

Witness Name: Jerome Glass

Statement No: 2

Dated: 8 April 2025

UK COVID-19 PUBLIC INQUIRY

SECOND WITNESS STATEMENT OF THE MINISTRY OF JUSTICE

I, Jerome Glass, of the Ministry of Justice, 102 Petty France, London, SW1H 9AJ, will say as follows:

INTRODUCTION

1. I am the Director General Policy (Courts and Access to Justice) in the Ministry of Justice (MoJ). Together with another Director General, I am responsible for MoJ's policy work, supporting the Permanent Secretary in their role as principal policy adviser to the Lord Chancellor and Secretary of State for Justice and their ministerial team¹. I was appointed as the acting Director General in November 2020 and to the post permanently in August 2021. I joined MoJ in 2016; I have served as the Principal Private Secretary to the Lord Chancellor and Secretary of State for Justice, the Director of Strategy, and the Director of Prison Policy.
 2. I am duly authorised to make this statement on behalf of MoJ and can confirm that where the facts stated in this witness statement are within my own knowledge, they
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¹ The Lord Chancellor is appointed as Lord Chancellor and Secretary of State for Justice, and heads the MoJ, which covers both Lord Chancellor responsibilities and Secretary of State responsibilities. The Right Honourable Sir Robert Buckland KBE KC held the posts of Lord Chancellor and Secretary of State for Justice between July 2019 and September 2021. On 15 September 2021, The Right Honourable Dominic Raab assumed the posts and was also the Deputy Prime Minister.

are true, and where I have relied on information from others, they are true to the best of my knowledge and belief. In preparing this statement, I am reliant upon the work of MoJ's COVID-19 Inquiry Team. My officials have coordinated and liaised with a number of colleagues that have relevant knowledge and experience across MoJ and its Executive Agencies. 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 identified by colleagues through rigorous and thorough searches. 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.

Summary of the witness statement

3. I have reviewed the content of the request that was issued to MoJ on 28 August 2024. In summary, this statement provides an overview of the structure and role of MoJ regarding:
 - 3.1. The development of national policy and guidance related to testing, tracing, and isolation (TTI) and how MoJ was involved in its development;
 - 3.2. The statutory rules, regulations and enforcement that was used to deliver TTI policy implementation and the roles and responsibilities of MoJ with regards these regulations and resulting legislation; and,
 - 3.3. The outcomes of enforcement mechanisms used, with data provided where MoJ holds this.
4. I describe MoJ's role, function, and responsibilities generally; MoJ's involvement in and advice upon the policy as it was developed as well as the choice of emergency legislation and other regulations with regards to TTI, focusing on enforcement; and the extent to which MoJ liaised with key stakeholders and the Devolved Administrations to implement and coordinate this policy and legislation.

BACKGROUND

5. MoJ is a large ministerial department at the heart of the justice system and is supported by thirty-five agencies and public bodies. MoJ works to protect and advance the principles of justice and is responsible for: delivering prison, probation, and youth custody services; administering, in partnership with the Judiciary, criminal, civil and family courts and tribunals; and supporting victims, children, families and vulnerable adults. These services are provided across England and Wales, and for certain non-devolved tribunals in Scotland and Northern Ireland. Together, MoJ's headquarters, agencies and public bodies employ approximately 93,000 people. Alongside its operational responsibilities, the department also has government policy responsibility in various other areas, including criminal and civil law and procedure; the management of offenders; coroners; burials and cremation; inquests; and the domestic law framework for human rights.
6. MoJ has five Executive Agencies that are responsible for the delivery of public-facing services. These are: His Majesty's Prison and Probation Service (HMPPS); the Office of the Public Guardian (OPG); the Criminal Injuries Compensation Authority (CICA); the Legal Aid Agency (LAA); and His Majesty's Courts and Tribunals Service (HMCTS).
7. MoJ's headquarters, during the period under consideration in this witness statement, were structured around two groups: finance, and policy. Whilst the titles of the groups changed during this period, broadly, the finance group delivered MoJ's financial and corporate functions, including estate management and IT. The policy group was responsible for advising ministers, communications, parliamentary handling, policy formulation, and strategy. Each group was led by a Director General reporting to the Permanent Secretary.²

² Within the Civil Service, "Group" is the term usually applied to the body of people led by a Director General (Senior Civil Servant (SCS) pay band 3). Groups are sub-divided into Directorates, each of which is led by a Director (SCS pay band 2). Directorates are sub-divided into Divisions, each of which is led by a Deputy Director (SCS pay band 1).

8. The policy group - initially entitled Policy, Communications and Analysis Group, subsequently reformed in October 2020 as the Policy and Strategy Group - consisted of approximately 900 people organised into several directorates based largely across offices in London and Leeds. The directorates reflected MoJ's policy portfolio: Access to Justice, Family and Criminal Justice, International and Rights, Judicial and Legal Services, Prisons, and Youth Justice and Offenders. Each directorate had a number of sub-divisions. I exhibit the organisational chart for the Policy Group from June / July 2020 (when the group was known as the Policy, Communications and Analysis Group) here: **[JG/01 – INQ000147701]**. In December 2020, the Policy Group established a new team called the Courts and Tribunals Recovery Unit (CTRU), to lead on policy in support of HMCTS' recovery efforts from the impact of the pandemic. The CTRU later became a part of a separate Directorate in May 2021. This followed the establishment of the Joint Strategic Policy Unit in March 2020, a shared MoJ and HMPPS function to manage the response to COVID-19 in prisons.
9. In February 2020 MoJ established a COVID-19 Programme Board which assumed responsibility for ensuring MoJ planned and prepared for the impact of COVID-19 on its operational areas of responsibility: courts, prisons, and probation. I exhibit the Programme Board's Terms of Reference here: **[JG/02 – INQ000147601]**. Although the cover slide suggests that this is a draft document, I can confirm that this is the final version. The Programme Board was supported by a secretariat, the Departmental Operations Centre (DOC). This approach was similar to other Government departments, with the DOC liaising with the Cabinet Office and coordinating across MoJ and its agencies and public bodies.

OVERVIEW

MoJ's role, function, and responsibilities in relation to the TTI policies and systems developed in response to the COVID-19 pandemic

10. HM Government abides by the principle of collective responsibility. This is the convention that free and frank discussions take place between ministers and departments but, once a decision has been made, the whole of the Government supports it. This helps ensure Government is clear and consistent. In this context it is normal for policy to be driven by one "lead department" with support and input from

other interested parts of Government as appropriate. This will usually happen at official level during the development of Government policy, and via the relevant cabinet committees and Write Round (WR) process, for ministers to formally agree the final decision. The WR process is one of the means by which collective decisions are taken at cabinet committee level. The responsible minister for the policy proposal writes round to the members of the cabinet committee to seek their clearance (or approval) for a given proposal. The WR takes the form of a letter from the responsible minister to the chair of the relevant cabinet committee, accompanied by a WR pro forma.

11. While many issues are, by their nature, cross-cutting, it is usual for one Government department, at either a ministerial or official level, to take the lead on a particular policy or issue and elicit the appropriate support and input from other government departments. For TTI, the lead Government department was the Department of Health and Social Care (DHSC). The WR process is where we would have outlined any issues DHSC's TTI policy would have for the areas of MoJ's responsibility. This would include, for example, the impact on our prisons and courts. However, once collective cabinet agreement for TTI had been agreed, MoJ would have taken a "rule follower" posture, as any other government department or organisation would have done.

Cabinet committees

12. The Lord Chancellor was represented on a number of cabinet committees which were consulted as part of the WR process in relation to proposals for preventing and controlling the transmission of COVID-19. Those which I believe to be of particular relevance to this witness statement included:

- 12.1. The General Public Sector Ministerial Implementation Group (GPSMIG), operational between March and June 2020, to oversee planning for the impact on public services (outside of the NHS and social care) of the COVID-19 pandemic. The structure, chair, and secretariat lead for the GPSMIG was outlined in an email from the Cabinet Office dated 18 March 2020. I exhibit a copy of this email here: **[JG/03 – INQ000147603]**.

- 12.2. The Domestic and Economy Implementation (DEI) Committee, established in June 2020, was the mechanism for routine collective decision-making on

domestic and economic policy issues. The scope, membership, and draft Terms of Reference for the committee were outlined in a letter from the Principal Private Secretary to the Prime Minister. I exhibit a copy of this letter here: **[JG/04 – INQ000147688]**. In relation to COVID-19, members of the DEI Committee were informed of, or asked to clear, proposals relating to, for example, the Coronavirus Job Retention Scheme, the Higher Education Restructuring Regime, and children's social care. The forerunner of this committee was the Economic and Business Committee, which was established in March 2020. Chaired by the Chancellor, with the Business Secretary as deputy chair, this group considered the economic and business impact and response, including supply chain resilience. It also coordinated roundtables with key sectors to be chaired by relevant Secretaries of State.

- 12.3. The Healthcare Implementation Committee, established in March 2020, focused on the preparedness of the NHS, notably ensuring capacity in the critical care system for those worst affected and the medical and social package of support for those who were shielding. The committee was chaired by the Health Secretary.
- 12.4. The International Committee, chaired by the Foreign Secretary, considered the UK government's response to the crisis through the G7, G20, and other mechanisms, including like-minded groups, and the UK five-point plan.
- 12.5. The Lord Chancellor was not a member of the COVID-19 Strategy Committee ("COVID-S") or the COVID-19 Operations Committee ("COVID-O"), as reflected in the cabinet committee structures circulated by the Cabinet Secretary to Heads of Departments in June 2020. I exhibit a copy of this structure here: **[JG/05 – INQ000147649]** (the relevant pages of which are 3 and 8). As with all cabinet committees where MoJ was not a standing member, a member of our ministerial team would be invited to attend where the topics under discussion pertained to MoJ-led areas. To the best of my knowledge, this resulted in MoJ ministers attending 35 COVID-O meetings. Details of the COVID-O meetings relating to TTI are provided in paragraphs 28, 29, 30, 32, 37, 38, 40, 44 and 91, along with the associated exhibits.

Internal boards

13. Alongside the cabinet committees, there were several boards and working groups across MoJ and its Executive Agencies that made decisions regarding testing and tracing. Terms of Reference have been set out below.

Cross-MoJ

- 13.1. **The COVID-19 Programme Board:** This Board was stood up in response to the COVID-19 pandemic. The purpose of the Board was for ensuring MoJ planned and prepared for the operational impact of COVID-19. The Board escalated issues to MoJ's Executive Committee (ExCo)³. During the pandemic, the board was chaired by the Senior Responsible Officer for COVID-19, Shaun McNally, and membership comprised senior civil servants from across MoJ. The frequency of meetings altered during the pandemic but mostly met weekly. The board went through a series of changes during the pandemic, and I have set out the amendments to the board's remit and exhibited the Terms of Reference for each iteration. The board underwent a review of its Terms of Reference in April 2020 and was named the 'COVID-19 Response Board' in April 2020. The Board was responsible for ensuring that MoJ's response to COVID-19 addressed the Reasonable Worst-Case Scenario (RWCS) and emerging issues. The Board widened its remit and changed to the 'Winter Planning Board' from September 2020 to April 2021. This version of the Board also considered EU transition and winter planning alongside COVID-19. There were no meetings in May 2021. The board changed its remit and was referred to as the 'COVID-19 Response Board' during June 2021 – October 2021. This version of the Board focussed on COVID-19 resilience planning and preparedness. The Board's remit expanded to manage a departmental response should there have been a Civil Contingencies Secretariat (CCS) mandate to build a command-and-control structure for Winter 2021, which could have resulted in a negative impact on the

³ The Executive Committee (ExCo) is MoJ's senior executive leadership team. It also supports the Permanent Secretary in their duties as principal adviser to the Secretary of State and as the department's Principal Accounting Officer.

MoJ's performance and ability to deliver its objectives. Finally, the board changed to the 'Winter Planning Board' in November 2021 until April 2022, covering wider resilience planning and preparedness against potential significant risks such as environmental, health, or other incidents such as (but not restricted to) floods, earthquakes, public disorder, terrorist attack or global pandemics. I exhibit the Terms of Reference for its inception, the paper recommending a review of the Terms of Reference in April 2020 and the subsequently amended terms at that time, the Winter Planning Board 'COVID-19 Response Board' in June 2021, and 'Winter Planning Board' here: [JG/02 – INQ000147601, JG/02a – INQ000592523 JG/02b – INQ000592523 }, JG/02c – INQ000592531 JG/02d – INQ000592536 JG/02e – INQ000592548 and JG/02f – INQ000592548].

- 13.2. **MoJ COVID-19 Command Response Structure:** HMPPS, MoJ Headquarters and HMCTS initiated a gold, silver and bronze command structure which reported into MoJ's departmental response structure via the DOC and the Criminal Justice Strategic Command (CJSSC). CJSSC was an existing group that was responsible for convening and directing emergency response arrangements during the pandemic in a co-ordinated way, across the various agencies of the criminal justice system. CJSSC was activated in March by HMPPS Gold and ran from March – August 2020 and September 2020 – February 2022. I exhibit the Terms of Reference here: [JG/02g – INQ000591168 and JG/02h – INQ000591251]. CJSSC brought together representatives from across the criminal justice system to coordinate emergency operational response and ensure continued maintenance of the rule of law and public order. The group was chaired by HMPPS, and membership comprised representatives from criminal justice agencies including the Police, National Crime Agency, Public Health Wales, NHS England, the Ministry of Defence and Home Office, among others. MoJ's command structure included representatives from estates, information technology and Human Resources (HR). The DOC reported to ExCo who were in turn accountable to the Secretary of State and informed the daily situation reports to COBR. I exhibit the Terms of Reference for ExCo here: [JG/02i – INQ000592517]. The command structure for the ExCo MoJ COVID-19 response can be found in the following exhibit which contains a breakdown of its structure in its entirety [JG/06 – INQ000532414].

- 13.3. **The Daily COVID-19 Response Briefing:** Daily COVID-19 briefing meetings were established in response to the pandemic and were attended by the Secretary of State, ministers, the Permanent and Second Permanent Secretary and senior MoJ officials including representatives from the DOC, HMPPS, HMPPS Gold, MoJ/HMPPS Joint Strategic Policy Unit, HMCTS and communications. The purpose of these meetings was to update the Secretary of State on MoJ data, actions and to provide a brief ahead of COVID-O meetings. After the meeting took place, a readout would be circulated. I exhibit an example of this here: [JG/06a – INQ000592552]. These meetings were coordinated by the DOC and occurred daily from 18 December 2021 to 5 January 2022.

Courts and tribunals

- 13.4. **The Command Structure:** At the beginning of the pandemic, HMCTS activated its command structure which planned, delivered, and communicated in response to the COVID-19 outbreak. The three tiers of this structure are described below. Furthermore, I exhibit two HMCTS documents which outline the Gold and Silver Command structure, its objectives and membership here: [JG/07 – INQ000532458 and JG/08 – INQ000532416].
- 13.4.1. **Gold Command:** membership was at senior management level and the group's focus was on strategic decision-making.
- 13.4.2. **Silver Command:** membership was at operational level and the group's focus was on strategic decision-making in HMCTS headquarters.
- 13.4.3. **Bronze Command:** membership was comprised of front-line staff and decision-making was at local operational level (front line - local operational decisions).
- 13.5. The Gold Commander determined the strategy for managing an incident including any tactical parameters that the Silver or Bronze Commanders should follow. The Gold Commander was responsible for retaining strategic oversight of incidents. The objective of Gold Command was to ensure that HMCTS could respond dynamically and without undue delay to the pandemic. During the

pandemic, the Gold Commander was Kevin Sadler, acting Chief Executive / Operations Director and subsequently Paul Harris, HMCTS Response Director. Membership of Gold comprised representatives from Silver Command, the Judiciary, the Judicial Office, MoJ Policy, and leads from key functions such as finance, commercial and HR. During the pandemic Gold Command met at least twice a week.

- 13.6. There were several changes to the name and remit of this group throughout the pandemic, which have been summarised below. The Terms of Reference for each iteration of the board are exhibited.

