

## Written evidence from Office of the Police and Crime Commissioner for Hertfordshire

Hertfordshire's PCC David Lloyd welcomes the opportunity to give evidence to the Justice Select Committee on the impact of Covid-19 on the courts.

**The impact of Covid-19 on court sitting days and the backlog of cases, including whether the one-off additional funding and 4,500 additional days provided for 2020/21 is sufficient and staffing and recruitment issues.**

### **Backlog of cases and sitting days**

As PCC for Hertfordshire and Chair of the Local Criminal Justice Board, I have been raising concerns regarding the backlog of court cases for the last 18 months. The impact on the reduction of sitting days was already evident prior to covid-19. Locally this saw a rise of 25 per cent over the course of a year; rising to over 600 outstanding cases. Covid-19 has exacerbated an already crisis situation further.

In Hertfordshire St Albans Crown Court only started hearing jury trials last month with two out of seven court rooms currently able to accommodate jury trials. We are also currently occupying two court rooms at Huntingdon Law Courts although this is only confirmed until the end of this calendar year. Whilst this goes some way to readdress the backlog, the shortage of court rooms will not provide sufficient capacity to reduce the backlog to an 'acceptable' level. With the use of Huntingdon not confirmed beyond this calendar year there are concerns around the possible lack of longer term planning that is being undertaken to reduce the backlog.

There are implications with using Huntingdon Law Courts which are currently being felt by victims and witnesses across Hertfordshire. We are seeing cases where less than 24 hours' notice is being given that a trial will take place at Huntingdon. For some victims and witnesses in the county Huntingdon will be a two and a half hour journey each way by public transport. If they were unable to make this journey then the case will be back in the system waiting for another suitable venue to become available.

The additional sitting days provided for 2020/21 were insufficient to make a dent in the existing backlog that had accumulated from the previous year. St Albans Crown Court has the capacity for 1500 sitting days per year if six courts are utilised five days a week for 50 weeks a year. In 2019/20 St Albans was allocated 1070 sitting days, with an additional 40 days granted at the end of 2019 taking the total to 1110. Uncapping the sitting days would enable Hertfordshire to fully utilise the seven Crown Court Judges and bring down the backlog of trials whilst supporting the current throughput. If sitting days were uncapped with more cases progressed then the legal aid budget would need to reflect this.

With the backlog of jury trials sitting at 739, together with 1500 either way offences sitting in the Magistrates Courts and 120 indictable only offences, the delays will be significant.

We know that during March – May 2020 the Judges at St Albans Crown Court triaged all the cases that they had awaiting trial with some cases cracked or discontinued. We are therefore expecting the remaining cases to go to trial. Taking our current Crown Court capacity and assuming the average trial will take 4 days to complete, it will take 8 months for 100 trials to be completed – 48 months for 600 trials, taking us in to 2024.

If we were to assume the oldest laid cases would be heard first then the 99 trials cases added since March 2020 would therefore be at the end of the list. Recognising that the most serious cases, those involving young people, vulnerable victims and witness and those on remand will be prioritised it is fair to say that if someone found themselves to be a victim of GBH in Hertfordshire now then there could be waiting until the end of 2024 to have their day in court.

### **Staffing**

The most pressing issues relate to the Crown Court, however there are also issues in the Magistrates Courts regarding the lack of legal advisors. This was an issue pre-covid which saw trials stood down at short notice. The lack of legal advisors is continuing to cause challenges with options being explored including using a temporary court venue for remand hearings.

### **Wider impact on the criminal justice system**

Whilst the committee are interested in assessing the impact on sitting days and the backlog of cases, it is imperative to consider the wider impact on the criminal justice system. Not doing so fails to address the wider demands that will further impact on the courts including anticipated future demand. The Police Officer uplift programme will see an additional 20,000 police officers over the next three years. In Hertfordshire this will mean an additional 305 officers, over the next three years. This will undoubtedly increase the throughput into the system with an increase in arrests, outstanding RUI cases being dealt with and more cases entering the court room. The CPS have also seen an injection of funding with £85 million committed to increase capacity. This increased capacity will support CPS to manage the increasing complexity of their caseload, and the increased throughput as a result of the police officer uplift. As it stands this additional funding will create a further bottleneck in the courts unless there is additional funding to maximise the number of court venues and rooms open (including suitable alternative venues) and the number of sitting days.

