, [Court and Tribunal reforms](#) (HC 190) on 31 October 2020 and Sixth Report of Session 2019–21, [Coronavirus \(Covid-19\): The impact on courts](#) (HC 519), on 30 July 2020. The Government Response was received on 10 November 2020 and is appended to this Report.

## Appendix: Government Response: Court and Tribunal reforms and Coronavirus (Covid-19): The impact on courts

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I am writing to the Committee in relation to two recent reports that you have published regarding the courts and tribunals service.

The first was published at the end of October 2019, as part of the Committee's inquiry into Court and Tribunal reforms, and the Committee has already received an initial response to its report and recommendations in January 2020. The second report was published at the end of July as part of the Committee's inquiry into the impact of Covid-19 on courts. Given the impact that the Covid-19 pandemic has had on Court and Tribunal reform, it made most sense to combine our response to the second report with an update that the Committee had requested on the first report. I apologise in advance for the length of this response as a result, but I hope that this approach will prove most useful to the Committee.

### Response to Covid-19

I would like to start by thanking you and your fellow Committee members for the acknowledgement and tribute paid to the work of HMCTS, the judiciary and the legal profession who have helped to keep the justice system running during the pandemic.

As set out in previous evidence sessions to the Committee, in response to Covid-19, HMCTS has worked closely with the judiciary and other justice partners to prioritise essential services to enable hearings to continue to take place where possible while ensuring the safety of all court and tribunal users.

The [HMCTS overarching recovery plan](#) (published on 1 July) is now well underway, and this sets out a range of measures being used to deal with the volume of outstanding cases and to get operating capacity as close as possible to pre-Covid levels, while social distancing is in place and in line with public health guidelines. In addition, we have now also published an [update on our recovery plans focussing on the criminal courts in England and Wales](#). This 'criminal courts recovery plan' sets out the key pillars of our ongoing recovery efforts: maximising the use of our existing estate; providing additional capacity through Nightingale courts; continuing to enable remote or video hearings where appropriate; and considering the adoption of different operating hours.

To that end, more than 90% of HMCTS buildings have now reopened, as well as a further 10 Nightingale courts, and jury trials have resumed at 68 Crown Courts. Plexiglass screens are being installed in around 160 courts and 80 jury rooms to enable more trials to be

heard safely from fewer rooms, freeing up capacity across the estate. Modular Portakabin buildings are also being brought on to existing sites to temporarily provide extra space for support facilities, such as waiting rooms and retiring rooms. Covid Operating Hours are also being tested in Liverpool since mid-August which will see courts sit beyond traditional court hours (usually 10am to 4pm), with further pilots in other locations.

The modelling that is informing our work is outlined in the criminal courts recovery plan, as well as the trajectories for how we will address the additional work that is now in the system due to the actions that we have had to take in the face of Covid-19.

## **Update on reform**

I was pleased that the Committee acknowledged in its July 2020 report that the Covid-19 pandemic has reinforced the importance of reform and modernisation of the justice system, as those services which have already been modernised have proved more resilient to the challenges faced. I would like at this stage to provide an update on the HMCTS Reform programme, with particular focus on the Committee's recommendations from its October 2019 report.

We have inevitably had to adjust the delivery of the Reform programme over recent months to help us meet the challenges posed by Covid-19. While momentum on technical development has been largely maintained, there have been unavoidable impacts in terms of the programme's ability to deliver change into live operations, in our ability to draw on essential input from subject matter experts in operations, and in commercial activity where suppliers have been affected. In reprioritising our work over the past months, we have sought to maintain momentum in delivering Reform, particularly where new services can improve the recovery of services, while not hindering our staff as they deal with the significant disruption caused by Covid-19.

In some areas delivery has been delayed as a result. For example, due to a need to prioritise operational recovery in the Criminal courts, the roll-out of the Common Platform—which had been planned to begin by the summer—was delayed, but I am pleased to say that it has just this month started at our first early adopter sites at Derby Crown and Magistrates' Courts.

We have, however, successfully delivered many key Reform initiatives during this period. We have launched, as planned, new public services for Immigration & Asylum and Family Public Law, using a mixture of socially distanced training rooms and virtual support for staff to allow key training to be completed. We have worked hard to enable our operational staff to work remotely, rolling out devices and expanding online services earlier than planned, thereby maximising the number of users able to use digital channels. We have also made successful contract awards for scheduling and listing technology, despite the significant disruption for suppliers caused by the pandemic.

