

Witness Name: Nick Goodwin

Statement No: 1

Dated: 30 June 2023

UK COVID-19 PUBLIC INQUIRY

WITNESS STATEMENT OF HIS MAJESTY'S COURTS AND TRIBUNALS SERVICE

I, NICK GOODWIN, of His Majesty's Courts and Tribunals Service, 102 Petty France, London, SW1H 9AJ, will say as follows:

INTRODUCTION

1. I am the Chief Executive of His Majesty's Courts and Tribunals Service ("HMCTS"). I am responsible for HMCTS' overall leadership, delivery of services, strategy, and vision. I am the Accounting Officer for HMCTS. I am also a member of the Ministry of Justice's ("MoJ") Departmental Board and Executive Committee.
2. I was appointed as Chief Executive on 14 March 2022. Prior to this, I was the Chief Executive of the Office of the Public Guardian from July 2019, and before that, the Director of Access to Justice Policy at the MoJ.
3. I am duly authorised to make this statement on behalf of HMCTS and I believe that the facts stated in this witness statement are true. In preparing this statement, I am reliant upon the work of the MoJ's COVID-19 Inquiry Team. My officials have coordinated and liaised with a number of colleagues that have relevant knowledge and experience across HMCTS and the wider MoJ. Their contributions have been used for the purposes of preparing this statement. My statement therefore relies upon those contributions. I am also reliant on a review of contemporaneous written material conducted by colleagues. In this statement I have made clear where I have put forward my personal reflections. For the most part, however, this is a 'corporate' statement in the sense that – to meet

the understandably broad nature of the Inquiry's request – I have drawn and relied upon extensive input from relevant colleagues.

OVERVIEW

4. This statement provides an overview of the structure and role of HMCTS with regard to the enforcement of the COVID-19 Regulations between 21 January 2020 and 24 February 2022 in England, and up to 30 May 2022 in Wales. I describe HMCTS' role, function, and responsibilities (in particular in respect of the enforcement of the COVID-19 Regulations in England and in Wales); provide a description of the Single Justice Procedure ("SJP"), and the role of legal advisers to magistrates (including how HMCTS Legal Operations supported them in respect of changes to the regulations and other developments relating to enforcement). I set out what occurred from HMCTS' perspective in respect of the enforcement of the COVID-19 Regulations, primarily via the SJP, including errors in the charging of the COVID-19 Regulations and how this was dealt with in the courts. I explain the liaison HMCTS had with other stakeholders and the Devolved Administrations in this regard. Finally, I have drawn out HMCTS' reflections on its experience of enforcement of the COVID-19 regulations in the magistrates' courts.

BACKGROUND

5. HMCTS is an Executive Agency of the MoJ. It was created on 1 April 2011 through the merger of HM Courts Service, and the Tribunals Service. Since this time HMCTS has been responsible for providing the system of support, including infrastructure and resources, for the administration of the business of the courts in England and Wales and those tribunals throughout the United Kingdom for which the Lord Chancellor is responsible. HMCTS provides the support necessary to enable the judiciary, tribunal members and the magistracy to exercise their judicial functions independently.
6. Reflecting the constitutional settlement safeguarding the independence of the judiciary, HMCTS is not a conventional Executive Agency. Rather, HMCTS operates through a partnership between the Lord Chancellor, the Lord Chief Justice of England and Wales, and the Senior President of Tribunals. This partnership is underpinned by the Constitutional Reform Act 2005 and governed by a 2014 Framework Document under which day-to-day operational management is delegated to a Chief Executive under the

general direction and strategic leadership of the HMCTS Board, which has an independent Chair [NG/01 - INQ000104036].¹

HMCTS' specific role, function, and responsibilities in the enforcement of the COVID-19 Regulations

7. The COVID-19 Regulations were made under powers devolved to ministers, principally under the Public Health (Control of Disease) Act 1984. The Regulations created various offences. Those offences could be prosecuted through magistrates' courts (see further below), or the police or other relevant bodies (such as local authorities), could issue a Fixed Penalty Notice ("FPN"). Service of a FPN gives immunity from prosecution for 28 days and payment gives permanent immunity. There is no penalty for failing to pay a FPN, but the recipient is then liable to prosecution in a magistrates' court for the offence for which the FPN was issued. This means that there is typically a window of time between a new offence being brought into law under the regulations, and prosecutions under those regulations coming before the courts.
8. HMCTS is an administrative body. HMCTS does not enforce regulations, prosecute, or make judicial decisions; these are respectively for the police and/or prosecuting authorities, and the judiciary. In answering the Inquiry's questions HMCTS cannot speak for, or represent, the judiciary.
9. HMCTS' role in the enforcement of the COVID-19 Regulations in both England and Wales consisted principally of preparing and disseminating guidance to legal advisers on the interpretation and application of the COVID-19 Regulations, the collection and enforcement of financial penalties, and the provision of facilities and services required by magistrates, prosecutors, and defendants, along with any other court user in order to facilitate the proper administration of justice during the pandemic.

