

Witness Name: Fiona Rutherford

Statement No.: First

Exhibits: FR/1 – FR/7

Dated: 7 September 2023

UK COVID-19 INQUIRY

WITNESS STATEMENT OF FIONA RUTHERFORD, CHIEF EXECUTIVE, JUSTICE

1. I, Fiona Rutherford, will say as follows in response to the Rule 9 request dated 12 January 2022, but received by me initially on 12 January 2023 with an updated version received on 13 January 2023, reference **M2/R9/JUSTICE01**.

A. Structure, people and processes

2. JUSTICE is a cross-party law reform and human rights organisation. Our purpose is to create a UK justice system that is fair, accessible and respects the rights of all. We are a values-led organisation and work transparently and with intellectual rigour. We are pragmatic and considered in our approach to address some of the most urgent issues facing the United Kingdom's legal framework. JUSTICE is a registered charity (no 1058580) and a company limited by guarantee. We are a membership organisation, drawn primarily from the legal profession with a common commitment to the rule of law and the fair administration of justice.
3. The organisation is governed by JUSTICE's Board which is chaired by Peter Binning. Peter was chair of the Board throughout the relevant period. JUSTICE also has an advisory Council, the president of which is Baroness Helena Kennedy KC. Baroness Kennedy was president of the Council throughout the relevant period. The Council provides advice and guidance to the organisation but does not have a governance function.
4. From January 2020 to October 2021, JUSTICE's Director was Andrea Coomber KC (Hon). She was responsible for the day to day running of the organisation. I took over in that role (renamed as Chief Executive) in February 2022. From April 2015 to January 2022, I worked for the Ministry of Justice. My last role was Access to Justice Policy Director, which included a range of responsibilities including policies and legislation to tackle the

consequences of the pandemic. This witness statement covers the knowledge and work undertaken by JUSTICE during the relevant period.

5. The JUSTICE policy team is led by the Legal Director, who oversees the organisation's policy output. The Legal Director between January 2020 and August 2021 was Jodie Blackstock. Stephanie Needleman took over as Acting Legal Director on 30 August 2021 and was made Legal Director on a permanent basis on 16 February 2022.
6. JUSTICE also carries out work in Scotland under the banner of JUSTICE Scotland. It is registered with the OSCR under charity No SC043518, but it is not a separate corporate entity. JUSTICE Scotland has a Chair and Vice- Chair, who oversee JUSTICE's work in Scotland. From January 2020 until June 2021 these positions were held by Shelagh McCall KC and Catherine Smith KC respectively. They are now held by Almira Delibegović -Broome KC (Chair) and Seonaid Stevenson-McCabe (Vice-Chair). JUSTICE Scotland does not have any separate staff – JUSTICE staff are also JUSTICE Scotland staff.

B. Liaison and communication with the UK Government

7. JUSTICE's advice, information and recommendations to the UK Government in relation to its response to the Covid-19 pandemic focused almost exclusively on the operation of the courts and tribunals in light of the national lockdowns and consequential inability to hold in person hearings in the majority of cases. However, I note that issues relating to the impact of Covid-19 on public services, including the courts and tribunals, are not within the scope of Modules 2, 2A, 2B and 2C. JUSTICE engaged extensively with HMCTS, as well as with other core political and administrative decision makers, in respect of the running of courts and tribunals during the national lockdowns and circuit breakers, with a particular focus on the use of video hearings and in relation to our mock virtual jury trials. However, this was in the context of the decisions to impose national lockdowns already having been made; we had limited engagement with the UK Government in relation to the decisions to impose or not impose, extend or remove the lockdowns and circuit breakers, social-distancing measures or other non-pharmaceutical interventions ("NPIs").
8. To the best of my knowledge the extent of JUSTICE's engagement with the UK Government in relation to the imposition of NPIs was:
 - a. On 19 March 2020, JUSTICE circulated a **briefing on the emergency Coronavirus Bill [FR/1 - INQ000119340]** ahead of its Second Reading in the House of Commons on 23 March 2020. The briefing set out three concerns with

the Bill aimed at ensuring the proposed emergency powers were used appropriately:

- i. the sunset and review provisions were too long and should be shortened;
- ii. powers that may restrict events, gatherings and use of premises must only be exercised when it is necessary and proportionate to do so; and
- iii. every effort should be made to ensure that legal cases can proceed through the courts and tribunals, with a preference for fully video trials in the alternative to in-person trials. Although the briefing stressed that careful consideration must be given to ensure that digitally excluded individuals and people who are vulnerable by circumstance or disability are not disadvantaged in the use of video hearings.

However, as far as I can tell from JUSTICE's records, this was circulated only to Baroness Shami Chakrabarti (then Shadow Attorney General), Joanna Cherry KC (then SNP Spokesperson for Justice) and Baroness Sarah Ludford (Liberal Democrat peer and then member of the Joint Committee on Human Rights). I do not know if other individuals including core political and administrative decision makers saw the document.

The briefing was subsequently circulated to Bob Neil MP as chair of the Justice Select Committee on 24 March 2020 in advance of the Committee's evidence session with the Lord Chancellor on the same date.