In other areas, as part of our response to Covid-19, it has been necessary to quickly deliver entirely new initiatives, and this has only been possible by reprioritising resource from the Reform programme. The most notable example of this has, of course, been in the rapid roll-out of audio and video hearings across courts and tribunals, which has enabled essential hearings to continue during this period. This has been enabled by significant support from teams within the Reform programme with the relevant expertise to deliver this at pace.

There are six recommendations outstanding from the Committee's October 2019 report, and I have addressed these in Annex A, attached to this letter, and then provided responses to the recommendations from the Committee's most recent report in July 2020 at Annex B. I hope that the Committee finds this update helpful.

Yours sincerely,

Chris Philp MP

# Annex A: Court and Tribunal reforms: Second Report of Session 2019<sup>1</sup> (recommendation numbers as per original report)

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## Recommendation 1

**We recommend that HMCTS set and publish ambitious targets for divorce completion times.**

### *Response*

HMCTS published new targets for both paper and digital divorces on 13 August 2020.<sup>2</sup> These targets concentrate on how quickly we respond to our users and how quickly we process those stages of the case that require our input, such as petition issue and the review that takes place at decree nisi. In this way, they will help measure how well the digital system is working and performing. We continue to encourage both litigants in person and legal professionals to sign up to the online divorce service.

These new measures do not focus on the end-to-end completion time of cases, because, as with many of our services, legislation deliberately builds in time to give parties appropriate time to respond, to ensure the financial aspects of their separation are agreed, and to provide the opportunity to consider if they want to go ahead with their divorce. Measuring the success of the process based on completion times gives a misleading picture of how quickly the process works, given that some users will necessarily wait longer than others to continue with the application. For this reason, we do not set targets for divorce completion times. However, we do publish these figures on a quarterly basis, split by paper and digital cases, as part of our official statistics.<sup>3</sup>

## Recommendation 5

**We recommend that HMCTS establishes a Freephone service for members of the public, similar to the Freephone system for Universal Credit.**

### *Response*

Work has been undertaken to investigate the costs of introducing a Freephone service for members of the public. As part of this, we have worked with other government departments where a Freephone service has been introduced to understand the impact of this. Work on this had been paused as we prioritised our response to the Covid-19 pandemic, but we expect to reach a conclusion by the end of October.

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1 <https://publications.parliament.uk/pa/cm201919/cmselect/cmjust/190/190.pdf>

2 <https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-june-2020>

3 <https://www.gov.uk/government/collections/family-court-statistics-quarterly>

## Recommendation 10

**We recommend that, by April 2020, HMCTS develop guidance in consultation with stakeholders on recognising and addressing communication barriers that may affect vulnerable defendants in court.**

### *Response*

HMCTS is committed to accessible justice for all and this includes addressing barriers that may affect vulnerable persons in court. We have continued to progress this work with the provision of easy read information, improving staff understanding of reasonable adjustments and how to apply them, and providing accessible physical environments. In June, HMCTS released a cross-jurisdictional reasonable adjustments guide for providing support to disabled people during remote hearings. Engagement in this area is high with regular liaison, support and advice from HMCTS's Defendant's Voice, Victim and Witness, and Equality and Inclusion engagement groups. This engagement ensures we are consulting on changes and monitoring the effective participation of defendants and accused people, and we will continue to work with these groups to further identify communication needs for vulnerable defendants.

## Recommendation 12

**We recommend that HMCTS does not introduce fully video remand hearings before robust piloting and evaluation have been carried out, alongside sufficient investment in video equipment and reliable Wi-Fi.**

### *Response*

HMCTS is taking the learning from the implementation of the cloud video platform in response to Covid-19 to inform the thinking around progression into fully video remand hearings. The introduction of a fully video remand pilot will be subject to engagement and agreement with the judiciary. Evaluation of video enabled remand hearings will be commissioned to look at both process implementation and the impact on justice outcomes before seeking to move forward with fully video hearings. Substantial investment is being made across the criminal court estate to improve the infrastructure which supports the delivery of video hearings. The roll-out of new audio-video (AV) facilities is nearing completion to ensure that 50% of all courtrooms have the facilities to participate in video hearings, with a second tranche of roll-out planned to increase this to 75%. Wi-Fi has been upgraded in all Crown and Combined Courts. All Magistrates' Courts except for 66 have also been upgraded, with those 66 currently in progress and due for completion by the end of the financial year.