Guidance to Legal Advisers

10. The dissemination of amended or new legislation and regulations to the judiciary is not within HMCTS' purview. However, HMCTS employs legal advisers who advise magistrates. While carrying out their court advisory functions, legal advisers act independently from HMCTS (legal advisers have statutory independence by virtue of

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/384922/hmcts-framework-document-2014.pdf

sections 28 and 29 of the Courts Act 2003) and HMCTS does not direct or in any way influence what advice legal advisers should give. It is the role of Legal Operations, a division within HMCTS, to provide general guidance to legal advisers to keep them up to date with changes to legislation and regulations. Those who undertake this work are either nominated by the Lord Chief Justice to exercise his functions under section 28 or authorised by his nominee to provide advice to magistrates.

11. Legal advisers also receive advice and guidance through the Justices' Legal Advisers and Court Officers Service, formerly the Justices' Clerks' Society ("JCS"). The JCS provides professional leadership, including guidance on law and legal practice, to legal advisers working in magistrates' courts and the Family Court. Until 2018, the JCS was a private members' association. Since 2018, the JCS has been a service within HMCTS' Legal Operations division which, in its advice-giving function, remains independent of HMCTS by virtue of the statutory independence of justices' legal advisers under section 29 of the Courts Act 2003. This is because JCS is constituted by legal advisers who enjoy statutory independence from executive direction when undertaking their advice-giving role.
12. In order to meet the challenges presented by the COVID-19 pandemic, a JCS COVID-19 team comprising one legal adviser and two trainee legal advisers was established in order to prepare national guidance on COVID-19 legislation for legal advisers. Such guidance was produced at pace, reflecting the fast-changing legal landscape. The guidance was intended to assist legal advisers in fulfilling their functions; the decision-making remained the responsibility of the magistrates who had sight of all the evidence in a particular case.
13. On 17 March 2020, JCS sent out early legal and procedural advice for legal advisers on the pandemic **[NG/02 - INQ000104038]**
14. On 26 March 2020, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 350/2020) and the Health Protection (Coronavirus, Restrictions) (Wales) Regulations 2020 (SI 353/2020) came into force (the "COVID-19 No. 1 Regulations"). They contained new offences related to the management of the spread of the pandemic.

15. On 30 March 2020, the HMCTS Legal Operations division distributed to legal advisers a “Legal and Procedural advice for legal advisers” document on the Coronavirus Act 2020 [NG/03 - INQ000104039].
16. In recognition of the complexity of the legal landscape, with COVID-19 offences specified at one point under twenty-five sets of regulations, the JCS issued regular guidance to assist legal advisers through its “Guide to Coronavirus related offences”. This guidance was first promulgated in April 2020, [NG/04 - INQ000104041 and NG/05 – INQ000104042], and updated in May 2020 (a “short guide”) [NG/06 - INQ000104048], June 2020 [NG/07 - INQ000104049 and NG/08 – INQ000104050], August 2020 [NG/09 - INQ000104054], December 2020 [NG/10 - INQ000104060 and NG/11 – INQ000104061], February 2021 [NG/12 - INQ000104063], March 2021 [NG/13 - INQ000104066] and August 2021 [NG/14 - INQ000104072 and NG/15 – INQ000104071]. Other early newsflashes and guidance relevant to coronavirus related offences in the magistrates’ courts included: Newsflash of 26 April 2020 entitled “Coronavirus offences, removal of “changed mind” defence and other amendments in England” [NG/16 - INQ000104043].