Name	Dates of Operation	Terms of Reference
HMCTS Gold Command	12/03/2020 to 25/05/2020	JG/08 - INQ000532416
COVID Board	25/05/2020 to 08/12/2020	JG/08a - INQ000592524
		JG/08b - INQ000592528
		JG/08c - INQ000592529
HMCTS Response Board	08/12/2020 to 18/01/2021	JG/08d - INQ000592533
HMCTS Gold Command	18/01/2021 to 03/03/2021	JG/08e - INQ000532458
HMCTS Response Board	03/03/2021 to 16/12/2021	JG/08f - INQ000592538
HMCTS Gold Command	16/12/2021 to 21/01/2022	JG/08g - INQ000592551
HMCTS Response Board	21/01/2022 to 08/12/2022	JG/08h - INQ000592553

- 13.7. **The HMCTS COVID Board:** The HMCTS COVID Board was established in May 2020 as part of a move away from the 'emergency' phase of the pandemic into a 'delivery phase', with a central planning assumption that HMCTS' operations would be impacted by social distancing regulations for the following 9 to 12 months. However, the board interchanged with Gold Command, with activation of the more 'emergency' response procedure in times of peak pressure, such as waves of the pandemic. The COVID board reported into the Senior Management Team (SMT - see below) and coordinated COVID-19 activities across HMCTS. It was chaired by Kevin Sadler, the Deputy Chief Executive and membership comprised Judicial partners, the Operational Delivery Director, leads amongst crime, civil, family and tribunals, MoJ policy representatives, and function leads such as HR, communications, and finance. The meetings were set at twice per week, reducing as needed.

- 13.8. **The HMCTS Response Board:** The Response Board was a successor to COVID-19 Gold Command and the COVID Board. Its purpose was to co-ordinate all response activities, including COVID-19, EU Transition, “D20” Winter business continuity (the concurrent risks in December 2020) and emerging issues that may have impacted on HMCTS’s operational capabilities to ensure new work was allocated and resourced and to ensure a coherent response across the organisation. The Response Board reported directly to the HMCTS SMT. During the pandemic, the board was chaired by Paul Harris, HMCTS Response Director, and membership comprised representatives from the Judiciary and functions including finance, communications, HR, policy, property, and strategy. The frequency of meetings was weekly.
- 13.9. **The HMCTS Recovery Board:** Following the agreement by the HMCTS SMT, the HMCTS Recovery Board was established in November 2020 to provide formal governance for previously unassigned responsibilities relating to the recovery of performance within HMCTS. It reported to the HMCTS SMT and ran parallel to the HMCTS Response Board. The purpose of the HMCTS Recovery Board was to initiate, identify, prioritise and monitor all recovery activity that had resulted from the COVID-19 pandemic, European Union Exit impacts, and existing backlogs in line with the aims, objectives and decisions of the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals. During the pandemic, the board was chaired by Paul Harris, Operations Director and membership was comprised of senior civil servants from HMCTS and MoJ HQ including representatives from policy, HR, finance, and strategy. I exhibit the board’s Terms of Reference here: JG/08i - INQ000592539. The frequency of meetings was typically monthly. The board was dissolved following the establishment of the Operational Performance Committee in July 2022.
- 13.10. **HMCTS Senior Management Team (SMT):** The HMCTS Senior Management Team (SMT) is a standing group and is the senior executive leadership team for HMCTS. It reports to the HMCTS Board and MoJ ExCo on key business and decision making. It supports the Chief Executive Officer in their duties as HMCTS Accounting Officer accountable to the Principal Accounting Officer of MoJ and to Parliament, as well as to the HMCTS Board and the Lord Chancellor, Lord

Chief Justice, and Senior President of Tribunals in accordance with the HMCTS Framework Document. During the pandemic, the group was chaired by the Chief Executive Officer of HMCTS, Susan Acland-Hood and interim CEO Kevin Sadler following Susan Acland-Hood's departure. I exhibit the SMT's Terms of Reference here: **JG/08j - INQ000592546.** Membership was comprised of Directors from across HMCTS' functions including finance, strategy, digital, HR, communications, criminal enforcement, and development. During the pandemic, the group typically met fortnightly

Prisons

- 13.11. **HMPPS Leadership Team (HLT):** This is a standing body that existed prior to and after the pandemic and reports into MoJ Departmental Board. The purpose of the HLT is to oversee HMPPS's overall performance, delivery, and finances. It focuses on strategic leadership, management, and direction, ensuring the most effective prioritisation of resources. The HLT is responsible for the day-to-day management of HMPPS. The HLT's role is to ensure effective delivery of the Agency's objectives and to address issues and make decisions on areas which were likely to have a significant impact on the management of the Agency's core business over the medium to long term. For further details of its organisation, structure and membership I exhibit **JG/08k - INQ000592540.** During the pandemic, the board was chaired by the Chief Executive of HMPPS, Jo Farrar, and membership comprised senior leaders across HMPPS. The frequency of meetings altered during the pandemic from weekly to daily.
- 13.12. **The Prisons Operations Management Committee (POMC):** The POMC is a sub-committee of HLT and standing body that existed prior to, and following, the pandemic. Its purpose is to oversee and take any necessary decisions regarding the day-to-day delivery of prisons (public and private sector) including performance, risk, assurance, and finances. This includes issues which are to be delivered by other Directorates, or the wider MoJ, which impact upon prison operations and system coherence. I exhibit the Terms of Reference of the POMC committee here: **JG/08l - INQ000592542.** During the pandemic, it was chaired by the Director General of Prisons, Phil Copple, and membership

comprised Executive Directors across HMPPS and senior representatives from wider MoJ including HR, Finance Policy and Legal. The group met weekly.

- 13.13. **The COVID-19 Prisons Medium Term Planning Programme Board / The Prisons Recovery Board (PRB):** The Medium-Term Planning Board was established in response to COVID-19 and became operational from July – September 2020. I exhibit the board's original Terms of Reference here: **[JG/08n JG/08m - INQ000592530]**. It subsequently changed to the Recovery Board when its Terms of Reference and chairmanship were altered. I exhibit those Terms of Reference here: **[JG/08n - INQ000576285]**. It remained operational until September 2021.
- 13.14. The Medium-Term Planning Board was a sub-committee of POMC. It received updates from a number of workstreams including Population and Capacity Management and Regime Mitigation Exit Strategy and was chaired by the Executive Director of Prison Reform, Cheryl Avery.
- 13.15. The PRB was established to drive operational delivery, including regime recovery, as the prison system balanced response and recovery, and began the delivery of reform. It was chaired by the Chief Operating Officer for Prisons, Michelle-Jarman Howe.
- 13.16. Membership of both boards was comprised of Executive Directors from across HMPPS and MoJ's Policy Group and met weekly.
- 13.17. **HMPPS Gold Command:** COVID-19 Prison Gold / Gold Command is part of existing emergency response structures that are activated as a result of significant events, alongside 'Silver' (regional) and 'Bronze' (establishments). For reference, I exhibit a presentation that details the HMPPS Prisons COVID-19 National Response Model which was used during the COVID-19 pandemic here: **[JG/09 – INQ000532524]**.

13.18. COVID-19 Prison Gold:

- 13.18.1. oversaw escalation of regime delivery concerns that threatened the safe, decent, and secure operation of a prison (from Regional Silver Command),
 - 13.18.2. escalated to CJSSC any HMPPS Prison level requirements for approval, e.g. supporting court activity or remand capacity,
 - 13.18.3. directed population management decisions, and
 - 13.18.4. directed resources as required.
- 13.19. The COVID-19 Gold team was comprised of a Gold Commander, a Senior Coordinator, Information Officers, and a Log Keeper. During the pandemic Gold Command was activated from March 2020 – May 2022 and met frequently with Silver Command, briefed Bronze Command, and reported into CJSSC.

Youth secure estate

- 13.20. **The Youth Custody Service Operational Management Committee (YCS OMC):** The YCS OMC is a sub-committee of HLT and is a standing body that existed prior to and following the pandemic. Its purpose is to oversee and take any necessary decisions regarding the day-to-day delivery of youth custody (public and private sector) including performance, risk, assurance, and finances. This included issues which were to be delivered by other Directorates, or the wider MoJ, which impacted upon youth custody operations. Issues impacting the wider delivery landscape would be escalated for consideration / decision at the HLT as appropriate. I exhibit the Youth Custody Service Operational Management Committee's Terms of Reference here: **[JG/09a – INQ000576114]**. During the pandemic, the group was chaired by the Executive Director of YCS, Helga Swidenbank and membership was comprised of Deputy Directors and the Heads of teams from across YCS including operational contract management, quality development, performance, and assurance, among others. The group met monthly .

- 13.21. **The YCS Recovery Working Group:** This group was a sub-committee of YCS Senior Leadership Team (SLT) and was established in response to the pandemic, starting in April 2020 and closing in December 2021. I exhibit the Terms of Reference of the initial group here: [JG/09b – INQ000591160]. The purpose of this group was to oversee the management and delivery of recovery from COVID-19 across YCS. Throughout the pandemic it was chaired by the Deputy Director (Quality, Information & Performance, Casework, Partnerships & Business Change), Fiona Parker. Membership was comprised of Deputy Directors and the Heads of teams from across YCS, for example Casework, Placement and Resettlement, Safeguarding, and Quality Development. The group met weekly. The frequency of meetings changed throughout the pandemic, averaging fortnightly. The name and purpose of the group changed during the pandemic, changing to the 'Winter Planning Working Group' in November 2020, to align with HMPPS. It further changed to the 'YCS Recovery and Winter Planning Working Group' in February – March 2021. From April 2021 – December 2021 (when it was stood down) the group changed its focus to development of Stages 1 and 2 of the National Framework⁴, and was subsequently called the 'Stage 1 Planning Group' [JG/10 – INQ000469607]. Despite the changes of names, the remit of the group did not change until April 2021. The changes were communicated by email, and I exhibit a copy of that email for reference here: [JG/10a – INQ000544664].

MoJ's role, function, and responsibilities in relation to emergency legislation which supported TTI policy in England

14. The key pieces of emergency legislation which supported TTI policy in England were the Coronavirus Act 2020 and the regulations made under the Public Health (Control

⁴ The National Framework was a document developed at the onset of the pandemic which set out a conditional roadmap for what the easing of restrictions would mean in practice. It was a summary of how prisons would operate while COVID-19 remained a threat but where severe restrictions on prison regimes were no longer proportionate or sustainable, or where the threat could be mitigated via alternative approaches. It also set out the core principles and the governance and assurance processes involved.

of Disease) Act 1984. Primary responsibility for this legislation in England lay with the DHSC, the lead government department, along with the Cabinet Office in its role of supporting the Prime Minister and ensuring the effective running of government. MoJ provided input relating to the policy and operational implications of proposals from other government departments to respond to the pandemic. MoJ Legal Advisers (a Government Legal Department team embedded in MoJ) also provided input through liaison with other Government Legal Department teams to inform the provision of advice on legal implications.

15. MoJ did not initiate proposals for the development or implementation of legal penalties as a method of enforcing TTI policy in order to prevent and control the transmission of COVID-19. It received and scrutinised Justice Impact Tests (JITs) submitted by other Government departments who were considering policy proposals that may have an impact on the justice system. JITs are utilised for proposed policies that may increase or decrease the volume of cases going through the courts or tribunals, and/or change the way cases are dealt with by the justice system. JITs require the proposing Government department to set out the relevant policy detail and background information to the proposal, any relevant legislation, the likely timescales involved in implementation and, if applicable, the anticipated impact on the justice system.
16. In addition, MoJ provided advice, through its Criminal Law Policy team, on the existing criminal offences to colleagues in the DHSC and the Home Office. MoJ has overarching policy responsibility for criminal law. Other Government departments make policy decisions on, and legislate for, criminal offences in their areas of responsibility, but MoJ has responsibility for legislating for offences not covered by other departments and for cross-cutting questions relating to criminal law. MoJ, alongside the Judiciary, also has responsibility for criminal procedure, as well as the operation of the criminal (and civil) courts.

MoJ's involvement in TTI strategy and policy across England and the Devolved Administrations

17. In compiling the response to this section, MoJ's COVID-19 Inquiry Team spoke with policy officials that work closely with the Welsh Government. These officials detailed that the development and implementation of the COVID-19 policy and regulations relating to TTI in Wales was the responsibility of the DHSC and Welsh Government, as health is a devolved matter.
18. Whilst MoJ were not directly involved in the development of the COVID-19 policy and regulations relating to TTI in Wales, MoJ ensured that essential operational requirements and the impacts of COVID-19 were understood by the Welsh Government through regular engagement between officials.
19. With respect to justice settings, justice is a devolved matter in Scotland and Northern Ireland. DHSC were the lead department for test, trace and isolate policy with responsibility to consider parity across the devolved nations. The actions MoJ took with respect to testing in Wales are described throughout this statement, and in the underlying exhibits.

INVOLVEMENT IN POLICY DEVELOPMENT GENERALLY

20. Between January 2020 and March 2020, our pandemic response was focused on scenario planning and developing the COVID-19 Bill.
21. DHSC led the policy regarding testing and were specifically responsible for setting priority levels when it came to testing (with cross-Government interaction via online meetings, challenge sessions, and email commissions which MoJ positively contributed to). They categorised different groups of workers and assigned each group a level of priority to receive testing, with NHS staff being the highest priority. MoJ advocated for the prioritisation of prison, probation and courts staff. For this, I exhibit a briefing note prepared by officials for the Lord Chancellor's use at this meeting here: **[JG/11 – INQ000532415]**.

22. On 30 March 2020, the Lord Chancellor attended a GPSMIG meeting. The agenda for the meeting included testing for priority workers. Officials advised the Lord Chancellor to make it clear that it was vital staff and prisoner testing be scaled up as soon as possible. DHSC had previously discussed this issue with MoJ and stated that the implementation of the HMPPS staff testing programme would not be before the week commencing 13 April at the earliest. An outcome of the meeting was the Health Secretary confirming to work with all departments to develop a ranking of priority workers for testing. I refer to the same exhibit mentioned immediately above, namely: **[JG/11 – INQ000532415]**.
23. On 9 April 2020, the Rt Hon Lucy Frazer KC MP, then Minister of State for Prisons and Probation (Minister Frazer), attended the Healthcare Implementation Group where this prioritisation was discussed. I exhibit the agenda for this meeting here: **[JG/12 – INQ000532420]**. DHSC led on the process for allocation of tests and established an expert committee to manage this process. MoJ was represented on this committee by Amy Rees, DG Probation and Wales, for HMPPS and Louise Alexander, HR Director, for HMCTS.
24. At this same meeting Public Health Wales (PHW) confirmed that they would be prioritising NHS staff for COVID-19 antigen testing in their designated test centres. I exhibit the meeting agenda here: **[JG/12 – INQ000532420]**. Through the local resilience forums, PHW intended to include MoJ staff in testing whilst also stating that they would need to prioritise NHS staff. PHE were looking at doing the same, however officials noted that there were decisions still waiting to be made by ministers on staff group priority categorisation and testing modes. I exhibit the email in respect of staff testing here: **[JG/13 – INQ000532421]**.
25. DHSC's adopted prioritisation of COVID-19 testing among public sector keyworkers was the preferred MoJ option. This was due to the considerable number of frontline staff who were vital to sustaining key public services and it was considered essential that prison, probation, and HMCTS staff were prioritised for testing to help manage the operational response to COVID-19. Prioritisation of key workers was based upon:
- 25.1. How critical the workforce was to preserving life (first and foremost) and/or sustaining key public services and utilities;

- 25.2. How severe impacts were on the workforce;
- 25.3. The ability of the sector to rapidly identify and prioritise workers who were self-isolating;
- 25.4. How unique / irreplaceable individual workers skills were; and,
- 25.5. How important it was for the workers to have physical contact with others: **[JG/14 – INQ000532418 and JG/15 – INQ000457349]**.
26. The NHS Test and Trace Policy was launched on 27 May 2020 and started on 28 May 2020. When someone tested positive, they would be asked to provide details of people who they had close contact with over the previous 48 hours, before they developed symptoms. The tracking team would then use that information to risk assess who needed to be contacted and told to self-isolate. The policy impacted everyone including MoJ staff and people using MoJ services. In response to the announcement, MoJ sought to understand how the NHS would use information from a professional user who may have visited multiple courts over a 48-hour period and how HMCTS would be contacted in this scenario. The HMCTS COVID-19 Board sought clarity as to whether as key workers, there would be an exemption for staff. I exhibit a paper which details this here: **[JG/16 – INQ000532430]**.
27. On 29 June 2020, MoJ received a WR from DHSC regarding the Test and Trace framework. I exhibit a copy of the framework here: **[JG/16a – INQ000233882]**. DHSC were seeking clearance to publish the framework and NHS Test and Trace action cards which explained the relationship between local and national government in this context. The Action Cards were aimed at those responsible for particular settings in which local outbreaks were expected (for example, restaurant owners, store managers, leadership and management of primary schools and early years providers) to assist them with identifying the circumstances that should trigger the setting owner to call their local public health team, the number to call, and a hierarchy of measures that the setting owner may be advised to put in place. This WR was subsequently withdrawn on 17 July 2020 as the approach was instead discussed and agreed at a COVID-O meeting attended by the Lord Chancellor on 14 July 2020. I exhibit the

meeting agenda and email detailing the actions from this meeting here: [JG/16b – INQ000592526] and JG/16c – [INQ000119979].