## Recommendation 32

**We recommend that the Ministry of Justice and HMCTS increase the resources dedicated to stakeholder engagement and adopt a more rigorous approach to analysing and reacting to the feedback received.**

## **Response**

We have significantly increased our effort to engage stakeholders on all aspects of the reform programme. We have made resources available to run a wide range of stakeholder groups, including with legal professionals, their representative bodies, and public user groups. There are ongoing and frequent discussions with judicial partners and other public agencies involved in the justice system.

We have now established processes and structures that will enable us to measure and record our engagement activities in a routine and systematic way, and better quantify the stakeholder engagement activity that is being done at every level of the programme.

Once fully embedded in the programme, these structures will provide us with the information and evidence of effective engagement to report back to the committee and share back more consistently with those who have participated. They will provide those who have participated in HMCTS engagement activity a more consistent, unified system through which to feedback to us, and they will give HMCTS reform teams a formal way of recording, tracking and quantifying their stakeholder engagement activity, across all jurisdictions.

## **Recommendation 36**

**We urge the Ministry of Justice to ensure comprehensive delivery of its legal support action plan within the time frames stated in the action plan document.**

## **Response**

Like many projects across government, work on some elements of the Legal Support Action Plan was paused in light of Covid-19. This prioritisation resulted in the provision of £5.4m in emergency grant funding for not-for-profit providers of specialist legal advice through the Law Centres Network and the Access to Justice Foundation. The funding is being directed at addressing immediate cashflow issues, enabling providers in the advice sector to avert closure and continue to provide important advice services throughout the pandemic and its aftermath.

Where possible, the MoJ has continued work on the Action Plan, prioritising areas which had the most significant immediate impact on providers. Notably, the £3.1m Legal Support for Litigants in Person grant was launched, which has provided a welcome revenue stream for the organisations it is supporting, whilst also encouraging and supporting new ways of working for providers in the advice sector. The MoJ has also removed the mandatory telephone gateway to access legal aid, as set out in the Action Plan. Furthermore, delivery of the online and telephone signposting pilots has also continued and will remain central to the MoJ's work on providing people with better legal support at earlier stages to help them resolve their problems.

## Annex B: Coronavirus (Covid-19): The impact on courts:<sup>4</sup> Response to recommendations

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### Recommendations 3, 4 and 14

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.

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.

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.

### *Response*

The unprecedented nature of this public health emergency has required HMCTS to quickly adopt new ways of working without the preparation that would normally take place, and under conditions that have not previously been tested. Some changes will be time-limited and will stop with the end of the pandemic. Final decisions on any measures which could be adopted and/or adapted in the longer-term will be made by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals in line with their statutory responsibilities.

The rapid roll-out of audio and video hearings across courts and tribunals has enabled essential hearings to continue. HMCTS will continue to ensure that technology recently introduced or expanded works effectively for all participants in court or tribunal proceedings. They recognise these types of hearings may not be suitable for everyone and ask individuals to tell them if there are circumstances which may affect or impair their ability to participate effectively. This will inform the judge's decision on how the hearing should be conducted.

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.

The review has identified some key issues which can make remote hearings less efficient

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4 <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/519/51902.htm>

and highlighted some of the user experiences HMCTS needs to address. Delays which prevent the hearing from starting on time (joining, recording, access to documents), troubleshooting technical issues during the hearing, hearings which include interpreters/witnesses and the practical issues of facilitating hearings remotely can all impact how smoothly a remote hearing runs.

For example, communication between legal representatives and litigants remotely is inevitably more challenging. WhatsApp, phone calls or facetime have been used during hearings, which may not be readily available to all litigants. HMCTS also identified that hybrid hearings (where some parties attend with the remainder engaging remotely) can be considered a good option compared to fully remote hearings for cases involving vulnerable users, or for more complex cases.

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 also explore whether users face barriers to its use, and if so, how these vary for different users. This will include, where possible, those that have disabilities or mental health conditions, and how they were addressed.

The evaluation will explore how experiences, perceptions (including of fairness) and outcomes appeared to 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 swiftly occurred 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 has also published a vulnerability action plan setting out how they are making sure any unintended effects on vulnerable users are considered, and can engage with new ways of working. The plan recognises the importance of vulnerable people being able to access the justice system without being disadvantaged or discriminated against.