Provision of Facilities

17. The major impact of the pandemic on HMCTS was that measures needed to be taken to ensure the health and safety of court staff, judges, and other court users, and to ensure court buildings, like all public buildings, had the appropriate health and safety measures in place to meet public health guidelines, and so reduce as far as possible the risk of infection for all users.
18. The work of HMCTS concerns the provision of IT services, including equipment, court and office space, and staff (including legal advisers to magistrates), and the collection of financial penalties imposed by the courts. In the context of the pandemic, this involved magistrates’ courts, for example, hearing offences against the COVID-19 Regulations.
19. To meet public health guidelines and reduce the risk of infection for court users, HMCTS put in place a range of measures between March and April 2020. These included issuing HMCTS staff with letters to confirm their essential worker status from 20 March 2020, procuring laptops to enable staff to work from home where roles allowed (staged rollout began in London on 20 March 2020), rapidly expanding audio and video technology to enable the conduct of remote hearings, and temporarily closing or allowing staff into

certain courts only. A summary of the work which had been done in this area by April 2020 is set out in slides prepared for the General Public Sector Ministerial Implementation Group (GPSMIG) [NG/17 - INQ000104040]. In total, by July 2020, 157 court buildings had been selected to be kept open for face-to-face hearings with the remaining 124 kept open solely for judicial office holders and HMCTS staff to support video and telephone hearings, or temporarily closed.

Liaison with the Devolved Administrations

20. On criminal law, HMCTS' jurisdiction is England and Wales. HMCTS did not liaise with either the Scottish Government or the Northern Ireland Executive. Liaison with the Welsh Government in respect of the operation of the SJP is detailed below.

OPERATION OF THE SINGLE JUSTICE PROCEDURE

Background

21. The SJP was introduced by the Criminal Justice and Courts Act 2015 to allow for the hearing of cases involving adults charged with summary-only, non-imprisonable offences in a more straightforward and efficient manner by a single Justice of the Peace (i.e. a magistrate) (rather than the normal two or three), sitting with a legal adviser.
22. Under the SJP, specified "relevant prosecutors" designated by the Secretary of State for Justice may institute proceedings by issuing a written charge with a 'SJP notice.' Defendants receive by post a notice containing the charge, with a statement setting out the facts of the offence and guidance on what steps to take, including their right to a lawyer (with a 21-day time limit to respond). A defendant has three options: to plead guilty by post; to make no response; or to request a court hearing. A magistrate can accept a written response indicating a guilty plea and convict and sentence without the defendant having to attend a court hearing. If no response to the charge is submitted, a magistrate can try the defendant in their absence on the evidence served, and either acquit or convict and sentence. A case dealt with under the SJP is handled in the same way as any other case, with the exception that the single justice/magistrate (assisted by a legal adviser), can deal with it alone, rather than two or three magistrates; and the hearing need not be in public. Written case statements and written guilty pleas have been standard practice in magistrates' courts since 1957 and were not newly introduced with the SJP. A fuller description of the SJP process, as it operated prior to the

pandemic, can be seen in the March 2017 Protocol agreed between HMCTS and a number of “relevant prosecutors” [NG/18 - INQ000104037].

23. It is a matter for the prosecuting authorities (not HMCTS) to decide whether it is appropriate to prosecute a defendant under the SJP. A number of safeguards are built into the SJP process to ensure a defendant's right to a fair trial are protected. Defendants are not forced to use the SJP and have the right to request a traditional court hearing at any point before their case is considered, or, if they plead not guilty, the matter is listed in open court in the same way as any other summary trial. The justice/magistrate must comply with the same legal requirements as with all other types of proceedings, and the Sentencing Council's Sentencing Guidelines apply in the same way. Upon conviction, a defendant would have the same rights of appeal to the Crown Court as under the standard procedure. Any defendant who was unaware of proceedings may make a statutory declaration to that effect, which would render the proceedings void. If a mistake or error has been made, the court has discretion under section 142 of the Magistrates' Courts Act 1980 to reopen the proceedings.
24. Only “relevant prosecutors”, as defined in the Criminal Justice Act 2003 (section 29(5)), may prosecute by this method. Such prosecuting authorities include the CPS, police forces, Government Departments, and other prosecutors specified in an order made by the Lord Chancellor. These are the Environment Agency, the Natural Resources Body for Wales, TV Licensing, local authorities, and railway and tramway operators. Although the CPS is a “relevant prosecutor”, they have not made use of the SJP and (so far as HMCTS is aware) do not have the computer infrastructure in place to operate it. However, the CPS was under a duty to prosecute these cases unless the Attorney General specified the COVID-19 offences for the purposes of section 3 by virtue of their general duty, under s3(2) Prosecution of Offences Act 1985, to conduct criminal proceedings instituted by a police force.
25. Since adoption, the SJP has been used for matters such as most types of road traffic offences, using a television without a licence, failing to pay motor tax, dog-fouling, and fare evasion. In the financial year before the pandemic (2019-20) 784,325 cases were started through the SJP, representing 72 per cent of criminal cases in magistrates' courts.
26. The key benefits of the SJP, from the perspective of HMCTS include: freeing up court time and facilities, allowing for the progress of other cases, including priority cases

