

IN THE UK COVID-19 PUBLIC INQUIRY
BEFORE BARONESS HEATHER HALLETT
IN THE MATTER OF:

MODULE 10
THE IMPACT OF THE COVID-19 PANDEMIC ON SOCIETY

SUBMISSIONS ON BEHALF OF:

(1) LEGAL ACTION GROUP (LAG), (2) SUPPORT THROUGH COURT (STC), (3) THE ASSOCIATION OF LAWYERS FOR CHILDREN (ALC), (4) THE CRIMINAL LAW ASSOCIATION (CLSA), (5) THE HOUSING LAW PRACTITIONERS' ASSOCIATION (HLP), (6) THE IMMIGRATION LAW PRACTITIONERS' ASSOCIATION (ILPA), (7) THE LAW CENTRES NETWORK (LCN), (8) THE LEGAL AID PRACTITIONERS GROUP (LAPG), (9) THE LEGAL SERVICES AGENCY (LSA), (10) THE LONDON CRIMINAL COURTS SOLICITORS' ASSOCIATION (LCCSA), (11) THE SCOTTISH ASSOCIATION OF LAW CENTRES (SALC), AND (12) YOUNG LEGAL AID LAWYERS (YLAL)

"THE JUSTICE SECTOR COALITION"
PRELIMINARY HEARING
18 FEBRUARY 2025

Introduction

1. The CPs within the Justice Sector Coalition are grateful for their designation as Core Participants. They are represented jointly by Public Interest Law Centre and counsel and are referred to hereafter as 'JSC'.
2. Their interest in the Inquiry, and specifically in Module 10, is in respect of all the areas identified in the Provisional Outline of Scope but in particular in relation to:
 - a. **Access to justice for the JSC's vulnerable clients during the pandemic and lockdowns.**
By "access to justice", we mean, by way of example, the ability of a mother to maintain custody of her children, or to enforce an injunction against an abusive partner, or the ability of someone recently left unemployed to access the benefits they are entitled to and to challenge their employer and the process of their dismissal. This is by no means exhaustive. In short, we are concerned with the ability of vulnerable people to enforce their rights through legal processes, whether represented by lawyers, assisted by advice services, or facing the courts on their own.
 - b. **The characteristics of those affected by the operation of the justice system during the pandemic, particularly the most vulnerable** (including the criminal justice system and across the civil justice sector, from family, immigration, employment and court of

protection and elsewhere). For example, it is widely known that there is a high overrepresentation of racialised, working-class and disabled people or people with learning difficulties subjected to criminal justice processes and public law family proceedings. Similarly, the sector of the asylum and immigration system which the JSC is concerned with revolves around some of the most vulnerable in society. And we are concerned with how judicial and legal processes, in combination with the pandemic and consequent restrictions, together impacted the wellbeing and mental health of those affected by the justice system.

- c. **The definition of key workers**, particularly whether it included frontline legal aid and advice sector workers and legal practitioners. What impact did the categorisation of 'key workers' have for those in the justice sector?
 - d. **The impact on key workers within the justice sector** of increased workloads, the changes to practices and whether there was sufficient support and sufficient protections for those continuing to work in difficult conditions. In short, how did vital services which provide people with access to justice continue and at what cost?
3. In 2020 WHO Director General Tedros Adhanom Ghebreyesus told a news conference in Geneva that the pandemic was "the defining global health crisis of our time". Its impact upon all aspects of civil society, institutions and individuals was profound, often life changing and long lasting.
 4. The pandemic had a fundamental impact upon the ability of individuals to access justice either at all or in a meaningful way; causing major disruption and in certain areas, arguably chronic difficulties and near paralysis to lives, processes and systems. The inquiry has heard extensive evidence from previous modules which has highlighted how the pandemic exacerbated the existing fault lines of societal inequalities. We consider that an analogy can be drawn with regards to the justice systems in this country.
 5. As is the case for the health and care system: it is important to contextualise the issues. Years of austerity, underfunding in terms of both the infrastructure and people, had weakened the sector, leaving the systems in a parlous state, ill-equipped to deal with or withstand the onslaught of a global pandemic. This was compounded by the fact that in terms of preparedness and planning, little had been done.
 6. We therefore invite the Inquiry to consider all aspects of the justice system that intersect with the Inquiry's laudable concern for equalities, which has been a key theme running across the modules. For example,