## Recommendation 5

**We invite the Ministry of Justice to demonstrate how it intends to work with the magistracy in order to deliver its recovery plan.**

### Response

HMCTS has been working closely with the magistracy for some months on the creation and implementation of plans for recovering the work of the magistrates' courts. A multi-agency Magistrates' Courts Hearings Working Group has been meeting since May. It is chaired by the Chief Magistrate and includes the Chair of the Magistrates Association and the National Leadership Magistrate. Each region has a similar working group which

is chaired by the Presiding Judge and includes representatives of the magistracy. There is also a separate national working group looking specifically at the work of the Youth Court, chaired by the High Court judge with lead responsibility for youth work. In addition, separate briefings on current performance are given to the Magistrates Association and the Magistrates Leadership Executive.

To ensure magistrate recruitment is ongoing during the pandemic, the conditions for the process have been changed to allow for remote interviews to take place for the role.

## Recommendation 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.**

### Response

Pre-Covid, HMCTS regularly used monthly management information (MI) internally and published this data. The information provided a good view of performance at the time.

However, the pandemic has necessitated an increase in the pace at which MI needs to be made available. Since March 2020, HMCTS has made significant improvements in access to weekly MI. This has been shared widely across the justice system and is now part of a new [publication](#).

As part of the reform programme there are planned improvements to the MI system including a new data platform for information, using modern technology, as well as investing in the data engineering needed to provide more regular access to information. It is planned for completion in 2023 due to the complex and technical nature of the work.

## Recommendation 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.**

### Response

Prior to Covid-19, youth data was not routinely extracted from MI systems. However, since July HMCTS has been supplying weekly data to the Youth Justice Board. This includes information on case receipts, disposals and outstanding cases in the magistrates and crown courts. HMCTS is continuing to work with the Youth Justice Board to meet

any additional requirements.

The judicial lead for Youth Justice, Mr Justice Davis, recently published a note on the allocation of youths jointly charged with adults. The interests of justice test should include consideration of the likely delay if the youth is sent to the Crown Court with an adult as opposed to remaining in the Youth Court. Senior officials in each region are working with Resident Judges to prioritise and support trials involving youth defendants.

The backlog that arose in the Youth Court during the lockdown period is now being cleared. Since July, the courts in each of the regions in HMCTS have been completing more Youth Court cases than they have received. Over 25% of the this workload for England & Wales is dealt with in London. London is currently completing around 25% more cases than it is receiving.

## Recommendation 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.**

### Response

The shift to more video and audio hearings has been enabled through the legislation in the Coronavirus Act. This ensures that the law which protects against prohibited recording and photography for physical hearings also applies for video or audio hearings, and open justice is upheld. Ultimately it is for the judge, magistrate or panel to decide, in the interests of justice, the way in which a hearing is heard, including how observation will take place (in person at a court, over the phone or via video) and that will continue.

Many hearings continue to be heard in courtrooms where, with the necessary and appropriate safeguards in place, observation can continue. Some hearings continue to be heard in private where it is in the interests of justice to do so, and many are heard by video/audio with some or all participants joining remotely. New staff guidance makes clear, where possible and with the agreement of the judge, that remote observation of hearings can be accommodated by the court, ensuring the practical arrangements are in place to do so. This has allowed people to continue to observe hearings remotely by video or phone as well as in public galleries as normal.

On 1 September, to further support public knowledge of, and access to, hearings, HMCTS announced magistrates’ courts lists will now be published online, in the same way they are displayed in court buildings.

In 2019 HMCTS approached the Cabinet Office led ‘Policy Lab’, who bring a people-centred design approach to policy-making, to explore the future of open justice in context

of the HMCTS reform programme. This work explored the opportunities and potential challenges raised by new technology including work with the public to explore what people already know and think about open justice, and how they might feel about it in a number of possible futures. This work continues to inform the strategic approach to reform.

MoJ will be working to ensure the principle of open justice continues to be upheld in the use of video and audio hearings and are grateful for the feedback media organisations, NGOs and academics have given us to improve the arrangements to facilitate open justice during this time.

## Recommendation 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.**

As part of the response to Covid-19, HMCTS has published a vulnerability action plan. This sets out how HMCTS are making sure any unintended effects on vulnerable users are considered, and can engage with new ways of working. The plan recognises the importance of vulnerable people being able to access the justice system without being disadvantaged or discriminated against.