involving allegations of domestic violence or vulnerable complainants; and the swift resolution of cases, with outcomes in SJP matters achieved in less time than is required for cases prosecuted by way of written charge and requisition. Benefits to defendants include reducing their time commitment occasioned by having to attend court.

27. Under the SJP, members of the press receive more information about SJP cases than if the same cases were dealt with at hearings in court. Since June 2019, HMCTS has published, each court sitting day, upcoming SJP cases on GOV.UK. As outlined in HMCTS' media protocol (September 2022) [NG/19 - INQ000104074],² available on GOV.UK, the additional information provided to members of the press in SJP cases over and above what is routinely made available to the public in non-SJP hearings, includes the prosecution's statement of facts and the defendant's statement in mitigation. This is to enable court reporting and support the open justice principle. In traditional proceedings these materials are only routinely provided to media representatives who attend the hearing in person.
28. Therefore, in our view, the SJP allows magistrates' courts to deal with minor offences in a way that is quicker, more straightforward, and more efficient than traditional court hearings, while still being fair, transparent, and rigorous. Importantly, during the pandemic, the online nature of the SJP helped to reduce footfall in court buildings allowing more serious cases, such as cases involving sexual assault and burglary, to be listed for hearing.
29. In addition to providing guidance to legal advisers, the Legal Operations division explained the SJP through blogs on GOV.UK. On 26 October 2021 HMCTS published an article titled "*Explaining the single justice procedure in the magistrates' court*" to help enhance public understanding of the process [NG/20 - INQ000104077].³ A further article titled "*Common misconceptions on Single Justice Procedure*" was published on 2 November 2021 [NG/21 - INQ000104076].⁴

Use of the SJP to prosecute offences under the COVID-19 Regulations

30. From April 2020, HMCTS worked with various stakeholders such as the CPS, the National Police Chiefs Council ("NPCC") and the Association of Criminal Records Office

² <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/protocol-on-sharing-court-lists-registers-and-documents-with-the-media-accessible-version#single-justice-procedure-cases>

³ <https://insidehmcts.blog.gov.uk/2021/10/26/explaining-the-single-justice-procedure-in-the-magistrates-court/>

⁴ <https://insidehmcts.blog.gov.uk/2021/11/02/exploring-misconceptions-about-the-single-justice-procedure/>

("ACRO") on the administrative process for dealing with the enforcement of COVID-19 Regulations. The police were able to begin issuing FPN for breaches of COVID-19 No. 1 Regulations from April 2020, once the fines infrastructure was in place. As mentioned above, if a FPN is not paid within 28 days, the person issued with the FPN becomes liable to prosecution in the magistrates' court.

31. On 28 April 2020, the courts portfolio manager for the NPCC contacted staff in the Single Justice Service of HMCTS to ask about how imminent prosecutions for breach of the COVID-19 No1 Regulations would be listed. Following some email exchanges, on 5 and 6 May 2020, a key stakeholder meeting was held with representatives from HMCTS, the NPCC, ACRO, and the CPS to discuss the options for managing prosecutions in the magistrates' court where FPN for breaches of the COVID-19 No. 1 Regulations have either not been paid or are contested. The meeting explored two enforcement options: use of the SJP, which was ultimately preferred, and Proceeding in Absence ("PIA"). **[NG/22 - INQ000104045] [NG/23 - INQ000104044] [NG/24 - INQ000104046].**
32. PIA requires the commencement of proceedings using a written charge and requisition, which would require defendants to attend court in person to enter pleas. Where a defendant in receipt of the written charge and requisition fails to attend court to enter a plea, the court may proceed to hear the allegation and find the matters alleged proved in the absence of the defendant. It was agreed between the key stakeholders that PIA did not meet the objective of using the available, though significantly reduced, court availability for cases of high harm and associated vulnerability which would remain a key priority when courts were in a position to operate. The lack of certainty as to whether defendants would attend court to enter a plea would have meant that HMCTS would have had to reduce lists significantly in any event, in order to maintain social distancing.
33. The SJP was the mechanism preferred by all the stakeholders. The benefits in the context of the pandemic (in addition to those identified above at paragraph 25), included the delivery of swift access to justice, the reduction of significant traffic within the magistrates' court which in turn would contribute to reducing the spread of infection for the protection of the public; the ability to deal with such cases remotely and whilst adhering to social distancing; increased capacity for the magistrates' court to also list more serious offences, including those involving high harm and vulnerable complainants and witnesses.