28. On 18 November 2020, Minister Frazer attended a COVID-O on Mass testing. I exhibit the meeting agenda here: [JG/17 – INQ000532452]. The recommendation was that COVID-O approved the allocation of tests for weekly non-symptomatic testing where there was a high transmission risk either to the vulnerable people within an institution and/or given the environment itself. I exhibit the agreed actions from the COVID-O here: [JG/17a – INQ000090938]. It was agreed that DHSC and Test and Trace would work with the COVID task force to develop a quantified approach that provided an objective basis for prioritising requests for providing tests to staff in courts.
29. On 8 January 2021, the Lord Chancellor attended a COVID-O meeting on Testing Delivery. COVID-O was primarily seeking agreement from ministers to roll out lateral flow device testing to asymptomatic critical workers who were required to leave their homes to work during lockdown. NHS Test and Trace was required to establish a programme of widespread employer/workplace asymptomatic testing in partnership with Government departments. Lead Government departments were required to appoint a Senior Responsible Officer (SRO) and allocate appropriate resources to work with NHS Test and Trace to identify testing demand and establish testing provision for workforces in their sectors but not limited to MoJ for staff working in courts and jury panels.
30. Prior to the meeting, the Lord Chancellor was provided with a brief that set out the impact of the proposals to MoJ. The brief advised that MoJ supported the extension of asymptomatic testing to all critical workers across the justice system, however identified some concerns with the proposals:
 - 30.1. Setting up asymptomatic testing sites at each of the justice sites (prisons, probation, and courts) would be difficult to deliver ahead of the next lockdown in several weeks' time.
 - 30.2. It would be more achievable for MoJ to take mass delivery of test kits and disseminate them to critical workers through a 'collect' or 'postal' model which would be run by MoJ.

- 30.3. MoJ wanted to ensure court service users were included in this roll-out.
- 30.4. In regard to a dedicated space for testing to be carried out, MoJ discovered, as part of setting up the Lateral Flow Device (LFD) testing pilots in probation centres and courts, that a testing area must be designated. This would likely require property alterations (such as the laying of hard flooring to allow for frequent deep cleans). For HMCTS this could slow the speed of recovery as spaces required for hearings would be repurposed.
- 30.5. The pilots also made clear that dedicated human resource would need to be identified in a short space of time. HMCTS estimated approximately 750 staff would be needed to deliver on-site testing, which would be difficult during the lockdown period.
- 30.6. It was noted that MoJ could establish on-site testing across the justice system, however due to the logistical work required, it was unlikely it would be possible to do this ahead of the desired timeline of “during lockdown.”
- 30.7. Sending critical justice workers to community testing centres was noted as the best option for some of MoJ’s smaller and disparately based ALBs.
- 30.8. MoJ considered that securing testing supplies centrally and distributing them to critical workers would be the quickest way to deliver against the proposal to extend asymptomatic testing, whilst avoiding numerous site assessments and logistical preparations required for setting up on-site testing. Departmental Operations Centre, with input from HMCTS and HMPPS colleagues, provided the Lord Chancellor with a briefing regarding the COVID-O. I exhibit the briefing here: **[JG/18 – INQ000532463]**.
31. DHSC were given an action to complete the establishment of nationwide community testing sites, starting from 11 January 2021. Ministers were asked to agree that MoJ staff be included as critical workers for the asymptomatic LFD testing. HMPPS began to plan for the implementation of this given the delivery options set out by NHS Test and Trace. It was proposed that testing supplies would be provided without cost to

private sector organisations until the end of March 2021, transitioning away from taxpayer funded testing in April 2021. I exhibit the actions and decisions log from the COVID-O meeting mentioned at paragraph 29 here: **[JG/19 – INQ000532464]**.

32. On 1 February 2021, the Lord Chancellor attended a COVID-O meeting on Workplace Testing: Delivery and Enablers. I exhibit the agenda for this meeting here: **[JG/21 – INQ000532467]**. The meeting focused on transitioning private employers to a privately funded model for tests. MoJ was not a lead department in this area and did not have responsibility for any private organisations in scope of the proposal. COVID-O agreed to set an internal target for all government departments of 75% of eligible employees that were responsible to be able to access testing through their employer by 31 March 2021, where an eligible employee is one who: was unable to work from home and worked for an employer with more than 50 employees. I exhibit the agreed actions here: **[JG/20 – INQ000532468]**.
33. On 5 February 2021, MoJ responded to a commission from the Department for Transport (DfT) related to exemptions from self-isolation requirements for arrivals from non-red list countries. I exhibit an email chain between MoJ colleagues and DfT regarding the presumption of isolation. The email of 5 February 18:50 notes the requirement for the exemption to continue and the email of 8 February at 12:27 notes the rationale for the exemption: **[JG/22 – INQ000532483]**. COVID-O had agreed that further urgent work on whether there should be a presumption of self-isolation for all sector exemptions should be undertaken. The only MoJ exemption in place was for international prison escorts. The primary impact of the quarantine period would be on the escort regime as HMPPS intended to use the same teams more frequently. Without the exemption the teams would be at risk of being in perpetual self-isolation and the number of escorts they could conduct would be reduced. MoJ responded to the commission confirming that the exemption for self-isolation for prison escorts returning from non-red listed countries was still needed.
34. A similar commission from DHSC was responded to on 8 February 2021. The commission asked for information regarding whether exemptions were required from the isolation hotels regime for travel ban countries. It asked for information about any cases where sectoral exemptions to mandatory quarantine and mandatory testing should diverge for arrivals from 'red list' and 'amber list' destinations. MoJ requested

to keep exemptions in place to allow for international prisoner transfer (to allow prisoners and staff both in and out). This was described as a “safeguard exemption” to allow transfers to take place “if absolutely necessary”. I exhibit an email chain in reference to this here: **[JG/23 – INQ000532469]**. Please refer to paragraphs 33, 36, 38, 157 and 164 for further information on International Prison Escorts being exempted from border regimes.

35. On 15 February 2021, the programme of asymptomatic LFD testing for prisoners going to court, being discharged, or transferred, commenced in addition to being rolled out across Probation Contact Centres. It was to help mitigate the risk of incursion at a high time of prevalence in the community.
36. On 16 February 2021, DHSC commissioned MoJ for information on international prisoner escorts and the repatriation of prisoners to the UK to inform bespoke testing regimes and what evidence should be accepted for exemptions on the Passenger Locator Form. I exhibit the information provided in MoJ’s response here: **[JG/24 – INQ000532480 and JG/24a – INQ000592537]**. Please refer to paragraphs 33, 34, 38, 157 and 164 for further information on International Prison Escorts being exempted from border regimes.
37. On 17 February 2021, Minister Frazer attended a COVID-O which was chaired by the Paymaster General. I exhibit the slides from this meeting here: **[JG/25 – INQ000532474]**. Minister Frazer confirmed that the rollout of weekly staff PCR testing across all establishments had been completed, as well as prisoner testing on reception and transfer. Minister Frazer also confirmed that they were working with partners to expand the use of LFD testing. MoJ was seeking priority access to vaccines and testing, in addition to more funds to continue prison regime mitigations such as video calls. I exhibit Minister Frazer’s speaking note to that matter here: **[JG/26 – INQ000532473]**. COVID-O actioned MoJ and HMPPS to work with HM Treasury to agree the duration and funding arrangements of supplementary mitigations and set out the value for money and operational justification for the types of testing required, including mobile and home testing. MoJ and HMPPS were to continue sending regular updates to the COVID-19 Taskforce (CTF) on staff absences and to start providing fortnightly updates on staff uptake of testing and vaccinations. I exhibit the agreed actions here: **[JG/27 – INQ000532479]**.

38. On 4 May 2021, the Lord Chancellor attended a COVID-O meeting which discussed enduring transmission (ET) of the virus ("Areas with case rates above the national or regional average for a prolonged period"), Variants of Concern (VOCs), the role of international travel in driving ET and introducing VOCs, vaccine uptake, and testing and tracing. The main point of interest to MoJ was the risk identified in relation to international travel, as part of DHSC's paper on Testing, Tracing and Isolating. I exhibit a briefing note prepared by officials for the Lord Chancellor's use at this meeting here: **[JG/28 – INQ000147640]**. International travel was a risk identified by MoJ due to the impact on International Prison Escorts. Please refer to paragraphs 33, 34, 36, 157 and 164 for further information on International Prison Escorts being exempted from border regimes.
39. The committee agreed to the proposals set out in the DHSC papers "Supporting Areas with Enduring Transmission" and "Covid Vaccines Uptake," particularly the importance of establishing a rapid and granular approach to tackling enduring transmission and low uptake. The committee noted the advice in the DHSC paper "Readiness of the Test, Trace and Isolate System to Delivery following Step 3 of the Roadmap", particularly the concerns about testing and tracing capacity related to decisions made on certification and opening up mass events. I exhibit an email chain which lists the actions and decisions resulting from the COVID-O meeting on 4 May 2021 here: **[JG/29 – INQ000532515]**.
40. On 22 July 2021, the Lord Chancellor attended a COVID-O meeting on high prevalence planning. I exhibit the agenda for this meeting here: **[JG/30 – INQ000532519]**. The objectives for this meeting were to establish whether the list of risks covered were exhaustive and for ministers to ensure mitigating actions were being robust and comprehensive. MoJ, alongside other government departments, were asked to respond to the topic of work distribution caused by staff absence and self-isolation. A brief to the Lord Chancellor advised that the response he should provide was as follows:
- 40.1. HMCTS did not expect that staff absence rates, even at high levels, would have a major impact on hearings and backlogs. Work done to mitigate against the

pandemic, such as the creation of systems and processes and the recruitment of additional staff, led to this assessment.

- 40.2. HMPPS were seeing a consistent increase in the level of staff absences across the prison estate. HMPPS welcomed the inclusion in the DHSC policy allowing double vaccinated critical workers in high-risk settings to be exempt from isolation. HMPPS strongly supported the proposed roll-out of daily contact testing which would mitigate further workforce issues for those told to isolate as positive contacts. I exhibit the actions from this meeting here: **[JG/30a – INQ000092072]**.

41. The committee agreed to expand daily contact testing to approximately 2,000 sites using existing workplace test sites wherever possible, and that any expansion of daily contact testing would require assurance that testing capacity would be in place prior to any roll-out.

42. On 29 November 2021, DfT commissioned MoJ for information relating to exemptions to border testing requirements because of the emergence of the Omicron variant. I exhibit an email chain with details of this here: **[JG/31 – INQ000532547]**. MoJ officials asked for the exemptions relating to MoJ, which covered HMPPS escort staff, foreign escort staff, and prisoners themselves, to remain active. I exhibit a copy of the submission here: **[JG/32 – INQ000532548]**. HMPPS were taking steps to mitigate risk where possible, including complying with guidance where timeframes allowed.

- 42.1. On 10 December 2021, Minister Malthouse attended a COVID-O meeting, where a discussion was held in relation to the Daily Contact Testing system for vaccinated adults who were identified as contacts of people who have tested positive for COVID-19. I exhibit the agenda here: **[JG/32a – INQ000592549]**. During the meeting the Committee agreed to revoke the amendment regulations that meant a contact of a confirmed or suspected Omicron case needed to self-isolate and agreed to introduce a guidance-based Daily Contact Testing system for all fully vaccinated adult contacts along with contacts aged 5-18.5 years old. I exhibit the agreed actions of this meeting here: **[JG/32b – INQ000092198]**.

INVOLVEMENT IN TESTING POLICY

43. During the pandemic, testing relied on the polymerase chain reaction (PCR) tests. PCR tests detect the presence of ribonucleic acid (RNA), the genetic material of the virus, even in small fragments. The virus is only infectious when the RNA is intact. PCR tests provided an accurate measure of the presence of the virus. However, its use was limited by laboratory capacity, the time it took to get results, and the cost.
44. Rapid antigen tests – better known as Lateral Flow Tests (LFTs) were also widely used. Lateral Flow Devices (LFDs) detect the presence of an antigen (a type of protein) produced by the SARS-CoV-2 virus when it is active. They did not involve a lab, results were produced in around 30 minutes, and tests were much cheaper, enabling people to test themselves much more frequently than was possible with PCR tests. The task for LFDs was not to diagnose whether the individual had the infection, but whether they were infectious.
45. Broadly speaking, people were encouraged to regularly test whether they had COVID-19 using LFTs. Where these tests were positive, or where individuals were experiencing the common symptoms of COVID-19, they were encouraged to undertake PCR tests.

Community testing between January and March 2020

46. The Ministry of Justice did not contribute to community testing between January and March 2020.

Design and implementation of systems for symptomatic and/or asymptomatic testing

Testing strategy / approach to testing for court users

47. On 31 March 2020, the Cabinet Office C-19 Secretariat Team requested all departments to complete a workforce data commission (including total workforce population, standard expected sickness and absence rates, current sickness and absence rates, minimum effectiveness levels, normal service demand, additional COVID-19 demands, and other risk factors) by 2 April 2020 for the Healthcare

Ministerial Implementation Group who were considering a proposal for the prioritisation of testing for critical workers and priority groups.

48. On 1 April 2020, a COVID-19 testing proposal was sent to HMCTS and HMCTS Gold Command for consideration. I exhibit the HMCTS COVID-19 Testing Proposal here: **[JG/33 – INQ000566491]**. It set out that MoJ was working on contracting out COVID-19 antibody tests for staff and business-critical providers. This was to ease pressure on the NHS and assist in maintaining staffing resources and operational delivery. The testing method proposed was that testing would be carried out by 'rapid' blood finger prick tests by suitably qualified personnel, near specific strategically located HMCTS sites. This would provide 'instant' results for staff. Testing would only be for those self-isolating or with mild symptoms. The test results, combined with nurses' risk assessments, would be used to determine risk levels. This would be delivered via mobile testing suites at 25 sites.
49. On 3 April 2020, a cross-government challenge session was held. DHSC subsequently sent an email detailing: a) their work so far on the principles of prioritisation; b) the process they expect to use to conduct allocations; and c) further details on the actions OGDs would be required to do in order to support the process they expect to propose to ministers. They also requested each department to nominate an individual best placed to represent them.
50. On 5 April 2020, MoJ's COVID-19 Response Team, with feedback from HMCTS, confirmed they were content with the proposed principles and processes and returned a document entitled "Keyworker Testing Priorities – Principles" which detailed HMCTS's workforce as critical to sustaining key public services, enabling the rule of law and providing access to justice to all, protecting citizens and maintaining civil order through the administration of courts and tribunals in England and Wales, with magistrate courts, Crown Courts and Family Courts protecting the most vulnerable citizens across our society, including victims and witnesses of crimes and protection of family and children. I exhibit a copy of the COVID-19 Keyworker Testing Principles here: **[JG/33a – INQ000592518]**. The paper stated that HMCTS have a high number of specialised roles which could not be readily backfilled, with changes made to ensuring social distancing in courts and tribunals despite a high number of user-facing

workers still having regular contact with the public and judiciary in roles it is not possible to undertake working from home.

