



## **Justice Select Committee evidence session with the Lord Chancellor and Susan Acland-Hood – 23 June 2020**

Please note, this short summary has been produced by the Bar Council. It is an unofficial summary for information purposes only.

### **Courts**

- Bob Neill (Chair) stated that by 22 May courts were working at 50% capacity and asked where we are now.
- Lord Chancellor (LC) said there are 246 courts open to the public, 58 courts staffed, 37 sites where operations are still suspended and a total of 86 sites have opened since the beginning of June.
- Pre-Covid, the capacity was 8000 hearings and we are now up to 7000 hearings (a mix of virtual and actual).
- Susan Acland-Hood (SAH) said the position varies across jurisdictions & HMCTS data was published 11 June. In tribunal jurisdictions, preliminary hearings and substantive hearings were successfully moved to audio and video hearings, bringing it to work close to full capacity.
- Things remain constrained because of social distancing, especially for jury trials.
- Chair asked if the reduction to 1m will change anything.
- SAH estimates it will take us from 1/3 capacity to 2/3 - dependent on the detail.
- SAH outlined that they hope to have all courts open virtually by mid-July & video technology will roll out next week in civil and family courts.

### **Magistrates' Courts**

- Chair asked what the situation in the Magistrates' Courts is now as they were operating at 25% capacity dating 22 May.
- SAH agreed and clarified that earlier in the crisis the most urgent matters were prioritised and focused on in the Magistrates', whereas now all types of matters are listed. The capacity is still constrained, and we are working way under the normal capacity in Magistrates' Courts.

### **Backlog**

- In 2014, there were 55,116 Crown cases – 30,000 cases awaited trials

- Pre-Covid, the backlog was 39,214 in the Crown Court, now 40,526
- Pre-Covid, the backlog was 406,610 in the Magistrates, now 483,678

### Jury trials

- Chair expressed that 'the elephant in the room' is jury trials.
- LC is extremely reluctant to amend jury trials and if it is, it will be sunset limited. Before taking a decision, he will have to look at:
  - Maximising the system with the 1m rule
  - Increasing capacity, e.g. nightingale courts & alternative accommodation. He has signed off alternative venues this week and more should come soon. He added that this will need to be scaled up immensely in order to tackle the backlog
  - Court hours and to ensure to maximise court sitting days
- Only then the alternative of change of the system comes in and there are 2 options:
  1. Reduce juries of a minimum of 7 – still very attracted to it as it preserves the principle and manages the number
  2. LCJ suggestions of a judge and 2 magistrates – could be tried in Magistrates and can end up in Crown Courts. It could be a way forward but considering if it is just used for certain types of offences.
- Chair said that Lord Chancellor has clearly had a shift in position as his Minister Philp has said there would be no change to jury trials.
- LC answered that he has rejected the idea of having 1 judge and it is the last resort in increasing capacity. The 2/3 capacity will not work to tackle the backlog.
- SAH added that numbers in Magistrates have grown rapidly. Backlog levels have been higher in the past, yet the challenge now is that with 1m & 2m social distancing we are still below the level of maintaining the case load. 200 or more additional venues for jury trials are needed to manage the caseload as well as extended hours (e.g. 50%) will not help to get to the required level in order to recover. They are currently looking at other measures in order to dispose more cases than coming in.

### Other options to help clear the backlog:

- LC is considering everything i.e. extended hours, more buildings, lower jury numbers, 2 mags and a judge.
- LC signed off alternative venues this week and more should come.
- SAH said they have modelled extended hours yet that doesn't take us to the level to fill the whole of the gap. That is why they've been giving the advice that other measures are needed.
- Chair asked if LC has asked HMT for more money for recorders, LC fudged answer and said he created more sitting days.

- LC added that any suggestion of 2,3,4,5 years of caseload is wrong. We can manage backlog this year, Crown Court is more complex. We can deal with this problem by Easter 2021.
- Andy Slaughter MP expressed that the restriction of jury trials would be absolutely the wrong thing to do and asked the LC what his view is.
- LC answered that they are looking at a temporary restriction of jury trials with the condition that it is only short-term e.g. for a few months.
- SAH added that if we continue running jury trials with 3 rooms, we won't be able to recover the backlog and more so be adding to it.
- Andy Slaughter continued and asked the LC which way he is moving – how likely are jury trials to be restricted and when is the decision to be made; what mechanism is he using and when is he planning to introduce it.
- LC said we only have 2 options
  - 2 Magistrates and a Judge – 40% extra capacity that he cannot ignore. Within that various options he could consider e.g. limiting offences up to 2 years imprisonment.
  - Smaller juries – goes up slightly from 5-10% capacity currently modelled if we reduce to 1m.
- Timing: for this to have effect it would need to be enforced as early as Sept. There is no point passing legislation at the end of the year. Legislate before summer recess.
- LC added that he is not ruling out remote juries. These are happening in Scotland from the end of the month so we will have a live example and we will monitor it. He doesn't want to rush into it but is not ruling it out either.
- Rob Butler MP referred to the scope to activate existing legislation, e.g. give power to Magistrates to sentence up to 12 months which saves cases going to Crown Courts.
- LC said they did consider that but don't think it yields the steep change in capacity.

### **Lammy Review**

- Committee said that restrictions would make it an unfair system.
- LC expects the judiciary to take the fullest account that benches are diverse.

### **Safety measures, e.g. wearing masks in courts**

- LC favours the use of Perspex where appropriate where legal representatives are addressing the court and is confident that the adaptations can be made.
- In the 19 Crown Courts that are operating, the spreading of a trial across 2-3 rooms has taken place and worked.

### **Impact on legal profession**

- Paula Barker MP asked the LC if there has been any conversation with the Treasury about further financial support for the legal sector.
- LC replied that there are many conversations happening and they continue. The challenge is to establish a bespoke scheme for the legal profession that fits in to the

overall support provided by the government. Some of the schemes available have benefited some members yet he is aware that difficulties remain. He is working hard with the Treasury to see what more can be done, especially for cash flow and for those at the sharp end of legal aid.

- Paula Barker MP added that newly-qualified barristers don't have accounts for 2018/19 and asked why the government shouldn't support them.
- LC said he is considering the proposal of regular monthly income if it's revenue-neutral as well as increased cash-flow. He is determined to find a solution.

For any further information, please contact [PublicAffairs@BarCouncil.org.uk](mailto:PublicAffairs@BarCouncil.org.uk)