- a. The criminal justice system where the waiting time for many trials were already extensive, saw trials further delayed; the use of nightingale courts was haphazard and inconsistent; custody time limits were extended leaving people waiting in custody without trial for longer than is otherwise considered just, including children.
 - b. In family law proceedings, the JSC is concerned with the ability to seek protective orders, the inability of parents to see their children who were in care or with another parent and whose welfare was severely affected, and the limitations on participation in care/adoption proceedings where parents lost their children. Vulnerable children and woman were effectively trapped in homes with violent partners, where hitherto they would have fled and sought refuge. The statistics showing the increase in abuse against women and children makes for chilling reading. Fact finding hearings, which often concerned the most serious of alleged physical, sexual and emotional harm to children and even death, were delayed for many months, which had a huge knock-on effect for welfare decisions on where children were to live, whether they were to be fostered or adopted.
 - c. Across jurisdictions, where substantive hearings did take place, the use of remote hearings was at times contentious. Assumptions were made as to people's ability to access computers, fast internet and broadband connections to allow them to "attend" remotely. This had a real and important impact upon their access to justice and effective participation in vital interventions affecting their lives. The Family Court, for example, deal with some of the most vulnerable people in our society and during the pandemic, life or death decisions, decisions having significant and life changing implications for people, were made over telephone without support for participants. The Court of Protection were also making decisions about highly vulnerable people and their short/long term care. Research in the criminal justice sector suggests that defendants appearing on video link experienced worse outcomes [see for instance paragraph 14 at <https://committees.parliament.uk/writtenevidence/6490/html/>].
7. As set out in our application for Core Participant status, the charity (forming part of the JSC), Support Through Court, has noted an increase in the needs and vulnerability of litigants in person.
 8. We hope this Inquiry will be able to consider the impact on the most vulnerable, and also on those working in the Justice Sector and the support that they were given to continue this work, whether they were designated as key workers or not.

9. We note from the Provisional Outline published on the Inquiry's website on 17 September 2024 that Module 10 is the last Module in this Inquiry. However, reference has been made elsewhere to a further Module (Module 11), focusing on "all public services". The Justice Sector Coalition would be grateful for clarification.
10. Counsel to the Inquiry's Note for the Preliminary Hearing is addressed below.

Provisional scope: Issues (paragraph 19 of the CTI)

11. We are grateful for the general outline of the issues in Module 10 (paragraph 19 of the CTI Note), and we understand that this is not an exhaustive list and to some extent a work in progress. Nevertheless, the JSC, does draw the Chair's attention to the following issues that the JSC considers relevant but not expressly referred to:
12. There is a clear omission to make any reference to those affected by the operation of the justice system (as referenced in the Provisional Outline published in September 2024) or, as the JSC would refer to, access to justice for the most vulnerable (including those outlined in the Inquiry's Equalities Statement). We understand that the roundtable event (at paragraph 21 (e) of the CTI Note) will include a discussion around 'prisons and other places of detention and those affected by the operation of the justice system'. Whilst place of detention is of course a relevant issue for Module 10, it does not encapsulate the impact of lockdowns in the civil, criminal, family, employment and immigration justice systems, nor the experience of litigants in person across all jurisdictions, nor the impact of the pandemic on advice services outside court encompassing (but not limited to) employment, debt, welfare benefits, as well as representation in police stations. In the interests ensuring that all relevant topics are given their appropriate time, we consider that "those affected by the operation of the justice system" should be a standalone issue for roundtable discussion. Further examples of why are provided below.
 - a. The resilience of the justice system at the outset of the pandemic and its ability to face or withstand and adapt to a crisis such as the pandemic, or indeed future crises, and be able to continue to function. The well-documented pre-existing pressures in the system were exacerbated by both the new pressures of the pandemic, and in some areas an increase in demand for the need to access justice, such as in family courts, where there was an increase in applications for non-molestation orders, among other applications, due to apparent increased levels of domestic abuse.
 - b. Whether the impact of the changes in practices to emerge during the pandemic (such as remote advice and hearings) have been properly considered in the context of the most

