

Written evidence from Penelope Gibbs, Transform Justice (COV0013)

Threats to human rights from Covid related legislation

Transform Justice is a charity advocating for a more fair, humane, open and effective justice system. We research aspects of the criminal justice system, publish reports and publicly advocate for change. In 2016 we published a report on unrepresented defendants in the criminal justice system. We have also published reports on the over-use of court remand for children and adults and on the quality of defence advice. As part of the research for these reports and in general, we often observe the hearings in magistrates' courts. This is seldom easy at the best of times, but always possible.

At this time, the principle of open justice appears to be severely strained. In theory, magistrates' courts are open. They are definitely hearing some cases – including “custody” cases. These first appearances are critical, since they involve decisions on plea, imprisonment and criminal sanctions. People can be sentenced to imprisonment on their first appearance or remanded in custody. So it is important these hearings can be observed.

The government brought in legislation which extends the use of video and audio court hearings and of closed hearings. We feel that significant steps need now to be taken to make the implementation of this legislation human rights compliant.

- 1) Criminal hearings need to be opened up to the public. Lawyers seem to be taking part in these hearings from home mostly using open source software such as Skype for business and Microsoft teams. At Medway magistrates' court all first appearances are occurring via video call, with I presume just the District Judge in the courtroom. There is no technical reason why a virtual public gallery should not be implemented, but nothing has happened so far. Transform Justice has been trying to access hearings digitally since Sunday 29th March. We have contacted the court, been asked why we want to “observe” cases and been told that the judge concerned needs to explicitly give his/her permission. This has not been forthcoming. Given advice against non essential travel, we perceive magistrates' courts to be in effect totally closed to the public currently. This is contrary to the principle of open justice and means there is no scrutiny of proceedings.
- 2) Video and audio hearings need to be monitored to ensure they comply with rights to a fair trial and to effective participation. There is a dearth of public information about which criminal hearings are being held digitally, and who is involved. It is not clear whether only defendants in custody (at the police station or in prison) are involved, or whether defendants and witnesses are also taking part from their homes. It is not clear what reasonable adjustments are being made to accommodate those with mental and/or physical disabilities. There is extensive academic evidence (see Dr Joe Tomlinson's submission to the Justice Committee inquiry into the court reform programme) that video/audio hearings can impede effective participation. A covid-related blog by Professor Celia Kitzinger illustrates this well <http://www.transparencyproject.org.uk/remote-justice-a-family-perspective/>. It is impossible to know at the moment (due to issues mentioned above) whether rights to effective participation and rights to a fair trial are being upheld. In order to do so the government must monitor and research hearings and educate judges and legal practitioners in how to facilitate effective participation in these new circumstances.

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