51. On 17 April 2020, the Government announced that Coronavirus testing (antigen testing) would be rolled out to people working in public services within priority group 3, which included HMCTS operational staff and the judiciary. Furthermore, swab testing access was expanded to a prioritised set of key workers. This included HMCTS staff and the judiciary. Swab testing was extended to all 'essential' workers on 23 April 2020.
52. On 20 April 2020, HMCTS Gold Command agreed with a submission from HMCTS HR on internal prioritisation of workers, which included those isolating at home as well as all individuals working on the front line and physically going into court buildings day-to-day, this included cleaners and security guards employed via third parties. All testing was voluntary, not mandatory, and at that time only for England. It was noted within the submission that HMCTS were talking with MoJ about arrangements for Wales and Scotland. Healthcare is however a devolved responsibility so each nation could take its own approach to testing. It was noted at this point that Scotland were adopting the DHSC portal approach; Northern Ireland however did not agree to use the portal. Discussions were ongoing with Wales. I am not aware of what happened thereafter in Scotland, Wales or Northern Ireland.
53. On 22 April 2020, HMCTS began antigen testing within England, I exhibit the agenda for when this was agreed to here: **[JG/34 – INQ000532424]**. On 24 April 2020, the DHSC test referral portal was launched, and accounts were set up for HMCTS staff and the judiciary to manage their own testing. All areas of MoJ were uploading daily staff lists to the portal. I exhibit a submission by Sam Forster titled 'Update on COVID-19 testing for MoJ workers here: **[JG/35 – INQ000532425]**.
54. On 6 October 2020, communications were sent to the HMCTS COVID-19 response team that it was agreed by Public Health England that HMCTS could refer symptomatic jurors for COVID-19 testing using the employer referral portal in England and Wales. This gave priority status for testing above the public, subject to any wider national changes in prioritisation. An immediate test was not guaranteed but it was quicker than using the self-referral route. The local court manager needed to be satisfied that a juror

had one or more COVID-19 symptoms before referring them via the HMCTS testing inbox. I exhibit the 'Juror Referral Process' for Covid-19 testing here: **[JG/36 – INQ000532447]**.

55. Rapid testing using a lateral flow device was being trialled in Liverpool as part of the mass testing pilot; the outcome and evaluation of the pilot would influence any future discussions regarding the utilisation of rapid testing technologies within HMCTS. At a meeting on 10 November 2020 the HMCTS COVID Board received a paper from the HMCTS Covid-19 Response and Recovery Team with a recommendation to pursue the concept of a pilot of rapid testing. I exhibit the briefing here: **[JG/38 – INQ000532449]**. The Board was sighted on the initial lines that were to be provided to ministers and were content with the proposed lines, which were:

- 55.1. "Rapid testing using a lateral flow device is currently being trialled in Liverpool as part of the mass testing pilot; the outcomes and evaluation of the pilot will substantially influence future discussions regarding the utilisation of rapid testing technology within HMCTS.
- 55.2. PHE are not yet convinced of the reliability of lateral flow testing; however, there may be a shift in this stance dependent upon the outcome of the Liverpool pilot. HMCTS wishes to be involved at the earliest opportunity.
- 55.3. Rapid testing would be supplementary to the existing measures we have adopted, such as plexiglass and Portakabin units. It is proposed that any pilot within HMCTS is geared towards addressing the backlogs and recovery process in the Crown Courts, particularly in respect of complex multi handed trials.
- 55.4. Public Health authorities have confirmed that a negative test will not warrant a relaxation of social distancing rules; notwithstanding this there are clear advantages to rapid testing.
- 55.5. Aside from additional reassurance to our staff and court users that our buildings are Covid secure, regular use of a rapid testing procedure would increase the resilience of the workforce and the throughput of work going through the system. In particular, testing jurors would result in fewer instances where juries are

disbanded due to self-isolation as a result of suspected Covid related incidences, thus reducing the risk of trials being displaced and the number of crisis management incidents, which attracts significant operational costs.

- 55.6. Notably, a high rate of false positives and frequent testing has the potential for rapid testing to increase disruption if used on asymptomatic individuals. Current tests available are being evaluated for their effectiveness in this regard.
- 55.7. Subject to the Liverpool pilot proving successful and there not being issues with false positives, HMCTS would want the next location for a mass testing pilot to include rapid testing at Crown Courts within the testing area. Following that, our next priority would be to roll-out to all Crown Courts. I exhibit a briefing from the COVID-19 Response and Recovery Deputy Director to the HMCTS Covid Board detailing this here: **[JG/39 – INQ000532451]**.
- 55.8. It will be recommended that the Board agree to pursue the concept of a pilot of rapid testing with the final details to be presented back to the Board and to begin the process of a more detailed scoping exercise including a commercial assessment.” I exhibit an email outlining the Covid Board’s Actions and Decision log for the meeting here: **[JG/37 – INQ000532450]**. I exhibit a briefing to the HMCTS Covid Board regarding COVID-19 Rapid Testing and a briefing from the COVID-19 Response and Recovery Deputy Director to the HMCTS Covid Board here: **[JG/38 - INQ000532449 and JG/39 – INQ000532451]**.
56. Early consideration was given to how testing kits could be used in criminal courts. Two scenarios were to be considered: testing for infection and testing for immunity. On 9 April 2020, a draft paper on Juror testing was commissioned by Silver Commanders for HMCTS Gold Command to discuss. I exhibit the draft report here: **[JG/40 – INQ000532419]**.
57. On 16 March 2021, an update was provided to ministers on lateral flow testing for court ushers. I exhibit the briefing titled ‘Lateral Flow testing in courts and tribunals: next steps’. here: **[JG/41 – INQ000532488]**. HMCTS were asked to provide an update about the prospect of accelerating the rollout of the testing regime, the recommendation was that ministers note and agree that HMCTS were not to pursue

any further expansion of asymptomatic testing sites (ATS) and, instead, work towards universal coverage of testing through a combination of local authority testing sites, existing ATS sites and a major expansion of home testing kit provisions. I exhibit a letter regarding the Latest Position on Providing Home Testing Kits to Court Users here: **[JG/42 – INQ000532492]**.

58. On 7 April 2021, at a meeting of the HMCTS Response Board, it was agreed that the seven ATS sites should be converted into home test kit collection sites due to the Government announcement that home test kits will be available to all from 9 April 2021. The additional five testing sites were mobilised on 22 March 2021. By 9 April 2021, DHSC had made home tests available, so the testing sites in courts were replaced with a home test collect model. I exhibit submissions to the Lord Chancellor and a submission to the HMCTS Response Board requiring a decision here: **[JG/44 – INQ000532508, JG/45 – INQ000532511 and JG/43 – INQ000532502]**.
59. MoJ sought advice from DHSC as HMCTS received a request from the Judiciary with regards to ramping back up a workplace collect channel for lateral flow devices. This was not a primary distribution channel, but it was thought that the establishment of some workplace-collect test availability would move equivalent demand from the public channels, and the provision of test kits in court buildings would also encourage an increase in testing amongst court ushers. DHSC responded on 14 January 2022, stating that the policy of testing was to use the Universal Testing Offer through pharmacies and online, direct to people's home. It was the quickest, easiest, and most effective way of providing access for all. The logistics team responded to that with a vast increase in supply, most people could obtain tests within 24 hours through online services or pharmacies. A business case needed to be provided to reintroduce more widespread workplace testing. I exhibit an email chain between the Service Manager for UKHSA and Sam Forster regarding mass testing task and finish group for further detail here: **[JG/46 – INQ000532586]**.

Testing strategy/approach to testing in prisons and the youth secure estate

60. On 9 April 2020, DHSC contacted HMPPS to offer unused testing capacity which the NHS had not been able to utilise. PRB agreed to a proposal which outlined using the tests to support a research project across a small number of prisons – including the

YCS estate – to better understand the prevalence of the virus and how it was transmitted in a prison environment I exhibit ‘Staff and Prisoner Testing – next steps’ here: **[JG/47 – INQ000532542]**. The Lord Chancellor gave approval of the proposal on 29 April 2020, prior to the list of prisons being confirmed by the HMPPS Executive Directors. I exhibit the minutes taken from the HMPPS Leadership meeting here: **[JG/48 – INQ000532427]**. As of July 2020, testing began in twenty-eight prisons involved in the Regime Recovery COVID-19 Testing Study. By July there had been a total of 12,500 tests administered across the estate, with twenty-four positive resident tests and six positive staff results. By 31 July, the uptake rate of tests amongst youth custody staff was 15% and was one-third amongst young persons.

61. On 28 April 2020, HMPPS provided a progress report on testing to Minister Frazer. On this date swab testing had been extended to include all civil servants, and a letter was sent to all Civil Servants, from the Chief Operating Officer, Mike Driver, that there was an expectation that all Civil Servants, who met the criteria, would take a test where available. Due to HMPPS accessing the spare NHS capacity, over 2,000 staff were referred for testing. HMPPS was one of the four MoJ departments who had accounts set up on the newly launched DHSC portal allowing them to manage their own staff testing and MoJ officials noted they had uploaded significantly more staff details than other departments. This was attributed to the nature of their work. I exhibit the progress report submitted to the Minister in regard to these updates here: **[JG/35 – INQ000532425]**.
62. On 4 June 2020, DHSC committed to continue collaborating with health partners by testing all prisoners in England and Wales at key ‘transition points’ in the prison system – with the aim of rolling out a comprehensive testing programme covering receptions, recalls, transfers, and potentially releases. They also agreed to conduct a joint research programme to ‘mass test’ staff and prisoners across 28 prisons, supported by the Office for National Statistics (ONS) and Southampton University. At the same time, HMPPS started conducting an outbreak control mass testing exercise, based on universal testing of all consenting prisoners and staff at HMP Littlehey. This supported HMP Littlehey but also provided an opportunity to ‘test’ processes before embarking on any wider research programmes. I exhibit readouts of the meeting here: **[JG/49 – INQ000532432, JG/50 – INQ000532438 and JG/51 – INQ000532434]**.

63. On 1 July 2020, at a meeting of POMC, a testing strategy update was provided by the Joint Strategic Policy Unit. The strategy proposed increasing testing capacity within the prison estate, including at key transition points and regular staff testing. The strategy was based on advice received from Public Health England. POMC supported the strategy, with the briefing team planning to present the paper to HLT on 2 July 2020. I exhibit the Testing Strategy Submission and the draft COVID-19 Prison Strategy: Joint COVID-19 Strategic Policy Unit paper here: **[JG/52 – INQ000532436 and JG/53 – INQ000532435]**.
64. On 2 July 2020, having considered those proposals, the HMPPS Leadership Team (HLT) gave approval to pursue the development of a testing strategy. HMPPS' engagement with DHSC began to secure adequate testing capacity to incorporate increased testing at key transition points in the estate. I exhibit the minutes and the covering paper from the meeting here: **[JG/54 – INQ000532437 and JG/55 – INQ000532433]**. Ministers agreed the HMPPS COVID-19 testing strategy which focused on regular staff testing and testing of prisoners at key transition points on 17 July 2020. I exhibit (as above) a copy of the testing strategy covering submission and the draft submission here: **[JG/52 – INQ000532436 and JG/53 – INQ000532435]**.
65. On 16 July 2020, in an internal email to Minister Frazer regarding a formal letter to Minister Dorries, Minister for Patient Safety, Suicide Prevention and Mental Health, DHSC, it was noted that the testing strategy letter and ministerial submission did not comment on who would administer the requested tests to prisoners as they cannot be expected to self-administer without supervision (unlike HMPPS staff). I exhibit (as above), a copy of the ministerial submission here: **[JG/52 – INQ000532436]**. HMPPS staff would be unable to supervise as they were not properly trained. The NHS were clear that they would only administer tests where there was a clinical need (i.e. where someone was symptomatic or could not take the test themselves for a health-related reason). The team's approach would be to utilise contractors to supervise / administer the testing; this approach was completed in the 28 study prisons. .
66. On 23 July 2020, Minister Frazer met with Minister Dorries and discussed the importance of testing in prisons to protect staff, prisoners and the NHS from explosive outbreaks in custody. I exhibit a letter from Minister Frazer to Minister Dorries containing the details discussed between them on testing in prisons here: **[JG/56 –**

INQ000532440]. The email exchanges between attendees agreeing to the readout draft is exhibited here: **[JG/50 – INQ000532438 and JG/51 – INQ000532434]**.

67. On 24 July 2020, Minister Frazer wrote to Minister Dorries to request their support to scale up testing in line with HMPPS / MoJ testing strategy from beyond 8,000 – 10,000 per week previously agreed for reception and transfer testing to ensure the 35,000 staff in prisons could be tested on a weekly basis. I exhibit a copy of this letter here: **[JG/56 – INQ000532440]**. This would support reopening regimes to allow more rehabilitative activity to take place safely (referred to as Stage 2), and combined with compartmentalisation, form the foundation of a response to a potential second wave of infections. HMPPS secured 65,000 tests from DHSC which were to be delivered to prisons in mid-September. It was thought this would represent approximately 8 weeks supply once prisoner testing was fully implemented.
68. On 29 July 2020, ministers were informed that when considering progression to Stage 2, HMPPS would need to consider whether a different approach to testing (and compartmentalisation) could be taken in either the youth estate or for young adults, where public health risks were 'arguably lower'. I exhibit the MoJ paper titled 'Progress towards prisons stage 2' here: **[JG/57 – INQ000532439]**.
69. On 15 September 2020, MoJ's Joint Strategy Policy Unit submitted a note to Minister Frazer and the Lord Chancellor on the Prison Testing Strategy. I exhibit the paper here: **[JG/58 – INQ000532444]**. Following interactions with DHSC's prioritisation board, DHSC agreed to make capacity available for c. 8,000+ tests a week for new receptions and inter-prison transfers. Earlier discussions with DHSC had considered regular staff testing for all prison staff, which would have been approximately 40,000 per week. However, this was not agreed by DHSC or ministers as they did not consider they had enough information on prevalence. They were also unable to deliver that level of testing at that time. Therefore, a revised proposal regarding 8,000 tests was put forward and agreed. In total, 65,000 tests were secured from DHSC. Roll-out for testing would commence w/c 21 September 2020, with the proposed schedule pending NHSE/I approval and local commissioners' confirmation. The national rollout timeframe would build up in stages each week to ensure any logistical/operational issues could be more easily resolved and guidance updated to reflect learning. There would be enough tests for every prisoner to be tested twice (on day 0 or 1 and day 5

or 6) to allow informed decisions on quicker movement through the Reverse Cohorting Unit. Testing would require prisoner consent and if consent was not provided then prisons would take other measures to reduce transmission. With testing capability in Wales managed by the Welsh Government, PHW were developing a specific testing programme to ensure alignment with health care services.

70. On 1 October 2020, HLT agreed to revise the testing strategy on the basis of reduced capacity by DHSC, with testing restricted to new receptions and inter-prison transfers (IPT) from red sites only. I exhibit the testing strategy options here: **[JG/59 – INQ000532446 and JG/60 – INQ000532554]**.
71. On 25 November 2020, HMPPS provided advice to the Lord Chancellor and Minister Frazer including an update on the COVID-19 testing strategy; the rollout of PCR tests – the most accurate tests then currently available – to frontline staff and prison residents on reception / transfer. This was the country's largest testing programme outside of the NHS and care homes and was supported by the Trade Unions. These PCR kits were provided by DHSC on the condition that HMPPS explored whether they could be replaced with new technology as it became available. Despite the increased national capacity for PCR tests, DHSC had made clear that this would be absorbed by increasing NHS demand and HMPPS would be unlikely, in any new requests, to secure additional PCR tests. At that time, there were high prevalence levels of COVID-19 and therefore HMPPS planned to make increasing use of testing as more supply became available and new testing technologies validated for deployment (as recommended by PHE). Therefore, the advice requested agreement on the proposed piloting of LFDs as a new testing technology (following confirmation by DHSC on when they expected these tests to become available) which would provide swifter results than PCR tests – as highlighted at the COVID-O held on 18 November 2020. The LFDs would be used in a pilot for prison residents moving from an outbreak site pre-transfer and on-arrival. LFDs were not to be a substitute for COVID-19 mitigations (e.g., PPE, hand hygiene and social distancing) and the pilots would be accompanied by a clear communication strategy. Both the Lord Chancellor and Minister Frazer supported the LFD testing pilot. I exhibit the updates to the testing policies here: **[JG/61 – INQ000532456 and JG/62 – INQ000532455]**.

