



Briefing Note: Lord Chancellor's evidence to the Justice Select Committee

7 April 2020

Background

1. The Bar Council has set up a COVID-19 Remote Justice Working Group, under the leadership of its Law Reform Committee, to examine how effectively remote working is being used to sustain the functioning of the justice system, drawing on the experiences of its own members and the specialist Bar Associations and Circuits.
2. The picture emerging is rapidly changing and, in some instances, chaotic. There is an understandable tendency for local solutions to be put in place as stop-gap measures, which make it difficult to describe the overall pattern with any coherence. Judges, practitioners and court staff are clearly doing their best and seeking to ensure that the justice system remains as effective as it can be. Having said that, it is amply clear that this represents nothing like "business as usual".
3. The clearest illustration is provided by the criminal justice system and, in particular, jury trials. Jury trials have been halted across the country. This is the correct decision – it is our view that no jury trials can presently be conducted safely due to:
 - a. The impossibility of ensuring social distancing for jurors throughout the trial process;
 - b. Serious concerns as to the ability of Crown Courts to achieve and maintain appropriate levels of cleaning to ensure safety.
4. Restarting jury trials as soon as possible, subject to these overriding safety concerns, is key to maintaining public confidence in the criminal justice system. Criminal legal aid is structured in such a way that trials are the trigger for most payments to publicly funded criminal advocates. The current shutdown has created a serious risk that the criminal bar will not survive.
5. The Bar Council has [conducted a survey](#) which shows that 67% of criminal chambers cannot survive three to six months without financial aid and 90% cannot survive 12 months, without additional financial support. 60% of criminal sets have already furloughed clerks or other staff, and more are likely to. The situation could not be

much bleaker for a profession that is essential to upholding the rule of law and access to justice for the public.

6. Issues which we consider should be addressed are as follows:
 - a. Noting the Government's reported intention to explore the provision of "immunity passports" or similar to persons who have undergone antibody testing, thought should be given to ensuring that jurors are priority recipients of such passports.
 - b. Courts must be provided with sufficient resources to ensure that, when they reopen, all court users can be confident that they will be in a safe environment. Furthermore, given that funding restrictions have led to closures of courtrooms and reductions to available sitting hours for Recorders, it will be important to ensure that sufficient resources are allocated to deal with the inevitable backlog of urgent cases.
 - c. Given the likely delay in restarting criminal trials, there is an urgent need to consider the provision of support for the publicly funded criminal bar, to ensure that it remains able to fulfil its vital part in the administration of justice.