vulnerable and their ability to access to justice. The JSC is aware that this may already be within the Inquiry's scope (paragraph 19 (m) CTI's note). Such practices have become embedded, and whilst evidence has been obtained about its impact, we understand that it is yet to be properly researched by the Government.

- c. The changes, the impact on the justice sector, and the court closures also need to be considered against a backdrop of increased demand for advice and assistance in some areas of law. The post lockdown period saw a significant surge in demand for services across family justice, mental ill health and employment, for example.
- d. The impact of both the changes to practice, but also the reduced access to the justice system that inevitably occurred, on the most vulnerable in society who needed to access justice sometimes on an urgent basis. Within many local authorities, who had been existing on reduced budgets in any event, the pandemic had a particularly harsh impact. Children Services, already under pressure and understaffed, with social workers with overloaded caseloads, found themselves in real difficulties accessing children in need in their homes, provide them with family support workers, regular social work visits. Vulnerable families also found themselves shut off from services and could no longer access many of the important resources they needed to supplement and support themselves, such as SureStart and similar providers, creches, contact centres etc. This meant that vulnerable children subject to existing safeguarding concerns were not seen and new cases simply missed. The pandemic exacerbated safeguarding risks leaving many children exposed to domestic abuse, neglect and exploitation. The JSC acknowledge that these may be considered by the Inquiry in Module 8 but consider that the impact on the most vulnerable of the changes and limits to the justice system needs to be considered in this context, especially to ensure vital aspects of these events are not missed.
- e. What additional pressures were put on legal services, and what additional support were they required to provide? For example, law firms having to conduct remote hearings from their offices with all the ensuing additional risk, and without any support to adapt their offices to do so. This is a further example of how the Justice Sector was absent from any governmental planning and preparedness for the pandemic.
- f. In previous modules the Inquiry has heard very moving, visceral oral testimony from front line workers and experts as to the toll that the pandemic took on their mental health and wellbeing. The Inquiry is already considering the impact of heightened workloads on keyworkers, and this should include the pressures both of higher workloads but also stress

and psychological toll on professionals within the justice sector such as court staff, social workers and the legal practitioners. The shift to remote hearings and the backlog of cases have contributed to increased anxiety and burnout, as has the emotional impact of the cases on workers.

- g. The availability of legal aid during lockdown. Entitlement to legal aid based on (a) means and (b) scope. The impact of those restrictions, during a national emergency, have yet to be considered. The Inquiry will be assisted by considering how the LAA responded to the changing practical needs of front-line advisors, or those of legal aid providers who urgently had to adapt to the covid restrictions.
- h. The impact on voluntary organisations. Most people do not seek a legal answer to their problems first; in the first instance, they usually turn to their support network or voluntary services. This should include consideration of whether staff at such organisations were key workers.
- i. The impact of removing the “Everyone In” scheme on homelessness applications.
- j. Covid deaths and the difficulties created for next of kin and wider families in the context of, for example, housing succession, accessing dead relative's belongings, associated benefits entitlements and their loss. Advisors created dedicated services to address these, such as in Liverpool where this became an evident problem early on.
- k. The lasting impact of the pandemic on the justice sector, including the case backlogs in crime and family, which existed pre-pandemic, but have increased, and the increased use of remote hearings in all areas.
- l. Access to employment advice and tribunals – particularly in the immediate aftermath of lockdowns, where we understand that the need for employment law assistance (particularly those who were immune-compromised or suffering from long covid) increased.