72. On 11 December 2020, a submission was provided to the HMPPS Leadership meeting to note: a) the modelling and recommendations by PHE, in partnership with HMPPS and the University of Manchester, on their updated Reasonable Worst-Case Scenario (WCS) modelling for prison residents only over the course of the pandemic; and, b) that work was already underway to take the recommendations forward. The RWCS was intentionally pessimistic, and assumed an incidence of infection incursion into a prison would lead to an outbreak, which would spread through the people within the prison until contained by reduced susceptibility in the population. I exhibit the PHE modelling recommendation and subsequent policy decisions here: **[JG/63 – INQ000532460 and JG/64 – INQ000532459]**. The paper made four recommendations for HMPPS which were previously discussed at POMC and HLT, with specific work commissioned to take forward recommendations. Recommendation 'A' concerned cohort strategy whilst 'B' concerned proactive testing, contact tracing, early regime review and prisoner movements to mitigate outbreak risks, 'C' concerned further options to utilise testing of both prison residents and staff in non-outbreak settings and whole prison testing in outbreak settings, and 'D' concerned implementing seasonal flu vaccination programmes as per current public health advice. The subsequent meeting discussion noted that testing data had revealed that asymptomatic staff were at a greater risk of introducing the virus into prisons, with incremental changes making a significant impact to stop a potential outbreak due to the way in which the infection travelled. PHE believed more could be done to tackle staff behaviours both internally and externally to drive down the infection rate, comparing care homes as a similar closed setting to prisons and the local community infection rate as an early indicator of an incoming outbreak. Mass testing on a frequent basis would continue to be important for HMPPS whilst pushing for priority access to vaccinations and the lack of clarity as to when this would be widely available. HMPPS agreed with PHE's recommendations and were looking to implement further testing in January 2021 dependent on testing availability, with awareness that prioritisation of estate in Tier 3 or areas with high incidence rates was required. I exhibit the meeting minutes here: **[JG/65 – INQ000532461]**.
73. On 4 February 2021, the YCS Recovery and Winter Planning Working Group discussed staff testing in secure children's homes (SCHs). The YCS estate and secure training centres (STCs) had agreed to follow the HMPPS route regarding staff testing, but it was recognised that SCHs would need to deviate from HMPPS guidance. YCS

were working with the Department for Education (DfE), PHE and HMPPS to explore model DfE use in specialist settings. On 9 February 2021, Public Health England agreed a national position on testing in SCHs, covering routine asymptomatic testing of staff, testing of children and young people (CYP) on admission and asymptomatic testing of professional and social visitors. This would support the delivery of a covid-secure near normal regime within these settings. Prior to this there was not a standardised national testing strategy for staff and children in SCHs. The new protocol included PCR tests for children on arrival at day zero and between days 5-7. Children would remain isolated in single room accommodation until two negative PCR tests had been received. A child with two negative PCR tests taken at least five days apart could leave isolation earlier than ten days. The protocol also included weekly staff testing with PCR and LFD, an additional midweek LFD test, and on-site LFD testing available for all professional and social visitors on arrival but prior to entry to the SCH. These contacts would be tested on each visit. I exhibit details of the protocols here: **[JG/66 – INQ000532470 and JG/67 – INQ000532471]**. On 17 February 2021, the YCS Recovery and Winter Planning Working Group meeting discussed the reception testing process for SCHs. I exhibit the meeting minutes here: **[JG/68 – INQ000532477]**. It had been agreed that the DHSC would fund HMPPS to supply tests and the DfE would co-ordinate activity.

74. On 9 March 2021, at PRB (29) a testing options paper was presented due to NHS-E indicating they may not have sufficient resources to continue delivering the then existing model for prison resident PCR testing (despite this being a recommended healthcare clinical activity by PHE with health partners responsible for commissioning and resourcing it). The intention was to receive an early steer on which options were thought the most viable to then engage NHS-E to reach an agreed, sustainable position based on collaborative work. It was acknowledged that in parallel to testing within HMPPS, there was a need for the NHS to deliver the vaccination programme, as HMPPS assisting with testing regimes would place further pressures on prison regimes. There were four possible delivery models to resource staff/resident testing (healthcare staff, Covid Bonus Scheme, Payment Plus, Prison residents). I exhibit the delivery models here: **[JG/69 – INQ000532486, JG/70 – INQ000532487 and JG/71 – INQ000532536]**. On 22 March a testing options paper was presented to the Strategic Health Partnership Group that recommended a blended delivery approach. At that meeting, NHS-E agreed that the blended approach was the right option. I exhibit the

testing options paper presented to the group and the actions from that meeting recording the agreement here: **[JG/72 – INQ000532498 and JG/72a – INQ000592541]**.

75. On 1 April 2021, a new bespoke testing regime was implemented for HMPPS officers working as escorts for prisoners into and out of the UK. On return to the UK, officers were required to test on days two, five and eight or no less than every five days for constant travel. The policy stated that testing was voluntary but officers refusing to be tested could not carry out overseas escort duties. I exhibit the complete policy on these duties here: **[JG/73 – INQ000532496]**.
76. On 8 April 2021, a social visits testing pilot was proposed for HMPPS. The aims of the pilot were to allow HMPPS to identify and work through any operational difficulties of delivering testing for social visits, consider the best approach between home vs on-site testing for visitors and prepare for a national roll-out (if appropriate). It was envisaged that the pilot would include the youth estate, however, as the pilot would not lead to a relaxation in restrictions in the YCS estate, YCS decided not to take part in the pilot. I exhibit details of the pilot here: **[JG/74 – INQ000532504]**. The pilot was approved and prepared to start the week commencing 26 April 2021. Unfortunately, the pilots found low uptake as there was no perceived benefits amongst users of taking the test. I exhibit the full Ministerial proposal for testing and refreshments at social visits here: **[JG/75 – INQ000532516]**.
77. On 9 July 2021, MoJ's Joint Strategic Policy Unit requested the Lord Chancellor to engage at ministerial level with the DHSC via a letter on four key areas that were vital to the COVID-19 response and recovery in prisons that MoJ were reliant on DHSC to progress and deliver:
- 77.1. Access to a mechanism and funding route for mass outbreak testing.
- 77.2. Funding to support the national roll out of wastewater testing as part of long term Covid-19 surveillance in prisons.
- 77.3. Access to daily contact testing to mitigate against predicted staffing impacts from the requirements to self-isolate.

- 77.4. The need to consider a whole prison approach as part of planning for the roll out of booster vaccinations later in the year. I exhibit the paper detailing advice sought in relation to recovery from COVID-19 in prisons here: **[JG/76 – INQ000532518]**.
78. The Lord Chancellor subsequently wrote to the Health Secretary on 23 July 2021. I exhibit the letter here: **[JG/77 – INQ000532520]**. The Health Secretary replied on 9 August 2021 and advised he welcomed a meeting to discuss the issues outlined. A meeting was organised but subsequently had to be cancelled.
79. On 12 August 2021, the POMC agreed to implement the HMPPS COVID-19 Testing Strategy which set out a local, risk-based approach to testing, where the level of testing a prison would deliver would depend on their local risk once baseline level had been met. I exhibit the strategy here: **[JG/78 – INQ000532523 and JG/79 – INQ000532525]**. The testing programme was agreed by ministers at a COVID-O on 21 December 2021 (see paragraph 88 below for more).
80. On 12 August 2021, the YCS Stage 1 Planning Group decided to deviate from the HMPPS COVID-19 Testing Operational Guidance regarding guidance for prisoners to self-test in cells using LFD test kits. The group decided that this guidance was not relevant or appropriate for use in the YCS estate, due to considerations over storage, safety, credibility of results and the low numbers of children taking tests compared with the risk. As a result, Prisoner Self Collect Testing was not rolled out in YCS establishments. I exhibit the meeting minutes here: **[JG/79a – INQ000576330]**. At this time a Prisons Testing meeting was set up with the Cabinet Office, UKHSA, NHS, PHE and HMPPS with an overall purpose to facilitate the implementation and delivery of a COVID-19 testing strategy in secure settings that was grounded in public health advice, through collaboratively developing implementation plans to deliver the agreed strategy. The first meeting took place on 11 August 2021. Although there were no minutes available for this meeting, there was an action to draft the Terms of Reference for the group, and each agency was requested to send views on this. I exhibit the email sent to agencies with this request here: **[JG/79b – INQ000592543]**.

81. On 27 August 2021, the Lord Chancellor, and the Rt Hon Alex Chalk KC MP, then Minister of State for Prisons and Probation, received a submission on staff self-isolation exemptions. I exhibit the submission here: **[JG/80 – INQ000532527]**. The submission outlined HMPPS' approach to managing staff absences relating to self-isolation following close contact with a positive case. The submission stated that staff in England and Wales who were fully vaccinated were no longer required to self-isolate if they were identified by NHS Test and Trace as a contact of a positive case and that those in England who were able to access a daily contact testing site and produce a negative test, and were asymptomatic, were eligible to work on a voluntary basis. These schemes were supported by Public Health England and Public Health Wales.
82. On 30 September 2021, the Joint Strategic Policy Unit and COVID-19 Response Team requested POMC to endorse the HMPPS Covid-19 Testing Strategy governance which was important to agree prior to implementing the testing strategy. I exhibit the submission here: **[JG/81 – INQ000532537]**. The proposed governance was based on underlying principles centred around evidence-based, agile, proportionate, and empowered local decisions, with Governors collaborating closely with Health Protection Team Leads to agree which level of the testing strategy to deliver by reviewing the risk-based framework and local public health advice. POMC endorsed the strategy as confirmed in exhibit **[JG/82 – INQ000532541]**.
83. On 26 August 2021, Prisoner Risk Mitigation Testing (PRMT) was rolled out across the HMPPS adult estate in England and Wales. I exhibit the advice issued to prisons on implementation here: **[JG/83 – INQ000532526]**. It was agreed between HMPPS, PHE and PHW and allowed fully vaccinated prisoners who take part in PRMT to no longer isolate following contact with a positive case and therefore continue engaging with daily prison routine. A new testing model, the Prisoner Self-Collect LFD Testing (PSC) operational guidance allowed prisoners to take part in self-collect testing. I exhibit the guidance here: **[JG/84 – INQ000532529]**. A fully vaccinated consenting prisoner would undertake a daily 'Self Collect' (in cell) LFD test each morning for 1 week prior to morning unlock following contact with an identified positive contact. Those participating in the programme were selected by the Governor. The programme was not intended to replace then current models of testing for prisoners but as an additional option to be deployed where deemed appropriate and safe. PRMT was similar to the RMT testing model published prior for staff. YCS reviewed the guidance

prior to being published/distributed and did not think that self-testing would be suitable for the children/youth estate at that time.

84. On 19 October 2021, the PRB approved a paper on making prisoner testing a condition of Resettlement Overnight Release (ROR), unless medically exempt. The number of domestic ROR placements was increasing as more prisons progressed through the National Framework. Managing this in line with the compartmentalisation model was causing capacity challenges. Making testing a condition of ROR, unless medically exempt, increased access to in-demand open prison spaces. The board approved the approach, and testing was subsequently made a condition, unless medically exempt. The board recommended that there should be clear guidance around the risks of ROR to enable staff to have coherent conversations with prisoners. I exhibit the notes of the meeting and the paper containing further details on the ROR mandatory testing model here: **[JG/85 – INQ000532539 and JG/86 – INQ000532538]**.
85. On 15 December 2021, at an HMPPS Leadership meeting the HLT approved making testing mandatory for social visitors, Given the increasing risk from Omicron, the Joint Strategic Policy Unit asked the HLT to agree that pre-visit COVID-19 testing be introduced to all visitors aged 12 and over. The aim of this was to minimise the infection risk from visitors coming into prisons from the community. I exhibit the agenda for the meeting, the submission and the meeting minutes here: **[JG/88 – INQ000532551, JG/87 – INQ000532607 and JG/89 – INQ000532606]**.
86. On 20 December 2021, at a HLT meeting, a decision was requested by the Joint Strategic Policy Unit to pursue mandating asymptomatic routine staff testing within HMPPS via existing implied contractual terms and to recommend this option in ministerial advice and engage Trade Unions to secure their support. I exhibit the Joint Strategic Policy Unit's submission to the HLT for their decision on the matter here: **[JG/90 – INQ000532552]**. This was due to the emergence of the highly transmissible Omicron variant of COVID-19 coupled with low staff uptake of voluntary testing at many sites. This resulted in HMPPS testing being below the UKHSA recommendation of a 75% uptake being necessary for an effective testing regime, with a then average of 54% for PCR tests and 21% for on-site LFTs across the HMPPS estate. This was despite an extensive communication campaign and bespoke advice for low uptake sites. The Deputy Prime Minister had made clear that prisons should move to daily

mandated staff testing as an intervention to quickly and significantly improve the coverage of the asymptomatic staff testing regime.

87. The Joint Strategic Policy Unit recommended mandating staff testing. Management instructions requiring staff to take mandatory testing could be issued immediately. Prior to any management instructions following a health and safety assessment, Trade Union engagement would take place whose support would be important for implementation and supporting staff compliance. On 20 December 2021, the Deputy Prime Minister wrote to the Chancellor of the Duchy of Lancaster, to explain MoJ's intention to increase the frequency of testing on staff, as recommended by the UK Health Security Agency (UKHSA), and introduce mandatory daily staff testing across prisons, Approved Premises (APs), courts and tribunals. I exhibit that note here: **[JG/91 – INQ000532576]**. The letter asked for assurances that a sufficient supply of testing kits would be made available to HMPPS and HMCTS to enable daily staff testing to be delivered. I exhibit a revised submission for the allocation of LFDs to prison staff here: **[JG/92 – INQ000532580]**. There was no reply to this letter, however the tests were subsequently provided as detailed further below.
88. On 21 December 2021, the Deputy Prime Minister attended a Daily COVID-19 Response Briefing (an internal MoJ meeting) where options were discussed for introducing mandatory staff COVID-19 testing in prisons and APs in England and Wales. The Deputy Prime Minister confirmed that he wanted to proceed immediately with mandating. The Deputy Prime Minister also confirmed he wanted work to start on a legislative option by amending Prison and Young Offender Institution (YOI) rules via statutory instrument to give power to refuse entry to people who cannot show evidence of negative test. The Deputy Prime Minister confirmed that he wanted to sunset the mandating of testing after three months, meaning the statutory instrument would expire and cease to have effect after a three-month period. I exhibit documents relating to the mandate of testing across policy areas, in Courts and Tribunals, and in prisons and approved premises here: **[JG/93 – INQ000532553 and JG/94 – INQ000532556]**. The readouts for this meeting are exhibited here: **[JG/95 – INQ000532555, JG/96 – INQ000532578 and JG/97 – INQ000532579]**. Dr Eamonn O'Moore, UKHSA National Lead for Health and Justice, provided advice in support of the Deputy Prime Minister's steer for mandatory staff testing: *"...Throughout the pandemic, incursion of infection into prisons has been driven by staff (similar to other closed settings such as care*

homes). Recognising this risk, UKHSA has long advised that prison staff should be regularly tested ideally prior to shift, with PCR weekly and LFD twice weekly. Previous advice from SAGE, based on modelling informed by alpha variant primarily, had advised that coverage of 75% or more was required for this to be effective against ingress hazard. Given more transmissible variants, it is likely that this coverage estimate will be revised upwards... For these reasons daily testing, tests which offer rapid results and higher test sensitivity is important". I exhibit a HMPPS document titled Risk Assessment: Mandating Testing in Custodial settings here: [JG/98 – INQ000532559].

89. On 23 December 2021, following engagement with trade unions, mandatory testing was introduced for all directly employed staff before entering prisons and approved premises. Probation staff were notified that they were also subject to the same testing as prison staff. I exhibit the submission from the Joint Strategic Policy Unit to the DPM and the minutes from the meeting when the HLT agreed to this here: [JG/99 – INQ000532573 and JG/100 – INQ000532583].
90. On 23 December 2021, MoJ submitted a request to the Cabinet Office for additional testing capacity to avert the risk of serious impact across the prison estate due to the Omicron variant of COVID-19. I exhibit this request here: [JG/101 – INQ000532572]. The request identified that women and children were particularly vulnerable in the face of restricted regimes, with self-harm in women's prisons extremely high and children's mental health especially at risk when spending so much time in their rooms. An estimated 8,000 LFD tests per week would allow increased testing in the female and youth estate, reducing the risk of outbreaks requiring regime restrictions. The Cabinet Office approved the request for additional testing capacity on 13 January 2022 and as a result prisons no longer required tests provided by the Critical Workers Scheme.
91. On 23 December 2021, the Deputy Prime Minister attended a COVID-O meeting to discuss prioritisation of testing for critical workers. There were two cross-government prioritisation conversations in train for testing access in the event of demand significantly and consistently outstripping supply. MoJ were considered key workers (staff across MoJ workforces) and not critical workers therefore access to testing was through the open-access channels available to all, with the proviso that a precautionary testing programme should be stood up for c.100,000 critical workers if

demand for LFDs significantly and consistently outstripped supply. I exhibit the actions from this COVID-O meeting and the associated policy documents here: **[JG/102 – INQ000532571, JG/103 – INQ000532570 and JG/104 – INQ000532569]**.