34. Although the CPS was entitled to prosecute by SJP, it did not have the appropriate systems and infrastructure to do so. In order for the Police to be able to prosecute proceedings by way of SJP for breaches of the COVID-19 No. 1 Regulations, the Attorney General would be required to specify the proceedings under section 3(3) of the Prosecution of Offences Act 1985. The specification enables the police to retain responsibility throughout the proceedings, rather than the CPS taking over conduct of the case (as they would be required to do, absent specification, pursuant to section 3(2)(a) of the Prosecution of Offences Act 1985).
35. As a result, in order to successfully operate the SJP for the prosecution of COVID-19 No. 1 Regulation offences, the preferred option for the stakeholders was to invite the Attorney General to specify those offences under the Prosecution of Offences Act 1985. At the same time, the CPS and HMCTS would make contingency plans for the CPS in the event the Attorney General declined to specify (see, for example: **[NG/25 - INQ000104047]**).
36. On 2 June 2020, the Prosecution of Offences Act 1985 (Specified Proceedings) (Amendment) Order 2020 entered into force, specifying proceedings brought under the No.1 Regulations. In light of the specification order, work continued to ensure HMCTS and the police were ready for the police to begin to issue SJP notices.
37. The COVID-19 No.1 Regulations were revoked on 4 July 2020 in England and 12 July 2020 in Wales. Revocation did not affect the power of the police to commence proceedings under the SJP for offences under the COVID-19 No. 1 Regulations where the underlying conduct that was said to amount to the offence was committed at a time when the Regulations were in force (that is, between 26 March 2020 and 4 July 2020 for England and 26 March 2020 and 12 July 2020 for Wales).
38. On 23 July 2020, in anticipation of the first SJP cases under the No.1 Regulations making their way through the court system in August, the JCS released guidance entitled '*Offences of Breaching Coronavirus Restrictions: Suggested Approach to Sentencing*' (July 2020), in which the JCS provided guidance to legal advisers in advising justices to apply the Sentencing Council's General Guidelines to the COVID-19 No.1 Regulations **[NG/26 - INQ000104052 and NG/27 - INQ000104053]**.
39. When the COVID-19 No. 1 Regulations were revoked, they were replaced with the Health Protection (Coronavirus Restrictions) (No. 2) (England) Regulations, which

entered into force on 4 July 2020, and the Health Protection (Coronavirus Restrictions) (No. 2) (Wales) Regulations 2020 which entered into force on 11 and 13 July 2020 (the “COVID-19 No. 2 Regulations”). Legal advisers were notified of the new regulations by a JCS Newsflash issued on 13 July 2020 [NG/28 - INQ000104051].

40. The COVID-19 No. 2 Regulations were not specified by order of the Attorney General at this time. This meant that the police could not conduct the prosecutions for offences under these Regulations at this time. Thereafter a number of further COVID-19 Regulations were brought into force and were also not specified.
41. On 5 February 2021, the Attorney General gave approval for the offences under the English and Welsh COVID-19 No. 2 Regulations and various others to be specified. The Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) Order 2021 took effect on 9 February 2021. This meant that from this date, the police could prosecute via SJP and so could issue SJP notices for offences under these Regulations. Further regulations were specified on 13 July 2021 (Prosecution of Offences Act 1985 (Specified Proceedings) (Coronavirus) (Amendment) (No 2) Order 2021).

