

## **Spotlight on Corruption – written evidence (CIC0029)**

### **House of Lords Constitution Committee Inquiry into the Constitutional Implications of COVID-19**

August 2020

#### *Who we are*

1. Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.
2. As part of our remit we monitor corruption and money laundering cases in the UK courts to see how the law works in practice and to track how the UK enforces its anti-corruption laws. We monitor civil, criminal and commercial courts as part of this monitoring.
3. Spotlight on Corruption has a particular focus on open justice, advocating for greater court transparency in economic crime cases to ensure confidence in the justice system and to ensure that criminal and civil justice outcomes have full deterrent effect. As part of this process we are closely engaged with officials at the Ministry of Justice and through the Open Government Partnership, to improve open justice data and ensure that the UK commits to an action point on open justice in the next Open Government Partnership National Action Plan.

#### *Summary*

4. Spotlight on Corruption's experience of monitoring the courts during COVID-19 has led us to the following conclusions:
  - COVID-19 has created real challenges for the courts but also real opportunities for improving speed and efficiency of the justice system through the use of remote technology.
  - Our experience of accessing remote hearings has been largely positive, particularly in the civil and commercial spheres. There have been huge savings in time and our ability to monitor trials in these spheres has for the most part been improved by virtual technology.
  - In the civil and commercial sphere however, we have observed in several cases, a phenomenon of cases being listed and then de-listed and becoming private hearings. We are concerned that this trend is not being monitored sufficiently.
  - Our experience of accessing criminal jury trials, particularly at the Old Bailey, has been more problematic, with observers being turned away by court staff (despite judicial instruction otherwise) for not being media representatives. An application we made for remote access to a trial that was one of the first to resume during the Pandemic meanwhile was turned down by the court.
  - Open justice is at risk of being compromised by the crisis in the courts, particularly in the criminal sphere and particularly for non-media observers and greater guidance could be provided about its application to the judiciary.

- The backlog created by the crisis in the courts is likely to have a particularly detrimental impact on the enforcement of complex economic crime, with these cases being put to the back of the queue.
5. In light of our experience Spotlight on Corruption makes the following recommendations:
- Serious consideration should be given to rolling out virtual technology for hearings that relate to pre-trial and procedural issues as the norm in both civil and criminal jurisdictions.
  - The Lord Chief Justice and Lord Chancellor should review urgently how open justice in criminal cases can be more effectively protected, including by giving consideration to making an order under Section 32 of the Crime and Courts Act to allow courts to provide remote access to the public, subject to safeguards.
  - Serious consideration should be given to publication of transcripts of judgements handed down orally and sentencing remarks both during the Pandemic and long-term. The judiciary and HMCTS should be working towards comprehensive publication of all such judgements in England and Wales.
  - Listing data should make clear that members of the public as well as media are able to attend remote hearings.
  - Evaluation should be undertaken and statistics kept on the number of cases that have been heard in private during COVID-19, both under the CPR 39.2(3) and existing Civil Procedure Rules, to assess whether remote hearings have had an impact on application of privacy orders.
  - The proposed Virtual Fraud Court should be implemented speedily to ensure that fraud and other economic crime cases can be managed effectively.
  - Given the potential huge increase in economic crime as a result of COVID-19, urgent consideration should be given to creating a 'ticket' for judges to work on economic crime, ensuring judicial training and expert support in this area.

*Virtual technology: experience under COVID-19*

6. Our focus is on transparency and access. Transparency is an essential element of a fair and open justice system and it needs to be ensured that all participants of a trial, including the media and the public, have as far as possible unrestricted access to proceedings. This is ever more important during a public health crisis that will impact the UK court system and cause significant disruption to the judicial processes.
7. To date, Spotlight on Corruption has been able to access remote hearings with no difficulty. This is important given the primacy accorded to the media rather than the public or public interest organisations. We note that clerks and court staff may not however be aware of their obligations to ensure access to non-media observers, given the fact that the listings mention only the media.
8. In our experience, best practice in the civil courts consisted of the livestreaming in the Commercial Court of the *National Bank of Kazakhstan and another v Bank of New York Mellon and Ors* with concurrent publication of transcripts on the website of the solicitor of the parties. We think this should be considered in all cases.
9. Spotlight on Corruption has welcomed instances where the link to remotely attend a hearing was directly provided in the listing. This eliminates the additional step of requesting access which due to time constraints can be challenging.

10. Throughout the pandemic Spotlight on Corruption researchers have accessed remote hearings via various means. Some require the installation of software, such as Skype for Business, while others do not, such as the CVP (Cloud Video Platform). From a technical standpoint a system which provides direct access via a link seems most suitable. We therefore welcome the introduction of the CVP platform which is more user-friendly and provides easy access on any device without the need to install any software. We believe the platform should become the standard for all remote hearings.
11. In terms of further research that needs to be carried out, Spotlight on Corruption deems it essential to gather data on the number of cases that are resolved out of court and settled between parties during Covid to understand trends within the civil justice system. Simultaneously, data on the extent to which court attendance by members of the media and members of the public changes when hearings are held virtually should be captured.

*Physical proceedings, jury trials and progress of cases*

12. Pandemic-related restrictions are likely to severely impact the courts for the foreseeable future. Research into how conviction rates and jury perceptions of defendants and witnesses during the pandemic and in virtual hearings needs to be conducted on an ongoing basis as a matter of priority, not least because this is likely to provide fertile grounds for appeals against convictions, thus placing further strain on the criminal justice system.
13. In principle, we believe that there should be room in the criminal sphere for hybrid trials, subject to further research. We believe that in order to ensure open justice in criminal trials, remote access for the media and members of the public should be considered. This is likely to necessitate an order by the Lord Chancellor under Section 32 of the Crime and Courts Act to allow courts to do so. In our view, this could reduce the number of people visiting the courts and thereby lower the risk of disruption to trials caused by the incidences of the virus.
14. Furthermore, COVID-19 should also be an opportunity to review how the publication of transcripts of judgements handed down orally and sentencing remarks should be more consistently and coherently done. The judiciary and HMCTS should be working towards comprehensive publication of all such judgements in England and Wales.
15. We have real concerns that despite the potential significant increase in economic crime that could result from the COVID-19 and the economic recession that will follow, complex economic crime cases will be at the back of the queue in an overburdened court system. At the end of March, the CPS and National Police Chiefs' Council floated the idea in an Interim Charging Protocol that "*a virtual specialist fraud court could be set up to manage cases and prepare a longer listing plan.*"<sup>1</sup> We have seen no further public information on this but believe the establishment of such a court is essential to ensure fraud and economic crime is not deprioritised at a time when proactive enforcement is most needed.
16. While in the context of fraud and economic crime, we think there may be merit in offering those accused the option of a judge-only trial, while not removing the right to a jury trial, we think this will only work if implemented with the introduction of an economic crime 'ticket' for judges to ensure specialised, well-trained and experienced judges hear these cases.

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<sup>1</sup> [https://www.cps.gov.uk/sites/default/files/documents/legal\\_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf)