92. On 23 December 2021, the Deputy Prime Minister met with the Joint Strategic Policy Unit to discuss plans to deploy additional LFD testing capacity in prisons in England and Wales. The Cabinet Office had confirmed that HMPPS would receive an additional 75,000 LFD tests per week (against the ask of 100,000). On 5 January 2022, the Deputy Prime Minister received an update on plans for deploying this additional LFD testing capacity in prisons in England and Wales. The Deputy Prime Minister was asked to agree to prioritise the women's and YCS estate for additional testing to limit the risk of outbreaks and disruption to the regime, given the mental health risks associated with regime restrictions, I exhibit the submission here: **[JG/105 – INQ000532575]**. The Deputy Prime Minister did not agree to the recommended approach to allocation of additional LFD tests and requested revised advice in line with the discussion in the meeting on 23 December. I exhibit the meeting minutes here: **[JG/96 – INQ000532578]**. On 7 January 2022, the Deputy Prime Minister agreed not to de-prioritise testing for the women's and YCS estate, given the risks to mental health and wellbeing associated with regime restrictions for those cohorts. The additional 75,000 LFDs per week allocated to HMPPS would be deployed on an ongoing risk assessment, meaning that HMPPS would only need to de-prioritise at most a small number of low-risk sites for daily testing. I exhibit a letter from the Joint Strategic Policy Unit to the DPM regarding the process for allocating additional covid test here: **[JG/92 – INQ000532580]**.
93. On 5 January 2022, the Joint Strategic Policy Unit provided advice to the Deputy Prime Minister regarding the ongoing mandating of testing for prison staff. I exhibit the advice here: **[JG/106 – INQ000532574]**. This was because the Deputy Prime Minister was concerned about COVID-19 related absences and the potential for staff to falsely report positive COVID-19 test results in order to obtain paid leave. In most cases (approximately 90%), positive cases were picked up through the HMPPS testing programme and HMPPS was informed about the results. However, in a minority of cases (approximately 10%), staff were reporting positive results to their line manager, having taken a test issued outside of the HMPPS testing allocation. I exhibit the

readouts of meetings where this was discussed here: **[JG/96 – INQ000532578 and JG/97 – INQ000532579]**.

94. The Joint Strategic Policy Unit recommended that HMPPS continue to mandate testing for staff in public sector prisons, develop a Policy Framework on testing requirements (which would mandate testing for staff in privately managed prisons). The advice also outlined the circumstances under which a Statutory Instrument could be a more suitable option for implementing a mandate. I exhibit the advice which included the fact that it could be applied to all staff, not just those directly employed, and would create an explicit power which could reduce the risk of a legal challenge here: **[JG/106 – INQ000532574]**. The Deputy Prime Minister wanted the Joint Strategic Policy Unit to start engagement with the unions, with a view to introducing a Statutory Instrument in the future. I exhibit (like above) the readouts where this was discussed here: **[JG/96 – INQ000532578 and JG/97 – INQ000532579]**.
95. The Joint Strategic Policy Unit advice recommended that HMPPS maintain the existing approach whereby:
 - 95.1. HMPSS would be automatically notified of positive test results at HMPPS' on-site LFD testing centres.
 - 95.2. Staff reporting more than one COVID-19 related absence in a short period would be queried by managers and asked to provide supporting evidence such as a proof of a positive test or medical advice.
 - 95.3. HMPPS staff were required to provide confirmation of self-isolation status from NHS Test and Trace where they were notified as being close contacts of a positive COVID-19 case.
96. Employees either had to provide an isolation note that started from the first day of symptoms or self-certify for their first 7 days then obtain an isolation note commencing day 8 of their absence. This was addressed in a letter to the DPM on 5 January 2022 regarding options for requiring staff to provide evidence of positive COVID test results. I exhibit the letter here: **[JG/107 – INQ000532577]**.

97. The Deputy Prime Minister did not agree with the recommendation. I exhibit the email exchange and minutes from the Post Prioritisation Submission Wash-Up here: **[JG/96 – INQ000532578]** and **[JG/97 – INQ000532579]**. The Deputy Prime Minister asked HMPPS to canvass the views of Governors on the value of introducing a requirement for all staff to provide proof of a positive test result from any COVID-19 test conducted outside of the HMPPS testing allocation. Prison Group Directors were instructed to seek the views of each of their Governors. Advice with the feedback from Governors was shared with the Deputy Prime Minister on 20 January 2022, with the recommendation that Governors and managers would be given discretion to require staff to provide evidence of a positive COVID-19 test. The Deputy Prime Minister and the Rt Hon Victoria Atkins MP, then Minister of State for Prisons and Probation, confirmed that they agreed with this approach and communications to this effect were subsequently issued. I exhibit the letter to Dominic Raab regarding options for requiring HMPPS staff to provide evidence of positive covid test results and the minutes and actions of a meeting between the DPM and other stakeholders on certifying prison staff COVID absences here: **[JG/108 – INQ000532587 and JG/109 – INQ000532584]**.
98. The Government's 'Living with COVID-19' plan was announced on 21 February 2022, which included the end of free testing in the community.
99. On 24 February 2022, the Deputy Prime Minister agreed with the recommendation to adopt a local risk-based approach to testing on the expectation that staff were tested twice a week. This agreement followed the decision from the Deputy Prime Minister to re-baseline the prison estate at Stage 2 of the National Framework and replaced daily mandatory testing. I exhibit an email from the PS of the Lord Chancellor who expresses the DPM's, Minister's Atkins' and Minister Malthouse's decisions and agreements and a submission to Minister Atkins and DPM titled COVID-19 in Custody: Stage 1 Gateway & Testing Frequency here: **[JG/110 – INQ000532592 and JG/111 – INQ000532590]**.
100. On 1 March 2022, following the Deputy Prime Minister's agreement that HMPPS should move to a local risk-based testing approach, PRB decided on the following approach:

- 100.1. To remove mandatory staff testing for all prisons, but voluntary testing should continue to be strongly encouraged;
- 100.2. To set minimum level of LFD testing for prison staff at three times weekly, and two times weekly at sites that had reached Stage 1;
- 100.3. To retain current pre-visit testing requirements until the end of March; and,
101. To not ask social visitors to pay for a pre-visit test. I exhibit a letter from the Joint Strategic Policy Unit to PRB regarding social visitor and staff testing and minutes from a PRB meeting dated 1 March 2022, which addresses this issue here: **[JG/112 – INQ000532593 and JG/113 – INQ000532595]**.
102. On 3 March 2022, mandatory testing within the prison estate, including the youth estate, ceased as it was considered no longer proportionate due to the reduction in prevalence and risk of Omicron. This had been implemented in December 2021, alongside daily testing, due to the Omicron variant. The frequency of testing was also reduced. Staff were still strongly encouraged to undertake testing. I exhibit a HMPPS paper titled Mandatory Testing and Testing Frequency in Prisons in England & Wales here: **[JG/114 – INQ000532594]**.
103. On 23 March 2022, the Deputy Prime Minister requested HMPPS adopt a proactive asymptomatic testing regime following the Government's 'Living with Covid' announcement which significantly scaled down testing levels across all settings. Of the four potential testing regimes for prisons and APs presented, the Deputy Prime Minister chose the option where only symptomatic new reception entrant prisoners would be tested, alongside asymptomatic testing of staff and prisoners in high-risk areas in response to local outbreaks – taking into consideration extremely vulnerable prisoners. I exhibit a letter from the Joint Strategic Policy Unit to the Deputy Prime Minister regarding HMPPS' 'Living with Covid' testing strategy, dated 18 March 2022, and an email exchange between PS to Lord Chancellor and HMPPS to inform the latter of the DPM's decision here: **[JG/115 – INQ000532597 and JG/116 – INQ000532600]**. I exhibit advice from UKHSA titled Advice on the management of OGD High-Risk Settings from April 2022, and a UKHSA paper titled COVID-19 Prisons

Thinking - April 2022 onwards here: **[JG/117 – INQ000532598 and JG/118 – INQ000532599]**.

104. On 30 March 2022, PRB agreed with the recommendation whereby prison staff were categorised as working in high-risk areas following the Deputy Prime Minister's endorsement of a proactive asymptomatic testing regime in areas of such risk. I exhibit minutes from the abovementioned PRB meeting, and a letter from the Joint Strategic Policy Unit regarding proactive staff testing in high-risk areas, dated 30 March 2022 here: **[JG/119 – INQ000532605, JG/120 – INQ000532603 and JG/121 – INQ000532601]**.
105. On 21 June 2022, the YCS Operational Management Committee discussed the approach to testing in YCS and proposed to diverge from the policy of 10 days isolation stated in HMPPS' custodial testing guidance, in order to avoid the disproportionate isolation of children. The preferred option was for YCS to take a bespoke approach where symptomatic staff were tested as in HMPPS' guidance, but asymptomatic staff testing, reception testing, and routine symptomatic testing of children all ended. In this option, YCS would still test children following local health advice or during outbreaks. At this point, the DfE had stopped testing in SCHs. An action was set up for YCS to liaise with UKHSA and confirm their guidance on managing symptomatic children. I exhibit minutes from YCS' Operational Management Committee Meeting dated 21 June 2022 here: **[JG/122 – INQ000532610]**. On 23 June 2022, YCS met with UKHSA and DfE to discuss COVID-19 testing. It had previously been agreed that asymptomatic reception testing in YOIs would cease, asymptomatic staff testing would only be used in YOIs where children were on personal management plans, and symptomatic child testing would only take place if clinically advised. This would bring YOIs and SCHs into alignment. There was an outstanding issue regarding symptomatic staff testing, which HMPPS were keen to retain in order to reduce staff absences which could result in children being isolated for long periods. The UKHSA's position was that there was no public health rationale for this testing, and it would contravene agreements made by COVID-O with regard to why tests would be deployed. I exhibit meeting minutes that show there was no agreed outcome by the end of June here: **[JG/122a – MOJ000093794]**.

National roll-out of PCR and lateral flow tests

106. For a chronology of key dates regarding the national roll out of testing, please refer to **Annex A**.

Provision of PCR and lateral flow tests to courts

107. On 20 November 2020, the Lord Chancellor confirmed that he supported the project on HMCTS involvement in DHSC mass asymptomatic rapid Lateral Flow Testing, which included a trial in a pathfinder court of mass testing those regularly attending courts with public-facing roles. I exhibit the submission by HMCTS on the above here: **[JG/123 – INQ000532453]**. The use case continued to be defined through December 2020 and went live from February 2021. I exhibit an updated submission dated 22 December 2020 on lateral flow device testing here: **[JG/124 – INQ000532462]**.
108. On 24 November 2020, ministers agreed to proceed with rapid testing within HMCTS to reduce the spread of COVID-19. The DHSC indicated that mass asymptomatic rapid LFD testing should soon be available for widespread use and that court buildings would be a valuable addition to the national LFD test trial. I exhibit a submission regarding Lateral Flow Device Testing within HMCTS, dated 20 November 2020 and the accompanying email here: **[JG/123 – INQ000532453 and JG/125 – INQ000532457]**.
109. On 12 February 2021, the Lord Chancellor announced a rapid testing pilot was to be held at Southwark Crown Court from 15 February 2021. The trial was part of the Government's national testing programme and ran for four weeks. Lateral flow tests were offered to all people attending a case who were not showing any symptoms of COVID-19. The tests were also offered to all staff, the judiciary, contractors, and legal professionals. I exhibit the announcement letter here: **[JG/126 – INQ000532472]**.
110. On 16 February 2021, DHSC confirmed that MoJ (specifically HMCTS) had been included in the home testing kit pilot, which was noted in an update to Ministers which I exhibit here: **[JG/131 – INQ000532611]**. The pilots were organised by DHSC, and HMCTS submitted a business case in January 2021 to seek inclusion in the pilot. I exhibit the draft proposal from HMCTS, titled HMCTS Proposition for Prioritisation of

Lateral Flow Testing Kits, and the accompanying email here: **[JG/127 – INQ000532466 and JG/128 – INQ000532465]**. DHSC confirmed on 16 February 2021 that HMCTS would be included within the pilot. This is confirmed by an internal confirmation email by HMCTS colleagues, that I exhibit here: **[JG/129 – INQ000532478]**. Five sites were chosen to take part in the pilot, and it was due to run for 5 weeks. An update was provided to the Lord Chancellor on 3 March 2021 which outlined that MoJ was moving forward with asymptomatic testing, with two pilot testing sites in courts, and working with DHSC to secure home testing kits for all court users. I exhibit the update here: **[JG/130 – INQ000532612 and JG/131 – INQ000532611]**. Along with the asymptomatic testing sites (ATS) pilot, the tests were offered to all professional court users, judiciary, contractors, jurors, and staff who attend scheduled hearings. Custody Officers employed under the Prisoner Escort & Custody Services (PECS) contracts also started a five-week at home LFD testing pilot. The test kits were delivered directly to sites where staff were able to collect them. HMCTS were asked to log the figures to DHSC daily. I exhibit an example of this, an HMCTS briefing on the home testing pilot and an email chain between MoJ and HMCTS colleagues about providing support for the above issues here: **[JG/132 – INQ000532517 and JG/133 – INQ000532506]**.

111. The Manchester Civil Justice Centre had been a pathfinder court site for Lateral Flow testing and take up rates were low. Testing operatives were not being utilised to their full capacity. On 24 March 2021, the HMCTS Response Board agreed to support the introduction of a satellite testing facility at Manchester Magistrates Court utilising the capacity of test operatives from the Manchester Civil Justice Centre. I exhibit the submission in support of this here: **[JG/134 – INQ000532499]**.
112. On 12 April 2021, advice put forward to the Lord Chief Justice noted that following confirmation from DHSC that HMCTS could roll out the asymptomatic home testing solution, and a recent government announcement that home test kits would be available to all from 9 April 2021, there was no longer the case to maintain operation of the seven pilot ATS facilities that were operating from HMCTS court sites. I exhibit the submission from the Response and Recovery Team titled COVID-19 Lateral Flow Testing in Courts and Tribunals: Next Steps here: **[JG/44 – INQ000532508]**. The Lord Chancellor agreed with this submission on 16 April 2021, stating that home testing had

always been the preferred option. I exhibit an email by the PS of the Lord Chancellor here: **[JG/45 – INQ000532511]**.

Provision of PCR and lateral flow tests to prisons and young offender institutions

113. On 3 April 2020, MoJ approved a Direct Award to Optima Health (then occupational health provider for HMPPS). This was a six-month contract to administer COVID-19 testing to MoJ staff, including HMPPS with frontline prison and probation staff prioritised. Testing would be via a blood test (finger prick). Mobile units accompanied by a nurse would visit minimum two sites per week with results provided immediately. To accommodate the demand for testing, an initial 50,000 tests were ordered. I exhibit an email exchange regarding the details, review and approval of the above direct award here: **[JG/135 – INQ000562594]**.
114. As an interim measure the DHSC granted HMPPS access to 400 testing slots across nine regional centres for three days from 11 to 13 April 2020. Following further negotiation, HMPPS secured an extension to this testing programme which continued until 19 April 2020 and secured access to an increased number of testing sites, giving the ability to deliver 850 tests across 18 sites in England. I exhibit a draft information notice on staff testing issued to silver command here: **[JG/136 – INQ000532423 and JG/137 – INQ000532422]**.
115. On 26 May 2020, Minister Frazer attended a healthcare ministry interest group to push for faster test results which were key for staff to be able to return to work sooner. She also pushed for sight of healthcare guidance and for antibody testing for prison staff. For this, I exhibit an email exchange between MoJ and Cabinet Office addressing the above here: **[JG/138 – INQ000532429]**.
116. On 1 September 2020, an interim agreement was made with DHSC to supply approximately 8,000 PCR tests a week to prisons, and to supply 60,000 tests overall which was a reduction from the 65,000 originally agreed. I exhibit the paper from MoJ titled COVID-19 Update on the testing strategy for prisons, an email exchange between MoJ, HMPPS, PS to Secretary of State for Justice and Lord Chancellor about reception and transfer testing roll out a paper from MoJ and HMPPS, titled COVID-19:

Options for Prisoner and Staff Testing here: **[JG/58 – INQ000532444, JG/139 – INQ000532443 and JG/59 – INQ000532446]**.