- b. On 22 March 2020, JUSTICE provided a **briefing to the Justice Select Committee entitled 'Ensuring fairness in socially distanced trials' [FR/2 – INQ000119341]**, which argued against the use of social distancing for trials in the majority of cases, and in favour of the use of fully remote trials instead.
- c. On 23 March then Legal Director, Jodie Blackstock emailed Baroness Chakrabarti **[FR/3 - INQ000249649]**, Joanna Cherry KC **[FR/4 – INQ000249651]**, and Baroness Sarah Ludford **[FR/5 - INQ000249650]**, with suggestions for safeguards to the powers contained in the Coronavirus Bill. In summary these were:
 - i. police powers must afford exceptions for rough sleepers; victims of domestic abuse; and other vulnerable people such as victims of modern slavery, trafficking or asylum seekers – all who may be permanently or

temporarily homeless, and will not be able to respond to an order to return to their home;

- ii. there must be significant increase in assistance to people who will not have a home to return to – making suitable shelters available and police assistance to enable people to get to these shelters;
- iii. the methods of providing reasons for being outside the home must be practicable – oral explanation should be sufficient;
- iv. powers should in the first place be to direct or escort a person to their home;
- v. the issuance of fines will have to be a last resort and then only when necessary and proportionate in the circumstances;
- vi. any proposal for detention powers would be wholly inappropriate – a strain on resources and a disproportionate interference with the right to liberty;
- vii. there should be a requirement of reasonable grounds to suspect that the person is not outside for one of the exempted reasons; and
- viii. powers should be reviewing weekly (3 weeks was being proposed and the emails argued this was too long).

I do not know whether these concerns were raised with or seen by core political and administrative decision makers.

C. Liaison and communication with the Devolved Administrations

9. JUSTICE did not engage with the core political and administrative decision making of the Welsh Government or Northern Ireland executive in relation to the Covid-19 pandemic.
10. As with the UK Government JUSTICE's advice, information and recommendations to the Scottish Government in relation to the response to the Covid-19 pandemic focused almost exclusively on the operation of the courts and tribunals in light of the national lockdowns and circuit breakers. JUSTICE Scotland provided limited advice to the Scottish Government in relation to NPIs and their impact on at-risk and vulnerable groups and/or those with protected characteristics. To the best of my knowledge this advice comprised:
 - a. **A briefing on the Coronavirus (Scotland) Bill circulated to all MSPs on 31 March 2020 [FR/6 - INQ000119342].** It focused exclusively on the justice proposals contained in Schedule 4 of the Bill:
 - i. whilst supporting the use of video as an alternative to in-person hearings and trials, the briefing urged that careful consideration must be given to

ensure that digitally excluded individuals and people who are vulnerable are not disadvantaged by its application;

- ii. called for the removal of the extension of custody time limits from the Bill, arguing these breached Article 5 of the European Convention on Human Rights and in some instances the release (on temporary licence or otherwise) of specific categories of prisoner where cases could not go ahead;
- iii. called for greater safeguards around the possibility of solemn trials being conducted by a judge alone, including a right of appeal - the plans to hold to hold more trials without juries were subsequently dropped from the Bill; and
- iv. additional safeguards to the exception to the normal rule that hearsay evidence is inadmissible.

- b. **A response in April 2020 to the Scottish Government's discussion paper 'Covid-19 and Solemn Criminal Trials Scottish Government Discussion Paper- April 2020' [FR/7 - INQ000119343]** which, amongst other things, argued that during lockdown it was not realistic to conduct solemn trials by requiring the physical presence of persons in the court room. It was also sent to Stephen Imrie, Clerk to the Justice Committee by Shelagh McCall on 25 May 2020

D. Public health communications and public confidence

- 11. As far as I am aware, JUSTICE did not play any role in the development of public health messaging over the course of the specified periods.

E. The public health and coronavirus legislation and regulations

- 12. The advice and briefings prepared by JUSTICE on the public health and coronavirus legislation and regulations, including in relation to at-risk and vulnerable groups and/or those with protected characteristics to the UK Government and Scottish Government are set out in sections B and C above.

F. Lessons learned

13. Paragraphs 17, 18 and 19 of the Rule 9 request pose a number of questions relating to lessons learned i.e. (i) what worked well and difficulties or challenges encountered by JUSTICE in making representations or providing advice; (ii) whether at-risk and vulnerable groups and/or those with protected characteristics were adequately considered; and (iii) JUSTICE's views as to the lessons that can be learned. Given that JUSTICE's engagement with the UK and Scottish Governments was almost exclusively in relation to the operation of courts and tribunals, which do not form part of these modules, I am not able to comment on these questions in any detail within the scope of these modules.
14. In relation to the Coronavirus Bill I know that there was some debate in Parliament of the issues JUSTICE raised in respect of the Coronavirus Bill including in relation to the length of the sunset and review provisions, however no changes were made to these provisions.

Statement of truth

15. I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

PD

Dated: 7 September 2023