We also need to be mindful of the other end of the system and the impact that items discussed locally such as a 'trial blitz' will have will have on other partners, namely prison and probation. Now more than ever we need to be taking a whole system approach to the criminal justice system. The Probation Service need to have the resources in place to ensure public safety through the effective management of offenders. The end of 2019 HMPPS inspection for Hertfordshire found numerous issues regarding caseload, unmanageable workloads and shortfall of staff. They are also now dealing with a backlog of cases to complete unpaid work and accredited programmes which were suspended due to covid-19.

Locally, since March I have convened regular extraordinary meetings of the Hertfordshire Criminal Justice Board in order to ensure there is a clear understanding of the challenges across the system and to problem solve these together. This has expanded to include an end to end local data set and a courts recovery task and finish group. Whilst the engagement is evident from all agencies locally, there continues to be challenges and blockages including the sharing of unpublished and unverified Court data at force level that awaits sign off nationally; which hampers real time decision making and local innovation. During the pandemic Local Criminal Justice Boards have shown how effective they are in bringing the system together. Further devolution of powers and responsibility to them should be considered.

**Practical experience of delay in Crown and other courts among lawyers, witnesses, victims and defendants and whether there is appropriate access to justice.**

It is clear at the moment that what we are doing is not sufficient or far reaching to change the system.

No one in the criminal justice system will be immune from the impact of the delays in the Crown Courts. In Hertfordshire we are soon to be utilising Huntingdon Law Courts for Hertfordshire Crown Court trials. Due to this being out of area, ordinarily it is only cases from the north or east of the county that are considered. If the victim or witness lives the other side of the county, in Watford, it would be a two and a half hour journey each way by public transport to reach Huntingdon. If they were unable to make this journey then the case will be back in the system waiting for another suitable venue to become available. Furthermore, those with their own transport will be better able to travel to Huntingdon than those relying on public transport thus creating inequality with which to access justice.

There are many other significant issues that delays in the Crown Court will cause:

- Defendants will be waiting on remand in custody which will either see continuous extensions to custody time limits or defendants released on bail. The latter of which has the potential to impact on public safety leading to repeat victims and decrease in public confidence of the system. As a result we have already seen the decision to increase the custody time limit to 238 days.
- Young people will be turning 18 whilst waiting for their trials to come to court which will see them being sentenced as an adult.
- Lawyers and defence practitioners continue to raise concerns regarding the limited number of trials and the impact the last 6 months has already had on their cash flow. There is particular concern with those firms who have furloughed staff and from October will either have increased costs to cover salaries or will be making employees redundant. The impact of this will be high street firms that are unable to survive.

Locally over the last quarter we have seen our lowest rate for guilty pleas at the first hearing in the Crown Court since October 2017. At 27.5% this is well below the aspiration target or 43%. Whilst it is unclear yet if this is an anomaly in the data or the start of a trend, it is concerning.

With 734 trials expected to take over two years to be heard, there is a real risk that justice will not be served. Victims and witnesses will not be prepared to put their lives on hold for that long to go through the trauma of a court process; suspects will be on bail in the community for longer, defence lawyers will (understandably) advise their clients not to plead on the basis that the trial may never reach court; and an innocent defendant will not have their moment to prove their innocence, something exacerbated for the young offender for whom a significant part of their life will be spent awaiting judicial process. Furthermore, the most complex cases and multi handed cases will be the ones stuck in the system for the longer period of time and those will be the ones where significant trauma may have been experienced by victims.

Locally trials are now being listed into 2022 with Witness Care obtaining dates to avoid for witnesses. This is leading to extended conversations with witnesses who are struggling to understand why dates are so far away and need support around this. This is creating extra work for Witness Care who will have to set up a further review date to remind witnesses of the court date approximately 6 months prior to trial date.