Expert evidence (paragraph 28 - 36 of the CTI)

- 13. There is a benefit in obtaining two psychiatric experts to consider the impact of the pandemic on people with diagnosed and severe mental health conditions, including access to services.
- 14. However, given the depth of Module 10, the Chair is invited to consider expert evidence on issues beyond access to services (which is understood to mean medical and treatment services). The Chair is invited to consider expert evidence on access to frontline advice and legal services,

particularly for those vulnerable groups, including those with mental health needs. There is often an interplay between the two, such as Court of Protection decisions on medical treatment or the restrictions on obtaining urgent injunctions to avoid harms.

15. More generally, there is evidence to suggest that addressing legal needs have positive health outcomes. In the context of housing disrepair – where for instance people may be living with mould or damp – this nexus is self-evident. But the impact of debt, job loss, unmet community care needs, family breakdown, detention and other “legal needs” have logical connections to individuals’ health. Given the pandemic’s impact on all these factors, and the inquiry’s concern with understanding the impact generally on society – including mental health – the JSC considers that expert evidence on the relationship between access to justice and health outcomes during the pandemic will be very helpful to the inquiry in finding recommendations for future civil emergencies.
16. Given the concern for the mental health of keyworkers, the JSC has a particular interest in those working in the justice sector, where there was already evidence of high levels of stress and burnout pre-pandemic due not only to the nature of the work but also by the difficulties of the legal aid system. In immigration and asylum there were pre-existing well-being and vicarious trauma issues, as well as in other areas, such as family law. These were exacerbated by isolation, grief and other stresses caused in the pandemic, they were also exacerbated by the toll of dealing with very vulnerable clients whose cases were delayed leading in some cases to significant distress, or who were left in dangerous and illegal situations (children left in unsafe settings, asylum seekers detained in Napier barracks, for example).
17. Against this background, the JSC recommend the following experts:
 - a. **Prof Hazel Genn** has undertaken a lot of work on health justice partnerships and the connections between justiciable issues and health [For example, “When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice” *Current Legal Problems*, Vol. 72, No. 1 (2019), pp. 159–202 <https://academic.oup.com/clp/article/72/1/159/5522522?guestAccessKey=d8713ace-acad-4b01-8d1e-662209632ba4&login=false>], noting for example that “There is growing evidence of bidirectional links between law and health demonstrating that social and economic problems with a legal dimension can exacerbate or create ill health and, conversely that ill-health can create legal problems.” Her doctoral candidate Sarah Beardon worked on the following research for the Legal Education Foundation

[\[https://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030_mapping_report_web.pdf\]](https://www.ucl.ac.uk/access-to-justice/sites/access-to-justice/files/lef030_mapping_report_web.pdf).

- b. The inquiry will be very familiar with **Prof Michael Marmot**, as he along with Prof Clare Bamba was instructed by the Inquiry in Module 1. Together they provided written and oral evidence on 16th June 2023, of the highest calibre [Expert Report of Prof Marmot and Prof Clare Bamba INQ000195843_0001]. We submit that it would be valuable and highly instructive to request further addendums from Profs Marmot and Bamba addressing the issues of inequalities and how they impacted upon the justice systems.
- c. Another key theme that has crossed the modules, from scientific witnesses to those in government and the civil service, is the issue of data, or rather the lack of data. We have seen how it had impacted upon planning and preparedness, on our understanding of the pandemic, the spread of the virus and how it impeded efforts to combat the pandemic. It has become clear that data is a key factor. We would invite the inquiry to instruct **Dr Natalie Byrom** who is excellent at data analysis on access to justice - she was employed by the Legal Education Foundation at the time of the pandemic and conducted research for the Foundation on the impact of Covid 19 on tribunal hearings. [\[https://thelegaleducationfoundation.org/articles/tlef-research-reveals-the-impact-of-covid-19-on-tribunal-hearings\]](https://thelegaleducationfoundation.org/articles/tlef-research-reveals-the-impact-of-covid-19-on-tribunal-hearings). Given the extensive data available through judicial processes, analysing the trends that occurred throughout the pandemic will be of great value to the inquiry.
- d. **Professor Cornelius Katona**, a psychiatrist who has extensive expertise in issues relating to immigration, assessing the mental health of asylum seekers and refugees.