Wales

42. The Attorney General's February 2021 Order extended to the Welsh COVID-19 No. 2 Regulations. This specification decision was made by the Attorney General. However, HMCTS was made aware of the reluctance expressed by Welsh Ministers at the continued use of the SJP in Wales and their request that the Attorney General not specify the Welsh COVID-19 No. 2 Regulations.
43. On 8 February 2021, the Lord Chancellor and Attorney General jointly wrote to the Welsh First Minister, explaining that the Attorney General would make an Order to allow for offences against the COVID-19 (No. 2) Regulations in Wales to continue to be prosecuted through the SJP [NG/29 - INQ000104062]. The rationale for the use of the SJP explained in the joint letter was as follows:

Rationale for the use of the Single Justice Procedure

Our view is that the SJP is the most effective tool for managing coronavirus regulations offences through the courts system. The alternative to SJP is for cases to be prosecuted by requisition which is less efficient for the following reasons:

- *Cases can be heard on any date and any place through the SJP process; the requisition process is less flexible as cases must be heard on a specific date in a specific court.*
- *The SJP process only requires one magistrate and one legal adviser working remotely proving both cost effective and, more importantly, safer without any impact on the delivery of justice. The requisition process is more resource intensive and costly, as it requires more than one magistrate, an usher and a CPS prosecutor. In addition, the requisition process requires more input by the police, and requires input by the CPS. In SJP cases, the CPS is not involved unless a defendant pleads not guilty, or the single justice refers the case to a hearing in which CPS prosecutes;*
- *Each additional requisition case places pressure on the system by taking up court time and delaying other cases. Furthermore, defendants are required to attend court for requisition hearings whilst SJP cases can be managed remotely. This increases footfall into the courts at a time when courts are being encouraged to conduct hearings remotely where possible due to the national lockdown restrictions; and*
- *Currently, in many parts of England and Wales, a requisition case takes double the time from issuing the charge to first hearing (c.56 days in comparison to 28 days). As requisitions tend to take longer to be processed than single justice notices, there is a greater risk of a defendant changing address and not receiving notice of the court hearing.*

44. On 2 March 2021, the Welsh First Minister responded to the Lord Chancellor and the Attorney General seeking reassurance that the number of FPNs rescinded by the police was being evaluated, and that those evaluations were specific to Wales. **[NG/30 - INQ000104065]** The Lord Chancellor and the Attorney General addressed the concerns in a further joint letter on 6 May 2021, highlighting the quality assurance and scrutiny work being undertaken by HMCTS, the CPS and NPCC (which is discussed further below) **[NG/31 - INQ000104067]**.

Issues with the operation of the SJP to enforce the COVID-19 Regulations

45. Prosecutions by SJP for offences under the COVID-19 No. 1 Regulations commenced in the week of 10 August 2020, although only a few cases were heard until the week of 24 August 2020.

46. Early in September 2020, three legal advisers in the South East and Wales who were leading on the preparation of the JCS legal guidance, identified technical and quality issues in the SJP proceedings initiated by the police. The types of errors identified by the legal advisers and communicated to HMCTS included, by way of example:
- The wording of the charge not matching the offence in the Regulations;
 - The evidence not matching the charge;
 - Charges of non-existent offences;
 - Prosecutions under Regulations which had not been specified i.e. prosecutions under the COVID-19 No. 2 or other Regulations, which had not, at this time, been specified;
 - Prosecutions for offences against the Coronavirus Act, rather than the Regulations;
 - Prosecutions for conduct which did not amount to a criminal offence on the date it was committed but which was subsequently criminalised; and,
 - Prosecutions under the Welsh Regulations in England and the English Regulations in Wales.
47. These concerns were reported to HMCTS Legal Operations on 18 September 2020 **[NG/32 - INQ000104055]**. On 9 October 2020, an urgent Newsflash was issued by JCS on this point, identifying the types of errors which had been discovered, reminding legal advisers that each charge must be scrutinised, and referring advisers back to the JCS Guide to Coronavirus Offences (Newsflash at **[NG/33 - INQ000104058]**; and the Guide in operation at this stage at **[NG/09 - INQ000104054]**). The Newsflash also addressed the advice to be given to magistrates when a defendant had been charged incorrectly, for example to dismiss cases where the prosecution had failed to record an essential element of the offence and to record as a nullity prosecutions by police for offences which the Attorney-General had not (at that time) specified.
48. HMCTS worked closely with the NPCC and the CPS to track and monitor caseloads, and to identify possible solutions to problems as they arose. As part of this ongoing liaison work, HMCTS provided input into urgent guidance issued by the NPCC to police forces in respect of the identified errors, including a request that all SJP cases listed for the coming week to be urgently reviewed **[NG/34 - INQ000104057]**.