With high caseloads it is difficult for Witness Care Officers to increase the regular contact to witnesses that they have done in the past. Their main focus has to be on those victims and witness with the greatest need due to vulnerability or intimidation. Particularly in the Crown Court there appears to be a lack of consideration of the impact their recovery plan has on victims and witnesses and little regard for their responsibilities in respect of VCOP. Since March 2020 witness care officers have seen a 40% increase in their caseload.

The impact on victims and witnesses locally is concerning with many cases of trials being removed late or being warned with less than 24 hours' notice. For example, we have a historical case of indecent assault on 3 children dating back to 1977. This was listed for trial on 23/11/2020 with all witnesses warned. St Albans Crown Court have e-mailed witness care offering a new date of 09/08/2021 with no reason given and asking if this was suitable for the witnesses. When the change of date was queried the response was '*Trial date was set pre-covid, therefore released to custody cases*'. The victims in this case are very distressed.

Another local trial involving a vulnerable and intimidated victim has been placed in the warned list for 14/02/2022 following a pre trial and preparation hearing on 05/10/2020. There is no guarantee that a case in the warned list will go ahead and the victim is appalled that the trial date is so far away.

There are more local examples similar to the two cases above. I am deeply concerned that the impact of this will be a decrease in public confidence in the system and will almost certainly mean that victims will feel less confident to report crimes.

**The extent to which courts have appropriate capacity post-Covid-19, including the extent to which courtrooms are idle across England and Wales;**

Prior to covid-19 it was evident that Hertfordshire should have no cap on sitting days and be able to operate seven court rooms every day for the majority of the year in order tackle the

backlog experienced as a result of the sitting day reduction. This is even more so the case now the backlog has further increased as a result of covid-19.

Watford Magistrates Court is currently under ownership of Hertfordshire Constabulary and has been offered as an additional venue to support the courts. This court should be opened at the earliest opportunity.

There also needs to be serious consideration of the other options available to the Government with decisions and implementation happening at pace. These options include:

- Reduced jury size
- Overcoming social distancing constraints by broadcasting the court room via video link to another room where the jury are watching. Unused theatres and cinemas could be used to support.
- A Judge and two Magistrates to hear either way cases – there are over 1500 either way cases in Hertfordshire and if only 5% of those ended up in a Crown Court jury trial it would take an additional 12 months to clear the backlog (based on the number of court rooms we currently know are available).
- Crown Court Judges to support Magistrates work whilst there is a decreased capacity for jury trials
- Addressing the lack of Legal Advisors by inviting defence practitioners (who may still be furloughed) to join as Legal Advisors for a defined period of time.

### **Long-term solutions to reduce delay in cases coming to trial, including the move to the digital transformation of the court estate**

Whilst recognising that the justice system will be changed by this pandemic we need to ensure that the system is not changing on the back of demands by HMCTS but because of a system wide need. For example, we cannot find ourselves in a situation where police are increasing their use of out of court disposal in order to keep cases out of the courts; the court process is an essential component of justice for many victims and witnesses. It may however, be appropriate for the court process to happen virtually by default but these decisions need to be made whilst considering the needs and impact to everyone and every part of the system.

The last six months has shown that digital technology can keep the system moving when a face to face court process is not possible. The criminal justice system has been talking about digital transformation and reforms for many years, but is yet to realise its potential.

There are a number of areas for consideration both in the long term and more immediately:

- Upgrade to the video capability of the prison estate – I am hearing locally of prisons where it will be months before probation or defence can get a slot to speak with a defendant. Hearings or sentencing has been booked and is then adjourned due to lack of access to the defendant in prison.
- The cost of video remand hearings to policing is a concern, in particular the impact this demand will have on the sustainability of this option.

Locally I have just agreed £60,000 to fund remote evidence centres for victims and witnesses in Hertfordshire. This will enable those who require special measures to give evidence remotely but also ensure those who are clinically vulnerable can be supported by the criminal justice system as well as those unable to travel to courts outside of the area.

If we are moving to more video conferencing then we need to be confident that the platform we are using are the most appropriate for all those involved, including victims and witnesses. The software used by all criminal justice agencies needs to be compatible with digitisation across the system. This means a need to have a common platform that everyone can access and that is accessible across the system and not just in the court estate.

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