Roundtable events (paras 21 – 23)

- 18. The JSC welcomes the roundtables on the matters set out at paragraph 21 of the CTI Note. To achieve the most that it can, attendance should not be restricted to CPs. However, whilst the organisations within the JSC will provide value in joining the Roundtable event proposed, the JSC also consider that the Inquiry will benefit from an Inquiry led roundtable that relates to matters relevant to access to justice for vulnerable groups and the availability (or otherwise) of legal aid and charitable advice services during lockdown. These matters are wide and extensive and cannot reasonably be explored within the discussions relating to paragraph 21 (a) to (i). For the reasons explained at paragraph 10 above, “those affected by the justice system” encompasses a broad cross section of society that should be of fundamental relevance to the Chair’s concerns.

19. The JSC would be grateful for clarification on how information about the roundtable discussions will be publicised and how organisations outside the CP framework can be made aware of and participate in future discussions. The JSC would be happy to disseminate details of the roundtables to others in their network if appropriate and consider that there are many across the justice sector who possess valuable and frontline experience that would provide meaningful contributions to the Inquiry's work. The JSC welcome further details on how others could be involved, and how that will be publicised and managed.

Systematic Evidence Review (paras 24 – 27)

20. Available research should include:

- a. The effects on lack of access to justice, particularly in the aftermath of lockdown.
- b. The effects of the lack of legal aid.
- c. Key workers and effects on mental health.
- d. The amount of unrepresented people (whether they increased or not) in all courts, including immigration tribunals, civil courts and family court.
- e. The increased demand post-lockdown on immigration, civil and family services, if any.
- f. The disconnection from support services and social isolation.
- g. The reality of insufficient data collected by the Home Office and the MoJ (particularly HMCTS) on these issues.
- h. The shift to remote hearings and the impact of those who are digitally excluded or have 'data poverty'.

R9 requests for information (paras 37 – 40)

21. The Inquiry may be assisted by Rule 9 requests of:

- a. Celia Kitzinger (Open Justice) who researched the impact of remote hearings in the Court of Protection cases [<https://transparencyproject.org.uk/remote-justice-a-family-perspective/>], [<https://www.lag.org.uk/article/207962/remoteness-of-justice>].
- b. Penelope Gibbs (Transform Justice) who works in the open justice space but with a criminal focus. [<https://www.transformjustice.org.uk/who-we-are/>] and who conducted research across the criminal justice system during the pandemic.

- c. The Citizens Advice Bureau, whose national body collects excellent and comprehensive data on the financial security of their service users. They are also able to assist in understanding access to welfare advice and support during lockdowns, a lifeline for many. [<https://www.citizensadvice.org.uk/about-us/information/citizens-advice-annual-reports/> for an overview of their insight].
 - d. The Official Solicitor, who acts on behalf of those who lack capacity.
 - e. The Children and Family Court Advisory and Support Service (Cafcass)', who provide guardians to represent children in family court proceedings and provide family court reporters.
22. Other research that has already been conducted and we consider the Inquiry would benefit from considering as relevant to the issues above include research by The Nuffield Family Justice Observatory (NFJO), who have conducted research on the impact of the COVID-19 pandemic on the family justice system, this can be found on their website and includes:
- a. Remote Hearings in the Family Justice System
 - b. COVID-19 and the Family Justice System
 - c. Written Evidence to Parliament on the impact on the family justice system

Disclosure (paras 44 – 50)

23. The JSC consists of 12 organisations, each with its own specialisms. To ensure that the consideration of disclosure is efficient, we would ask for more than two Relativity licences per CP.
24. Lastly, given that this is the last Module, the disclosure process will be accelerated if disclosure documents could be labelled as having been previously disclosed in previous modules.

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