49. HMCTS was also involved in discussions in October 2020 with the CPS and the Police National Legal Database to amend standard offence wordings for charging purposes, to reflect the various versions of the Regulations in force at different times. These standard offence wordings were placed on the Database for access by all police forces across England and Wales, the CPS and HMCTS, thereby facilitating consistent wording of charges [NG/35 - INQ000104056].
50. On 12 November 2020 HMCTS participated in a NPCC-led workshop with officials from the police and the CPS to discuss learning from the initial period of SJP, develop the process and guidance, and address and mitigate any concerns raised by the CPS to inform next steps and the evidential review process [NG/36 - INQ000104059].
51. At the same time, HMCTS Legal Operations carried out an informal review of all prosecutions under the SJP for breaches of the COVID-19 No. 1 Regulations between 11 August 2020 and 9 November 2020 to identify the level and nature of the problem. Following an analysis of the data available to 23 November 2020, the error rate was identified as 10 per cent in England and 4 per cent in Wales [NG/37 - INQ000104068]⁵. As a result of the review, HMCTS Legal Operations provided further advice to senior legal managers (who manage legal advisers), and to legal advisers and administrative staff via a the JCS Newsflash.
52. On 22 February 2021, in anticipation of SJP proceedings for breaches of the COVID-19 No. 2 and later Regulations reaching the courts, JCS issued a Newsflash to legal advisers [NG/38 - INQ000104064].
53. Legal advisers were urged to review the latest iteration of the JCS Guide to Coronavirus Offences, and also to read the Newsflash in respect of lessons learnt following the “first wave” of SJP use, in which time errors were found in 10% of cases. Whilst guidance had since been issued by the NPCC and College of Policing, court scrutiny was necessary. As to avoiding court errors, the guidance stated:

A review of outcomes from the first wave of prosecutions has shown some unhappy outcomes. It is important for legal advisers to remember that the law

⁵ This reflects the location where the case was heard, not where the offence occurred. As such, these statistics may not correlate exactly with statistics provided by police forces. Furthermore, Ipswich Magistrates' Court dealt with cases brought by the British Transport Police across all of England and Wales.

in an SJP trial is the same as any other, except for the limited materials the court can take into account.

***If the prosecution fail to prove** the case on the papers they have submitted, the court should **dismiss**. Not withdraw, declare a nullity, “entered in error”, adjourn, or issue a summons. The only grounds for dismissal in an SJP hearing will be a failure of the prosecution’s written evidence to prove the case, as the court cannot take into account anything else. Under the first wave this was not as rare as it is in other SJP proceedings – acquittals were rightly fairly common.*

*If on the other hand the prosecution have proved the offence but there is a **variance between evidence and charge** (e.g. date, location), if the defendant has not raised a challenge, the court should convict (see s. 123 MCA 1980). This would not be the case if the evidence and the offence were significantly different, or the material served on the defendant was apt to mislead. The latter circumstance is one of the rare grounds to adjourn – the legal adviser should draft the core text of the letter to the police, not expect administrative staff to do it.*

*Note that **failure to issue a fixed penalty is not a defence**. The only relevance of a fixed penalty is as a bar to prosecution, either because it was issued less than 28 days before, or it has been paid. It is not necessary for the prosecution to prove non-payment unless the defendant raises it (evidentially) as a defence, which they could only do by asking for a trial, not in a single justice hearing.*

54. SJP prosecutions under the COVID-19 No. 2 and later Regulations commenced in March 2021.
55. In March 2021, HMCTS agreed with the NPCC and CPS to introduce an audit of COVID-19 SJP prosecutions, starting with a pilot in Wales. The Welsh pilot ran from 29 March to 16 July 2021. The objective was to sample 20 cases dealt with under the SJP and 20 withdrawn cases per fortnight. A total of 104 cases were reviewed. There were errors in 8 cases, that is 7.7% of the total number reviewed. Most defects had been discovered by the legal adviser and single magistrate when dealing with the case. A very small number were discovered during the pilot audit, requiring the case to be re-opened under

section 142 of the Magistrates' Courts Act 1980. The outcome of the pilot audit was notified to Chief Constables of police forces and the Commissioner of the Metropolitan Police Service. It was recommended that the auditing work be rolled out nationally (with slight amendments to the process) [NG/39 - INQ000104070]. The proposed audit procedure is set out in [NG/40 - INQ000104069] – please note that the date on this document should read 23 July 2021.

