



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Sir Robert Neill

Justice Select Committee
House of Commons
London
SW1A 0AA

20 January 2021

Dear Sir Bob,

Thank you for your letter dated 16 December and for the evidence session on 1 December 2020 focusing on the impact of the COVID-19 pandemic on the justice system. I am writing to respond to the important questions raised in your letter, and also to provide further information in relation to other areas which the committee touched upon during the December evidence session.

Crown Court Recovery

The recovery plan sets out the actions HMCTS is taking to maximise the number of courtrooms open for jury trials. By the end of December, HMCTS had successfully made over 290 courtrooms available to safely hold jury trials, in addition to over 120 courtrooms for non-jury trial work across 79 Crown Court sites.

HMCTS does seek to forecast the impact of different options, but those forecasts are subject to a range of assumptions that are highly sensitive to various factors, including external ones such as the case mix received by the Crown Courts.

The most up to date HMCTS Management Information, published on 14 January (available [here](#)), shows that the Crown Courts disposed an average of 193 jury trials per week in October and 230 per week in November. From the beginning of October through to 20 December, on average 275 trials per week were listed. HMCTS continues to monitor performance carefully. It is important to note that the weekly management information reflects the data held on the case management system, which is subject to change between publications.

As previously stated, it is impossible to predict the exact date upon which the outstanding caseload will return to 'pre-COVID' levels. HMCTS has not published any estimated figures in that respect, because any such estimate will inevitably be based on a significant number of assumptions and variables that are likely to change.

Gemma Hewison's statement to the Divisional Court on the outstanding jury trial caseload was based on a set of assumptions, such as social distancing requirements. These assumptions, as we would expect, have now changed as the situation has developed, meaning that assessment is now out of date. Internal modelling work is not designed to provide a specific forecast of 'recovery', defined as the date when HMCTS will reach a given

level of outstanding cases. It would not be sensible to attempt this as there are too many variables involved to make any accurate predictions.

Video Remand Hearings

As I set out in my evidence last year, Video Remand Hearings were rolled out at pace and proved valuable: they reduced the number of movements to court, reduced the risk of transmission and therefore increased the resilience of the Criminal Justice System. At their peak last summer, video was being used in around three quarters of all remand hearings. This required a huge amount of collaboration, including from the police who had to deploy officers to help run the hearings. This cross-system effort proved effective and the Ministry of Justice has provided material assistance, including by deploying PECS officers to help a number of police forces. However, legislation limits the type of work these officers can carry out. We are therefore preparing primary legislation to create more options for PECS officers to help ease this burden.

Meanwhile, officials in the Ministry of Justice and Home Office led a rapid piece of work with frontline agencies to understand what more could be done to help. This agreed a number of actions including localised solutions in high-risk areas and avoiding face to face hearings for COVID-19 positive defendants. Following the conclusion of this work, the Home Secretary and I wrote to all Chief Constables and I'm pleased to see that video hearings are being widely used for remand hearings where the detainee has tested positive or is suspected of having COVID-19. The safety of all court users remains a core priority.

Technology and the Criminal Justice System

We are continuing to explore potential new legislative provisions similar to the measures in the Prisons and Courts Bill which fell because of the 2017 General Election. Those measures provided for defendants to submit an online *indication* of plea which would have to be completed through a legal representative. A *binding* plea would still have to be entered at their first court appearance.

I would like to now provide further information relating to additional issues raised during the December evidence session.

Custody Time Limits

Data on the length of time a defendant has spent on remand is held within individual case files and is not collated centrally. HMCTS and the Crown Prosecution Service monitor the length of time that a defendant is held on remand to ensure that they are not remanded beyond their custody time limit (or that an extension is applied for if this is necessary).

For children and young people up to the age of 18, 73% of youth custodial episodes were for 182 nights or fewer for the year ending March 2019. The Youth Justice Board statistics will be updated in January and will provide an update until March 2020.

There is work underway to improve the Youth Custody Service (YCS) case management system and an ongoing project to replace the YCS reporting system. Once these projects are delivered the YCS will be able to re-examine whether it is possible to report on the length of time in custody by legal basis.

Youth cases are listed as a matter of priority, particularly those cases where a young person is remanded either into a custodial establishment or into the care of the local authority. As part of recovery planning, outstanding youth cases are monitored closely to ensure they are listed as expeditiously as possible.

Unpaid Work Requirements

COVID-19 restrictions have resulted in some service users being unable to complete their hours before the twelve-month requirement end date – creating a backlog.

The Probation service has been recovering well from the pandemic and probation providers have been working hard to maximise delivery of unpaid work despite these challenges. Through a range of alternative delivery formats, we have been able to increase delivery to approximately 56% of pre-COVID capacity (as of 6 December).

Unpaid work is now being delivered through a prioritisation framework, which ensures that the rate of increase of the backlog is minimised. This is largely by prioritising those service users who will be able to complete all their hours in the remaining time, without the need for an extension.

In addition, we are progressing a number of innovative approaches to maximise delivery, including the development of partnerships for outdoor placements, flexibility around travel to placement sites, adapted delivery in smaller groups and one-to-one, home-based projects, and encouraging greater use of education, training and employment services (which can now account for up to 30% of an offender's unpaid work hours).

We have also been working with the Senior Presiding Judge to address the backlog directly. A panel has been set up to manage the backlog through measures such as crediting hours for compliant service users who were unable to complete their hours during the national lockdown and applying for requirements to be extended - allowing service users affected by local restrictions more time to complete their hours. The panel will manage this process, ensuring justice is appropriately served in each case, and these efforts will reduce the backlog by up to 6000 cases.

Public Sector Pay

During the session, the committee asked about the proportion of HMCTS staff in the lower pay bracket who would still be eligible for a pay increase. Our current data shows that 71.2% of HMCTS staff (whose full-time equivalent salary is presently below £24,000) will not be impacted by the pause in public sector pay increases. This equates to 11,542 people.

The committee should note, however, that the MoJ 2020 pay award has not yet been agreed and this figure will change once this is implemented. The 2020 award is outside of the pay pause period which takes effect from April 2021. MoJ have submitted a business case to Cabinet Office and HM Treasury to request a pay deal that goes beyond 2020, a key component of which is to improve our pay offer for the lowest paid employees across a number of our grades.

The case is still being considered, but once discussions have concluded and the MoJ 2020 pay deal has been agreed, this could reduce the number of HMCTS staff in the lower pay bracket before the 2021 pay pause.

HMCTS continues to be subject to Civil Service Pay Guidance and as such, the specific details regarding the approach for individuals earning under £24,000 will not be known until the full guidance is issued next year.

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly informal style.

RT HON ROBERT BUCKLAND QC MP