117. On 21 October 2020, ministers contacted DHSC regarding staff testing capacity following a rapid increase in the number of outbreaks and those testing positive within prison settings. Matt Hancock, then Secretary of State for Health and Social Care, gave approval for the additional tests to increase testing capacity of prison staff. This helped to identify infected staff and break chains of transmission. I exhibit a document from HMPPS titled COVID-19 Testing: Business Case for HMPPS Frontline Staff Testing and a call note between HMPPS and stakeholders dated 30 October 2020 here: **[JG/140 – INQ000532501 and JG/141 – INQ000532448]**.
118. On 1 December 2020, roll-out commenced of PCR Testing for Approved Premises staff, service users, Prisoner Facing Staff and National Tactical Response Group (NTRG) staff (specialist prison staff). I exhibit a milestone chart spreadsheet with workstream information, progress and data here: **[JG/142 – INQ000532609]**. All staff were encouraged to participate in this regular testing. I exhibit a letter from Phil Copple (Director General of Prisons, HMPPS), Kate Davies CBE (Director of Health & Justice) and Dr Eamonn O'Moore (National Lead for Health and Justice, UKHSA), regarding omicron variant testing vaccination, dated 06 December 2020 here: **[JG/143 – INQ000532549]**.
119. On 1 January 2021, roll-out of PCR testing was expanded from frontline staff to all prison staff. By 25 January 2021, the roll out for routine PCR testing in Approved Premises for staff and service users was achieved. On 1 February 2021, the full national roll-out of LFD Testing for Prison Staff commenced. By 15 March 2021, the testing programme was live in 118 prisons. On 11 February 2021 the mass testing pilot in the 28 Prisons Study went live in 3 of the pilot sites. On 22 February 2021, the roll-out of LFD testing for prisoners received into reception commenced. The full roll-out was achieved on 10 May 2021. I exhibit a milestone chart spreadsheet with data confirming the points above here: **[JG/142 – INQ000532609]**.
120. On 17 February 2021, Minister Frazer attended a COVID-O which was chaired by the Paymaster General. Minister Frazer confirmed that the rollout of weekly staff PCR testing across all establishments had been completed, as well as prisoner testing on

reception and transfer. Minister Frazer also confirmed that they were working with partners to expand the use of LFD testing. MoJ was seeking priority access to vaccines and testing, in addition to more funds to continue prison regime mitigations such as video calls. COVID-O actioned MoJ and HMPPS to work with HM Treasury to agree the duration and funding arrangements of supplementary mitigations and set out the value for money and operational justification for the types of testing required, including mobile and home testing. MoJ and HMPPS were to continue sending regular updates to the COVID-19 Taskforce (CTF) on staff absences and to start providing fortnightly updates on staff uptake of testing and vaccinations. I exhibit a presentation from Ministry of Justice, titled COVID Operations Committee: Prisons COVID-19 assurance, dated 17 February 2020, a speaking note titled Minister Frazer, introduction – Covid-O, also dated 17 February 2021, a speaking note for Jo Farrar, and the actions from the meeting here: **[JG/25 – INQ000532474] [JG/26 – INQ000532473, JG/144 – INQ000532475, JG/145 – INQ000532476 and JG/27 – INQ000532479]**.

121. On 24 February 2021, the Prison Recovery Board agreed to update the testing approach to increase staff uptake of PCR testing in prisons. The data suggested that the average uptake for PCR testing was 37% which was significantly below the 75% level that PHE recommended for the testing regime to be truly effective. HMPPS's ambition was that all prison and probation staff were tested for COVID-19 each week and proposed a specific commission which was sent to Governors to make them aware of the data, ask them to validate it and to spread best practice. I exhibit a submission titled 'COVID-19: Increasing staff uptake of testing' here: **[JG/146 – INQ000532481]**. I also exhibit exhibits minutes from a Prisons Recovery Planning Programme Board Meeting from 24 February 2021 here: **[JG/147 – INQ000532482]**. There was a long and sustained campaign by HMPPS to increase uptake of staff testing, which continued throughout 2021. I exhibit the following documents on this issue: **[JG/148 – INQ000532493, JG/149 – INQ000532494 and JG/150 – INQ000532495]**. Options were discussed at the PRB and POMC in November and December 2021 respectively, and it was agreed that testing should continue to be encouraged through the operational line, efforts to share best practice efforts should be renewed and targeted communications designed to reiterate the importance of testing ahead of winter should be shared. Furthermore, POMC agreed to temporarily raise prisons' Target Staffing Figure (TSF) to create a time-limited mechanism (until

March 2022) for prisons to be able to dedicate resource to increase staff testing. I exhibit a submission from the Joint Strategic Policy Unit to PRB, regarding the decision to agree with the recommended options for increasing staff testing uptake, dated 16 November 2021 here: **[JG/151 – INQ000532544]**. I also exhibit presentation slides titled Weekly Testing and Vaccine Summary, dated 12 November 2021 here: **[JG/152 – INQ000532543]**. Furthermore, I exhibit a meeting note for a PRB meeting on 16 November 2021 here: **[JG/153 – INQ000532545]** and a briefing from Joint Strategic Policy Unit to POMC titled Options for Increasing Staff Testing Uptake, dated 2 December 2021, here: **[JG/154 – INQ000532546]**. Finally, **[JG/155 – INQ000532588]** exhibits minutes and actions from a Prisons Management Committee Meeting dated 2 December 2021.

122. On 16 March 2021, guidance documents were distributed to SCH managers to support testing new entrants, including a Standard Operating Procedure, “How To” Guide and consent forms. I exhibit these here: **[JG/156 – INQ000532489, JG/157 – INQ000532490 and JG/158 – INQ000532491]**. A set of FAQs were distributed on 19 March 2021 to support the earlier guidance, covering asymptomatic PCR testing for new entrants in SCHs. I exhibit the FAQs here: **[JG/160 – INQ000532497]**. A virtual training session was set up for SCH managers to cover staff testing on 1 April 2021, preceding the roll out of staff testing across the SCH estate. Child-facing information was in development for new admissions on what their first 14 days would likely involve, including testing, education and health. I exhibit a summary and action points from the recovery working group session here: **[JG/159 – INQ000532503]**.
123. On 29 March 2021, the roll-out of Self-Collect LFD testing was introduced to remove the need to isolate when having been in contact with a positive Covid-19 case. This went live in 5 Pilot Sites and for all Prison Escort Contracted Services. I exhibit a milestone chart here: **[JG/142 – INQ000532609]**.
124. On 12 April 2021, NHS Test and Trace announced that it was providing additional testing across south London following identification of the South African C19 variant (B.1.35). Everybody aged 11 years and over who resided in, worked in, or travelled through certain boroughs were strongly encouraged to take a COVID-19 PCR test, whether they were showing symptoms or not. As a result, on 13 April 2021, a London meeting was called by PHE involving NHS E prison health commissioners and prison

representatives to consider next steps for mass testing of prisoners and staff at HMPs Brixton and Wandsworth utilising existing PCR capabilities on site, with support from NHS E/I and HMPPS Testing team. MoJ and HMPPS staff who lived in Lambeth or Wandsworth, but worked at other sites, would be able to access testing through community provision. I exhibit a briefing on this here: **[JG/162 – INQ000532509]**. On 14 April 2021, the roll-out of mass testing (Op Eagle) of staff and prisoners commenced. I exhibit an event report on this here: **[JG/161 – INQ000532510]**. By the end of the day on 15 April 2021, HMP Brixton had completed surge testing of all staff and prisoners who consented, with HMP Wandsworth completing by 20 April.

125. On 24 December 2021, HMPPS communicated the national roll-out of mandatory staff testing in prisons and for probation staff in APs. The following exhibits consist of explanatory and policy documents that were circulated **[JG/163 – INQ000532563, JG/164 – INQ000532564, JG/165 – INQ000532562, JG/166 – INQ000532568, JG/167 – INQ000532557, JG/168 – INQ000532558, JG/169 – INQ000532560, JG/170 – INQ000532561 and JG/171 – INQ000532566]**.

Distribution of RT LAMP tests

126. Loop-mediated isothermal amplification (LAMP) tests – known more simply as “saliva testing” or “spit testing” – are a single-tube testing technique and a low-cost and rapid alternative to PCR testing.
127. A pilot of Reverse Transcription LAMP testing was conducted at HMP Hull between 23 and 25 March. A total of 737 prisoners were tested, with 43 positive results identified. Further LAMP testing was conducted at HMP Hull and started at HMP Moorland from 5 April 2021. For this, I exhibit **[JG/172 – INQ000532500]** which is a HMPPS Testing Team Newsletter.
128. In August 2021, HMPPS published its revised testing strategy. At this time HMPPS was keeping the testing technologies for each use case (i.e. who was being tested and at which risk level) under review and the strategy stated HMPPS would consider replacing PCR and Lateral Flow Devices with LAMP testing when it became available and if they were suitable for a given use case. HMPPS planned to pilot LAMP tests

from 28 July 2021, with a view to rolling out nationally from September/October 2021. I exhibit the strategy here: [JG/173 – INQ000532531].

129. The pilot for using LAMP testing took place at HMP Isle of Wight and began on 26 July 2021 for staff and 9 August for prisoners. All staff were offered twice weekly testing, replacing PCR and LFD testing. As part of the pilot a small sample of 89 prisoners were offered testing once a week with a view to ramping up fairly quickly to include all prisoners, depending on evaluation of sample quality over the initial couple of weeks. I exhibit the Recovery Position Statement dated 23 August here: [JG/174 – INQ000532528].
130. The pilot was paused in December 2021 due to operational reasons at the establishment whilst they were managing an outbreak. No further LAMP testing took place, and no further sites were involved. Unfortunately, I am unable to advise why the pilot did not continue after this date or involve alternative sites.

Significant input or cooperation between MoJ and other government departments

The Department for Health and Social Care (DHSC) and UKHSA, formerly Public Health England (PHE)

131. MoJ and its Executive Agencies worked closely with DHSC and UKHSA (formerly PHE) at ministerial and operational levels. These relationships were crucial to outbreak control in particular. The significant instances of cooperation have been detailed throughout the body of this statement.

The Home Office

132. HMPPS provides a small number of places for immigration detainees risk assessed by the Home Office as unsuitable for Immigration Removal Centres (IRC). Both the Home Office and MoJ attended cross-government groups during the pandemic, such as the COVID-O meetings, where they discussed papers and were assigned actions to complete. However, there was little overlap between the Home Office and MoJ in regard to testing and tracing policy.

133. In April 2020, MoJ and the Home Office agreed that Home Office Detention & Escorting Services (Immigration Enforcement) would not arrange transfers of immigration detainees from a prison where there was a notified COVID-19 outbreak.
134. As numbers of immigration detainees in prisons increased (to 583 in February 2021) MoJ worked to reduce the number of immigration detainees in the prison estate by working with the Home Office. As part of this, MoJ agreed a “Triple Lock” testing procedure with the Home Office. This consisted of detainees being tested twice and isolated prior to transfer as well as on arrival at an IRC (under a process known as Reverse Cohorting). For this, I exhibit a submission to the Secretary of State and Prisons Minister here: **[JG/175 – INQ000532484]**. By December 2021 the “Triple Lock” testing procedure had ceased to be practised and MoJ and Home Office officials worked together to agree a new testing protocol which included a voluntary LFT 24 hours before transfer. I exhibit the email chain concerning the above protocol here: **[JG/176 – INQ000532550]**.
135. On 22 February 2022, the Lord Chancellor attended a COVID-O meeting that discussed COVID-19 mitigations in Immigration Removal Centres. The paper for the meeting was put forward by the Cabinet Office, with input from the Home Office, MoJ, UKHSA and Department of Health. The paper discussed capacity issues in IRCs due to prevention and control measures. Ministers were asked to decide how COVID-19 could be best handled in IRCs, given the need to use more detention spaces to meet the Prime Minister’s illegal migration goals. Options included assessing individuals who self-declared symptoms associated with COVID-19 who refused to test and who had no signs of a fever and isolating them for 10 days before removal, to mitigate the risk of transmission aboard an aircraft. The Home Office also proposed to cease the testing of detainees on arrival, day five and twice weekly, instead only carrying out testing during a significant outbreak. Ministers were asked to agree to this change. Similarly, close contacts of those who had tested positive for COVID-19 were identified and entered 10 days of precautionary self-isolation. The Home Office proposed to no longer identify close contacts and isolate individuals. Ministers were asked to agree this change. The Home Office were assigned actions to further develop this paper and assess the risk of the proposals. I exhibit the draft paper on IRCs here: **[JG/177 – INQ000532608]**. I exhibit the action points from the meeting that took place on 22 February 2022 here: **[JG/178 – INQ000532591]**. A subsequent COVID-O was

scheduled but then cancelled. The COVID-O papers were discussed between MoJ and UKHSA and a subsequent paper entitled 'UKHSA Testing in OGD High Risk Settings' was developed. I exhibit this here: [JG/179 – INQ000532596]. The paper advised that discussions between UKHSA and the Home Office had recently concluded that reduced Reverse Cohorting was possible providing testing was maintained . A further COVID-O meeting took place on 29 March 2022 which discussed testing and guidance. The committee agreed that DHSC would fund and provide testing in a small number of other high-risk settings and would work with relevant other government departments to provide appropriate testing regimes. I exhibit the actions and decisions from this meeting here: [JG/180 – INQ000532602].

The Crown Prosecution Service (CPS)

136. MoJ, and more specifically, HMCTS worked closely with the Crown Prosecution Service (CPS) during the pandemic. Both organisations were members of cross-government and judicially led working groups including CJSSC, the 'Restarting Jury Trials in the Crown Courts' working group, the "Increasing hearings in the Magistrates' Court" working group and the 'Youth Justice Recovery Working Group'. HMCTS' Governance and Assurance team met with CPS officials during the pandemic to discuss issues such as entry into buildings, CPS risk assessments of courtrooms, application of cleaning standards across buildings and face coverings in buildings. When HMCTS was developing its testing strategy, they considered all the users that came into court buildings, which included those working for the CPS.

HM Prison and Probation Service

137. HM Prison and Probation Service is an Executive Agency of MoJ, and details of the decisions and events taken by MoJ and HMPPS have been detailed throughout this statement.

The private sector, including Serco, G4S and other private bodies contracted to provide services in prisons and YOIs

138. HMPPS worked with private sector providers to administer testing in prisons, such as Optima Health to ensure that front line health provision was not depleted. The testing

of staff and service users within private prisons was captured as part of the strategies for testing developed and implemented by HMPPS. Private prisons ran in line with public prisons.

Border Force

139. There is no evidence of significant engagement at official level with Border Force, regarding issues of testing and tracing.

STATUTORY RULES, REGULATION AND ENFORCEMENT

140. The legislative response to the COVID-19 pandemic was contained in part in primary legislation, the Coronavirus Act 2020, and in part in secondary legislation, in regulations laid under the Public Health (Control of Disease) Act 1984. The former was a product of cross-Whitehall working led by the DHSC as the lead government department, with MoJ leading on provisions directly relevant to its areas of responsibility. The latter, as Statutory Instruments, were laid by the lead government department responsible for the Statutory Instrument in question. This was principally the DHSC in relation to the COVID-19 regulations in England, and the Welsh Government in relation to the COVID-19 regulations in Wales.