56. In August 2021, the audit was rolled out across England and Wales. This comprised a sample review of just over 300 COVID-19 SJP cases for the period September 2021 to December 2021, looking at the way police forces charged breaches of the COVID-19 Regulations and the way courts dealt with them. This sample review identified that both courts and police made errors in 9% of cases; the total percentage of cases with errors being 15%. The total percentage is lower than the sum as, if the court did not pick up a police error in a case, the case was counted as both police and court errors. This breaks down for England as court errors at 1%, police errors at 8% and the total cases with errors at 8%. This breaks down for Wales as court errors at 13%, police errors at 10% and the total cases with errors at 19%. The sample size for Wales was twice the sample size for England, which is why the sum of the percentages for the two countries is not the same as the overall percentage⁶ [NG/41 - INQ000104073].
57. In addition to the HMCTS review and audit, the CPS carried out its own review of COVID-19 prosecutions which they conducted (i.e. those that proceeded by way of written charge and requisition and not under the SJP) for the period 26 March 2020 to 31 March 2021. The CPS review showed an error rate of 30 per cent (549 incorrect charges in 1821 finalised cases) [NG/42 - INQ000104078].⁷ As the CPS review identified errors, the CPS referred the cases back to court for re-opening under section 142 of the Magistrates' Courts Act 1980. I would urge caution when comparing the error rates between the HMCTS sample review and audit and the CPS review, due to the different time periods and focuses of each exercise. For example, the CPS figure arises from a specific search for errors, so may result in a higher error rate than HMCTS data.

⁶ This is calculated as (Errors Wales + Errors England)/(Total Wales + Total England)

⁷ <https://www.cps.gov.uk/cps/news/cps-review-findings-first-year-coronavirus-prosecutions>

REFLECTIONS

58. I believe it was appropriate to use the SJP for the prosecution of offences related to the breach of the various COVID-19 Regulations. In the normal course, where a Fixed Penalty Notice had been issued and not paid, the offence would be prosecuted through the SJP. Since its introduction, the SJP has been criticised by some commentators for lacking the same transparency as hearings in person. In the context of the enforcement of the COVID-19 Regulations, and the errors that were identified in that process, it is suggested by some that the errors were caused because the SJP was used. I believe this risks conflating two separate issues; firstly, whether it appropriate to use the SJP, and, secondly, what caused errors to occur.
59. The pandemic caused unprecedented disruption to the work of HMCTS. In getting courts running again, we had to observe social distancing requirements, and to reduce the footfall in our buildings. It is not always understood that, prior to the adoption of the SJP, most people summoned to the magistrates' court for a summary non-imprisonable offence did not attend. In such circumstances, the court only knew this as the hearing was heard. The use of SJP during the pandemic enabled us to make sure that anyone who wanted to contest their case, or who wanted a hearing in person, could have such a hearing in an environment that was safe. This was because we could accurately predict the number of people who would come into court buildings. By providing this predictability, the SJP improved our hearing flexibility and capacity. Moreover, it enabled offences under the COVID-19 Regulations to be prosecuted in volume and in a timely way because only those cases that required hearing in person were listed, and we were able to maintain an environment that was safe. My reflection on this is that I believe that the use of SJP was appropriate, proportionate, and to be encouraged were a similar situation to arise.
60. We can all recall that the COVID-19 Regulations were frequently changed to reflect the changing risks associated with the spread of the virus. Different regulations applied on certain dates and, on occasion, they varied in different parts of England. Who could meet, where, and in what number, varied throughout the course of the pandemic. Reflecting on the pace at which changes to regulations took place, I believe the JCS did an essential job in identifying and making sense of the complex rule changes and communicating this clearly to magistrates' legal advisers. It meant that courts could apply the correct law and find the right pieces of legislation which applied. Inevitably, some errors were made by legal advisers, in particular the identification of the

regulations that were applicable on the date and in the place that the alleged offence occurred. We became better at checking and identifying these. I feel sure that those errors would have occurred regardless of the use of the SJP. There is nothing inherent in the SJP that makes it more prone to such errors. Indeed, many errors were made in the initial prosecution of offences before the use of the SJP had been adopted.

61. HMCTS learned much from this public health emergency. Focussing in on the SJP, we believe that we could have put in place audit mechanisms to check for errors sooner. We did good work on carrying out some sample checks to ensure the correct processes were being followed, and rectifying any errors found. If a similar situation arises, we want to be able to check for error rates as soon as possible, particularly when new legislation is changing rapidly. We want to be able to have a set process ready to identify errors quickly, remedy them, and prevent them from happening again. I am proud of the work my staff did in such extraordinary circumstances to keep the justice system operating.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Personal Data

Signed: _____

Dated: 30 June 2023