HMCTS recognises that audio and video hearings provide an additional channel for conducting a hearing and should be as accessible as possible. However, they may not be suitable for everyone. Individuals are asked if there are any circumstances which may affect or impair their ability to participate effectively in an audio or video hearing. This will inform the judge's decision on how the hearing should be conducted. For those who are able to have a video hearing but require support to access or navigate the online service, a telephone number for support is available.

Reasonable adjustment and disability guidance is provided to HMCTS staff who support phone and video hearings. This guidance raises awareness of the issues people with different disabilities may face, and reasonable adjustments which may help them to fully participate in telephone and video hearings.

As well as retaining paper routes, HMCTS also has a digital support pilot in place which supports users who want to access newly reformed online applications/appeals but lack the skills, access or confidence to do so. Prior to lockdown, this pilot, with our partner Good Things Foundation, provided face to face service in 26 locations. This was provided through the Good Things Foundation network which is made up of organisations such as Community and Legal advice centres and Citizens Advice.

Since April we have been adapting the service, offering remote support to those who request it via existing pilot locations as well as face to face support in locations which are able to operate safely. From the Autumn remote support will also be available to those who contact our CTSCs for help. A report outlining our findings from the first two years of the

pilot will be published by Good Things Foundation in the coming weeks and commercial activity has started to replace the pilot with a national service in 2021.

HMCTS has introduced a new Public-Sector Equality Duty (PSED) toolkit, to provide practical support to staff when considering the equality impacts on public and professional users when introducing changes.

### **Recommendation 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.**

### **Response**

The Government has no plans to remove jury trials. Indeed, Criminal Court recovery has focused on opening up the court estate and increasing capacity to safely resume jury trials, with the full support of Public Health England and Public Health Wales.

Jury trials resumed in May, in a small number of Crown Courts. Since then HMCTS has opened 110 rooms for jury trials, and practical measures, including the installation of plexiglass screens, will enable them to open many more in the autumn.

As of 1 September 2020, 68 out of 81 Crown Court buildings had re-started jury trials, and more than 800 jury trials have been listed since they were reintroduced in May.

HMCTS has been able to keep the criminal courts system running thanks to the hard work and dedication of those across the whole justice system during the toughest times of lockdown. The most important and urgent cases have been prioritised throughout this period, and HMCTS has used innovative ways to enable justice through technology, enabling many more remote hearings. They have taken an open approach to policy making, engaging with a broad range of stakeholders on an ongoing basis since the start of the pandemic and as we have moved into the recovery phase.

### **Recommendation 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.**

## **Response**

The reform programme has been re-planned to ensure it reflects the changes precipitated by Covid-19. While there have been some inevitable delays to certain projects, the overall timelines and long-term goals of reform remain largely unaffected. Some strategic questions, including the future of the estate and video hearings are being reviewed as part of the sixth iteration of the reform portfolio business case (PBC6), which will be submitted to HM Treasury this autumn. While HMCTS would not say the programme has been “accelerated”, it has increased resilience to Covid-19 (and future shocks), as digital services and remote working have meant they can progress cases without being in court.

All planning of the reform programme involves significant scrutiny and engagement with key stakeholders. The reform programme works to a seven-step project lifecycle, and to take each step forward each of the programmes within reform (Property, Future Operations Programme and Future Hearings, Civil, Family & Tribunals and Crime) must gain approval from their programme board.

There has been significant engagement with the judiciary as part of the preparation for PBC6, including meetings with the Judicial Executive Board (chaired by the Lord Chief Justice), the Judicial Reform Board and the Heads of Division to set out plans for the business case. There will be further, more detailed discussions with them before it is submitted to HM Treasury.

## **Recommendation 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.**

## **Response**

HMCTS is currently preparing a refreshed version of the reform portfolio business case (PBC6) which takes account of the impact of Covid-19 and the infrastructure investment for 2020/21. This will be considered by the Major Project Review Group on 18 November. The latest approved version of the business case (PBC5) had a planned expenditure of £242.9m for 21/22 onwards to complete reform.

## **Recommendation 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.**

## **Response**

The Committee’s comments on supplementary court venues have been noted. In the case of previous court closures, where HMCTS considered that supplementary provision was required to maintain effective access to justice, this was stated in their consultation response. In all other cases, the Lord Chancellor was satisfied that it was not required.

HMCTS has previously reported to the committee that they are not intending to conduct a widespread assessment of whether further supplementary provision is needed in areas where courts have closed previously. Should they consider that supplementary provision is a necessary component of any future proposals regarding the court estate, their intention is to include this in their initial consultation proposal to allow those responding to comment on this as part of the proposal.

As set out in the response to the ‘fit for the future’ consultation last year, supplementary provision can be used to respond to temporary changes to workload, business continuity purposes and the maintain effective access to justice. HMCTS work to quickly establish Nightingale courts has demonstrated the benefits of supplementary provision to respond to issues of continuity and workload. As HMCTS recover from the impact of the coronavirus pandemic their focus will be on improving the existing estate through the additional funding received earlier this year and by making a robust case for additional funding as part of the spending review process. Beyond the recent consultation on Medway County and Family Court, they have no further active proposals for changes to the court and tribunal estate.

### Recommendation 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.**

### Response

HMCTS does not underestimate the significant challenges still to come to get back to working at pre-crisis activity levels and to deal with the outstanding cases that have built up.

Over ninety percent of court and tribunal buildings have now reopened for essential in-person hearings, following rigorous assessment to make sure they adhere to public health guidance. HMCTS are installing physical modifications, where necessary, to maintain a safe environment and will continue to open sites as they are assessed safe.

They are identifying suitable venues outside of their estate, such as former courts, local authority and other public buildings, or commercial hires, such as conference venues, to boost capacity. This will allow traditional court buildings to manage more work while maintaining social distancing—whether that be by hosting full hearings or allowing victims and witnesses to attend remotely. Additionally, work is underway to design and

look at options for other arrangements to maximise capacity, like extending sitting hours, where possible.

Online services will continue to accelerate and expand their effective use across all jurisdictions to maximise impact. This includes new hardware to improve the quality of video hearings and, over the summer, they'll complete the rollout of a new video platform into all crown and magistrates' courts, as well as civil and family jurisdictions.

As earlier mentioned, HMCTS re-started jury trials in a number of buildings—one of the first among other comparable jurisdictions globally. These sites, which included the historic Old Bailey, were carefully assessed as are all reopened buildings. More will follow and all jury trials will take place under special arrangements to maintain the safety of all participants.

More detail on this is included in the criminal court recovery plan published this week, and HMCTS will be setting out more detail in the civil, family and tribunals jurisdictions shortly.

A further £142 million has been allocated to HMCTS to speed up technological improvements and modernise courtrooms, building on the rapid progress made to keep the system running during the coronavirus pandemic. Combined with the £48 million already set aside this year, there will be £153 million for improvements to court and tribunal buildings—the biggest single investment in maintenance of the court estate for over 20 years.

This investment will allow HMCTS to make significant improvements to equipment in their buildings, for example replacing heating, cooling and ventilation systems, making sure buildings remain comfortable year-round. They are also committed to transforming the sustainability of court and tribunal buildings. Investing £40m will modernise heating, ventilation and air conditioning systems, provide energy efficient lighting and reduce energy consumption. Taken together, this will reduce carbon emissions and contribute to their Greening Government commitments.

## **Recommendation 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.**

### **Response**

As set out in the response, plans to increase the pace of recovery and meet this unprecedented challenge are already well underway. The introduction and continued review and development of new ways of working, together with the investment outlined above will help to build capacity for the longer term.

## Coronavirus (Covid-19): The impact on courts:<sup>5</sup> Response to conclusions

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### Conclusion 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.**

### Response

The Crown Court continues to deal with a range of work, much of which is being done remotely. This includes sentencing hearings and all urgent applications, including applications for bail and applications to extend custody time limits. Pre-trial preparation hearings and further case management hearings are also taking place. Magistrates' Courts are now hearing all types of work.

Cloud Video Platform (CVP) usage continues to increase, with in excess of 28,000 hearings taking place over CVP in the magistrates' court, and 13,000 in the Crown Court as of 3rd September.

Social distancing has presented significant challenges for those parts of the system which rely upon face to face hearings. HMCTS has been working to increase the volumes of cases which can be heard, whilst adhering to public health guidelines on social distancing.

Since May jury trials have resumed in 68 Crown Court buildings (out of 81), and HMCTS has met its target to have 100 courtrooms suitable for hearing jury trials by the end of August 2020. With the installation of plexiglass screens and other measures, we expect this to reach 250 by November. The 10 Nightingale Courts, will provide hearing rooms for non-custodial crime work, removing it from the permanent estate so that can be used for criminal work.

The Covid Operating Hours (COH) pilot at Liverpool Crown Court has extended the times that trials sit within the period that the buildings are open, without requiring any party to attend court for longer. Similar pilots are planned for other Crown Courts.

Additional Saturdays courts have been used to clear the backlogs in some of the more routine summary cases. Single Justice Procedure (SJP) cases have been dealt with remotely to help reduce the 'foot fall' within court buildings, and the number of court sessions has increased to deal with cases that are not processed through the SJP system. We are now sitting around 90% of the sessions sat in the equivalent weeks in 2019. In July the Crown Court were recording disposals of 79% of pre-Covid levels, and magistrates' courts were recording disposals of 54% of pre-Covid levels, but above the level of receipts. Over the coming months the recovery plan will build on the gains already made in reducing the

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5 <https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/519/51902.htm>

backlog in the criminal justice system.

## Conclusion 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.**

### Response

As the committee is aware, over the last decade HMCTS reduced the size of the court estate closing underused and poor-quality buildings. Since 2015, the receipts from the sale of surplus freehold building have been reinvested in the reform programme. The consultations that took place between 2015 and 2018 were all based on workloads and processes in place at the time. The proposals did not require any future changes being introduced by reform to enable the closure to proceed. The next iteration of our reform business case will consider the lessons learnt from the Covid crisis, the implications of which for space have been felt across all walks of life, including what it means for our property reform programme.

Covid-19 has placed unprecedented pressures on public services, including our courts and tribunals. In response, HMCTS has demonstrated its ability to increase capacity quickly as part of the recovery. Ten initial Nightingale sites were announced on 19 July, to operate as satellite hearing centres nearby to existing courts on a temporary basis. All 10 Nightingale courts are now open and we will open another eight in September and October. Portakabins are being installed which will provide additional room for jury deliberations, unlocking more space for hearings to take place. Plexiglass screens are also being installed at 250 court and jury rooms, another powerful solution which enables more rooms for hearings and jury deliberations, while adhering to the latest public health guidance and keeping people safe.

## Conclusion 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.**

### Response

The fees introduced under the Civil Legal Aid (Remuneration) (Amendment)(Coronavirus) Regulations 2020 were always temporary, as evidenced in the sunset clause within the instrument itself. These were introduced to ensure that the tribunal system could continue to function and appellants could still access justice during the Covid-19 pandemic, accounting for additional work required under HMCTS' online system.

It is necessary to distinguish between a policy consultation and a contractual consultation. No written policy consultation was undertaken as the priority was to ensure that the

tribunal system could continue to function during the unprecedented situation. It is incorrect to say that no consultation in the form of engagement with stakeholders and legal aid practitioners was conducted.

It is a requirement of the contract that the Legal Aid Agency has with legal aid providers that there must be a contractual consultation for substantial changes to the contract. The contract sets out, amongst other things, the rules and procedures for claiming fees, including what fees can be claimed for what type of case. The contractual consultation is a technical one, which ensures that legal aid practitioners are clear on the effect of the policy on the rules for claiming fees. Upon the laying of the Amendment Regulations, an updated version of the contract reflecting the changes the Amendment Regulations made was sent out to the Consultative Bodies to start the contractual consultation process. It may be worth noting that all of their recommendations of how to improve the wording of the contract to be clear and concise about the effect of the changes were accepted in full.

The Committee will already be aware that the Ministry of Justice has since indicated its intention to revoke the Amendment Regulations. Instead, payment for these cases will move to payment by the hourly rates as set out in the Civil Legal Aid (Remuneration) Regulations 2013 on an interim basis. The Ministry of Justice's long-term intention remains a sustainable fixed fee scheme, but we recognise that there is further evidence to be gathered to inform any permanent change to fixed fees. Furthermore, remuneration by hourly rates will enable us to monitor our datasets and use the data collected here as part of the wider evidence upon which to set future fees. As per the commitment the Lord Chancellor has already made to Parliament, there will be a written policy consultation and ongoing engagement with the legal profession and those with an interest in this area on any future fixed fees.

## Conclusion 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.**

### *Response*

The pandemic has necessitated a radical and swift transition to widespread use of audio and video technology to support remote hearings. An internal two-stage research approach has been commissioned to fully understand the audio and video response during the pandemic.

Stage 1 was an implementation review looking at ways to develop and improve processes.

Stage 2 will evaluate the revised processes.

A formal independent evaluation is to be commissioned at both a thematic and a project level covering the use of video in criminal proceedings as part of the Crime Reform programme.