Choice of emergency legislation

141. MoJ participated in the WR process of proposals from other Government departments relating to the use of the justice system for enforcement. As outlined in paragraph 10, the WR process is one of the means by which collective decisions are taken at cabinet committee level. The responsible minister for the policy proposal writes round to the members of the cabinet committee to seek their clearance (or approval) for a given proposal. The WR takes the form of a letter from the responsible minister to the chair of the relevant cabinet committee, accompanied by a WR pro forma. I exhibit the guidance for collective agreements and the WR process here: **[JG/181 – INQ000147703]**.
142. Where a new policy proposal involves the creation of a new criminal offence or the amendment of an existing offence, government departments are requested to consider

engaging with MoJ on the content and implications of these changes at an early stage, in line with cross-government guidance. This guidance confirms that MoJ will scrutinise the creation of new offences and their impact on the justice system, through the Home Affairs Committee WR clearance process. The Home Affairs Committee is a cabinet committee chaired by the Chancellor of the Exchequer with the purpose of supporting collective agreement of matters relating to the implementation and delivery of domestic and economic policy. The Lord Chancellor is a member of the committee. Although the guidance makes specific reference to the Home Affairs Committee WR process, the WR process (as outlined above) can be used by any cabinet committee. In relation to the response to COVID-19, the WR process was used by the cabinet committees on which the Lord Chancellor was represented. I exhibit the guidance on this issue here: **[JG/182 – INQ000147699]**.

143. The JIT process usually takes around eight weeks from the time of receipt acknowledged by MoJ, so as to allow sufficient time to properly consider the proposals. Once in receipt of the JIT, the JIT team then circulates to a range of analytical, operational, and policy colleagues across MoJ who provide comments to the team on the potential impact of the proposals on their areas of work. The JIT team considers the responses received and provides an assessment to the proposing Government department, including how any anticipated costs to the justice system resulting from the proposals should be managed. The presumption, in accordance with HM Treasury's Managing Public Money guidance, is that the proposing Government department will meet any additional costs or new burdens (the 'polluter pays' principle). JITs are primarily a financial planning tool to assist MoJ to identify, quantify and cost financial impacts on the civil and criminal justice system. JITs are not a 'gateway' to agreeing the appropriateness or otherwise of an offence. Rather, JITs follow on from and are concurrent to engagement with officials at MoJ as part of the routine policy development process and engagement with other Government departments. I exhibit MoJ's Justice Impact Test Guidance here: **[JG/183 – INQ000147698]**. I also exhibit the template JIT form here: **[JG/184 – INQ000147653]**.

144. MoJ received JITs in relation to the Coronavirus Act 2020 and some (but not all) of the COVID-19 regulations in England. In some cases, the JITs were submitted retrospectively after legislative changes had already come into force. JITs should be normally completed before a proposed policy is implemented, at a stage when it is

sufficiently finalised that there will be no significant changes which affect the cross-Government process. This is most likely after consultation between the proposing Government department and other Government departments. MoJ recommends that JITs are completed before WRs (which are considered further below). However, it was reasonable in the circumstances for the proposing Government department to submit JITs after WRs. This is so long as the proposing Government department can commit to funding any costs that MoJ may incur as a result of late implementation. Retrospective receipt after legislative changes is unusual and reflects the unprecedented challenges officials faced during the pandemic.

145. MoJ was sent three JITs relating to self-isolation enforcement in the Coronavirus Act on 6 April 2020. Nothing further was received after this date. The three JITs were all sent retrospectively, after the Coronavirus Act had received Royal Assent:
146. DHSC sent a JIT about measures which gave the Secretary of State, immigration officers and constables the power to 'direct or remove people to hospital or other suitable place to ensure that they are screened and assessed for coronavirus', and which allowed the Secretary of State to 'impose a number of different requirements on people who may be infected, and who may therefore infect others, including to stay in isolation'. I exhibit the JIT here: **[JG/185 – INQ000147635]**.
147. A JIT completed by the Home Office detailed measures which gave power to immigration officers and constables 'to direct or remove people to hospital or other suitable place to ensure that they are screened and assessed for coronavirus and to keep them there for a limited period for that purpose. Constables would also have powers to enforce decisions of the Secretary of State to remove people to or detain people at a hospital or other suitable place'. I exhibit the JIT here: **[JG/186 – INQ000147637]**.
148. MoJ was sent a JIT completed by the Department of Culture, Media and Sport (DCMS) which detailed powers given to the Secretary of State 'to give a direction to prohibit or restrict events or gatherings to prevent, protect against, control or provide a public health response to the incidence or the spread' of COVID-19 and 'to give a direction to close premises or impose restrictions on persons entering or remaining inside premises'. I exhibit the JIT here: **[JG/187 – INQ000147638]**.

Coronavirus Act 2020

149. The decision to pursue freestanding emergency legislation in the form of a Coronavirus Bill was made at a COBR meeting on 18 February 2020 attended by Minister Frazer. At the meeting, ministers agreed to the development of policy and draft legislative provisions which could be brought forward in emergency legislation. The rationale, timing, and possible requirements of the proposed emergency legislation were outlined by the Cabinet Office in a briefing paper and annex circulated by email in advance of the meeting. I exhibit the email here: **[JG/188 – INQ000147591]**. I also exhibit the attached briefing paper here: **[JG/189 – INQ000258629]** and the annex here: **[JG/190 – INQ000087257]**. The post-meeting record of actions and decisions reflects the decision of ministers to develop the proposed emergency legislation led by the DHSC as part of Reasonable Worst Case Scenario Planning. I exhibit this here: **[JG/191 – INQ000258334]**.
150. At a further COBR meeting on 2 March 2020, ministers agreed to proceed with preparation for a proposed freestanding Coronavirus Bill to be led by the DHSC, as reflected in the post-meeting record of actions and decisions which I exhibit here: **[JG/192 – INQ000106144]**. The proposed content of the Bill and the timing for its introduction had been outlined in a briefing paper prepared by the DHSC and in an annex of proposed legislative clauses which I exhibit here: **[JG/193 – INQ000052269]** and **[JG/194 – INQ000052276]**. The inception for the Bill came from the Department of Health⁵ and the Cabinet Office as part of operational planning following a February 2017 meeting of the National Security Council (Threats, Hazards, Resilience and Contingencies) Committee.
151. Government departments, including MoJ, were asked to identify clauses for inclusion in the new Coronavirus Bill relating to their respective department's operational areas. The steer provided in the briefing paper to which I have already referred is that there was a need to limit and, where possible, reduce the number of provisions. Government

⁵ The Department of Health was renamed to the Department of Health and Social Care in 2018.

departments were asked to provide assurance that the proposals were necessary for inclusion in the Bill, that there was no other route through which these measures could be achieved, and that they could be prepared in time.

152. The response on behalf of the Lord Chancellor was co-ordinated within MoJ by the DOC Secretariat. Consideration was given to the existing provisions in the then-draft Pandemic Influenza (Emergency) Bill, their impact and readiness, as well as the need for any additional clauses in order to fully respond to the risks posed by the pandemic.
153. The final decision on what provisions the Coronavirus Bill would contain, when it should be introduced, and its parliamentary handling were for the Parliamentary Business and Legislation (PBL) Committee, a cabinet committee of which the Lord Chancellor was not a member. The forms for clauses contained in the Coronavirus Bill as it entered into the House of Commons were completed and provided to MoJ retrospectively and in stages, see, for example, **[JG/195 – INQ000147632]** which confirms receipt of some JITs in May 2020. Copies of all JITs received in respect of the Bill are exhibited with this statement: **[JG/196 – INQ000147633, JG/197 – INQ000147634, JG/185 – INQ000147635, JG/198 – INQ000147636, JG/186 – INQ000147637, JG/187 – INQ000147638, JG/199 – INQ000147639 and JG/28 – INQ000147640]**. Dates on which they were received are set out in the chronology that accompanies this witness statement.
154. Work on the Bill continued at pace, with DHSC pursuing a fast-tracked passage in order to achieve Royal Assent by 31 March 2020, ahead of the then-anticipated peak of the virus.
155. The Coronavirus Act 2020 received Royal Assent on 25 March 2020.
156. The Coronavirus Act 2020 was subject to parliamentary review every six months to consider whether the temporary provisions contained within the legislation ought to be maintained. MoJ was consulted about the retention of those clauses which it had proposed ahead of each statutory review period until the expiry of the temporary provisions within the Act.

Exemptions to enforcement of self-isolation periods

157. MoJ ensured that, where necessary, exemptions to the COVID-19 regulations included individuals delivering essential services in relation to its core operational areas: prisons, courts, and probation. For example, on 19 July 2021, at a COVID-O meeting attended by the Lord Chancellor, ministers considered a proposal by the DHSC to make use of the existing “reasonable excuse” provision in the Health Protection Regulations to exempt fully vaccinated close contacts of a positive case from the self-isolation requirements to be able to perform work in critical elements of infrastructure. The proposed exemption was subject to meeting a series of conditions including that the loss or compromise of the critical infrastructure could result in major detrimental impact on the service; and/or significant impact on national security, national defence or functioning of the state. In MoJ’s portfolio, prisons met this criterion. The proposals were summarised in a briefing document for the Lord Chancellor ahead of his attendance at COVID-O, which advised that HMPPS were supportive of the proposals. I exhibit this here: **[JG/200 – INQ000147683]**. Ministers agreed to the approach, to provide, in very limited circumstances, the ability for departments to identify fully vaccinated contacts who may have a reasonable excuse to leave self-isolation to carry out critical roles ahead of 16 August 2021 when the exemption came into force. This included prisons and Approved Premises. I exhibit the post-meeting record of actions and decisions here: **[JG/201 – INQ000065404]**. Similarly, MoJ secured an exemption for international prisoner escorts from both the self-isolation requirements in the International Travel Regulations, which has been discussed above (please see paragraphs 33, 34, 36, 38 as well as 164 below), and from the mandatory testing requirements as outlined in the DHSC briefing paper, which I exhibit here: **[JG/202 – INQ000147672]**.
158. There was a limited exemption to the Public Gatherings Regulations for funeral attendance. MoJ did have some, limited, involvement in the Government’s response to concerns raised by the death management sector about the exemption from enforcement of the COVID-19 regulations to enable attendance at the funeral of a close family member. MoJ was a member of the cross-Government COVID-19 Death Management Programme in which MoJ worked alongside, and was consulted by, the Cabinet Office, and other members, on the development of regulatory policy on matters concerned with death management, which included funeral attendance, and

to disseminate updates about the application of COVID-19 regulations and guidance to the funeral sector.

159. MoJ did not give consideration to seeking to secure exemptions for those outside of its responsibility from the enforcement of the COVID-19 regulations.

REGULATIONS, ENFORCEMENT MECHANISMS AND OUTCOMES

160. 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 in relation to the facts of the particular offending. 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.
161. 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 independent judiciary or the police.
162. HMCTS' role in the enforcement of the COVID-19 Regulations in both England and Wales consisted principally of preparing and disseminating guidance to justices' legal advisers in magistrates' courts 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.
163. MoJ was consulted regarding proposed legal penalties for breaches of the COVID-19 regulations as part of the WR process. I set out below the circumstances in which MoJ

was consulted by reference to (i) legal penalties for breaches of restrictions on travel, (ii) legal penalties for organising or facilitating public gatherings of over 30 people, house parties and indoor raves and (iii) legal penalties for failing to self-isolate. I am not aware of any consideration being given to alternatives to creating criminal offences or FPNs beyond what is set out in this statement.

Fixed penalty notices (FPNs)

Legal penalties for breaches of restrictions on travel

Legal penalties for incoming travellers who fail to provide contact information or who fail to self-isolate

164. Ahead of a GPSMIG meeting which took place on 7 May 2020, the Lord Chancellor was provided with a briefing paper prepared by the Home Office outlining proposals to introduce additional public health measures at the UK border to reduce the risk of imported cases of COVID-19. I exhibit this here: **[JG/203 – INQ000083546]**. The measures included (i) the mandatory collection of data for arriving travellers to provide their route of travel and contact details in support of contact tracing, and (ii) the introduction of a mandatory 14-day self-isolation for incoming travellers at a location they specify. The briefing paper reflected discussions in the preceding days with MoJ and other government department officials in relation to the proposed list of exemptions to the measures. The Lord Chancellor was briefed on the Home Office proposals and advised that MoJ had secured provisional agreement to exempting from the measures HMPPS staff who travel as part of an international prisoner escort. In support, I exhibit the agenda for the GPSMIG meeting here: **[JG/204 – INQ000147622]**. An exemption was subsequently also secured for travellers from the Crown Dependencies. I exhibit an email exchange on the above issue here: **[JG/205 – INQ000147629]**. Furthermore, I also exhibit a presentation on the same topic here: **[JG/206 – INQ000147630]**. Subsequently international prisoner escorts were exempted, please see paragraphs 33, 34, 36, 38 and 157 above for further information on international prisoner escorts.
165. On 7 May 2020, the DHSC circulated by email draft policy instructions in support of the proposed data collection and self-isolation measures for comment by Government

departments, including MoJ. I exhibit the email **[JG/207 – INQ000147623]**, the draft policy instructions **[JG/208 – INQ000147624]**, and the annex **[JG/209 – INQ000147625]**. The measures were to be given legal effect through the laying of new regulations under the Public Health (Control of Disease) Act 1984. The measures would be enforced through the introduction of new criminal offences for breaching the requirements contained in the regulations.

166. The DHSC sought input from the Home Office and MoJ in relation to the level and detail of the proposed penalties, and the possibility of appealing the penalties. The DHSC envisaged similar penalties to those in place for offences under the Health Protection Regulations: the imposition of a fine on conviction by a magistrates' court, or the issue of a FPN by police varying from £30/£60 for a first offence and rising to £960 for third and subsequent offences.
167. MoJ was asked to provide its views by the end of the day. The response provided by colleagues within the Criminal Law Policy team is contained within the email of the Head of Criminal Law Policy dated 7 May 2020 timed 17:19, which I exhibit here: **[JG/210 – INQ000147627]**. MoJ colleagues considered that the maximum level of penalties was a matter for DHSC (as the lead government department on the regulations) but recommended that the levels be aligned with levels of FPNs for offences under the Health Protection Regulations for social distancing measures.
168. At the same time, a cross-government working group was established to coordinate work on the draft regulations. MoJ officials attended the first meeting held on the afternoon of 7 May 2020. The outcome of that meeting, as well as the subsequent actions and discussions that took place on the issue of a draft penalty regime for breaches of the regulations is set out in email correspondence between MoJ, the Home Office, and other Departmental officials between 7 May and 18 May 2020, which I exhibit here: **[JG/211 – INQ000147643]**. At the conclusion of the working group's first meeting, Home Office colleagues circulated by email a draft penalty regime for breaches of the regulations, which is exhibited here: **[JG/212 – INQ000147628]**. A summary of the meeting and the actions resulting from it appears in an email sent on 7 May 2020 timed 18:59. The email was responded to on 11 May 2020 on behalf of the Prime Minister's Office indicating the Prime Minister's preference to look at the

extent to which higher penalties could be imposed for breaches of the regulations on the grounds of deterrence.

169. On 12 May 2020, the Home Office requested advice from MoJ by the end of the day as to the level of proposed penalties. MoJ legal and policy officials provided advice to the Home Office on the same date.
170. On 18 May 2020, the proposed measures were considered again by ministers at a GPSMIG meeting. The briefing paper prepared by the Cabinet Office ahead of the meeting invited ministers to agree in relation to enforcement that compliance would primarily be self-policed relying on a statutory requirement to self-isolate with an associated criminal offence. I exhibit this briefing paper here: **[JG/213 – INQ000147642]**. Ministers were asked to adopt the recently revised penalties for breaching the social distancing measures but to keep those levels under review as the risk for transmission from new arrivals grew.
171. At the conclusion of the meeting, the Home Office was asked to carry out a legal risk assessment for setting the FPN for breaches of the proposed measures at £10,000 for first and subsequent offences. MoJ officials took part in a telephone call on the same day with Home Office colleagues. MoJ lawyers and Home Office lawyers took part in that call. A summary of the call was subsequently circulated by email; that email is not exhibited to this statement because it is privileged in its entirety.
172. The Health Protection (Coronavirus, International Travel) (England) Regulations 2020 (“International Travel Regulations”) entered into force on 8 June 2020. Regulation six created a number of new criminal offences relating to self-isolation and the provision of contact information. In relation to contact information, it was a criminal offence to: (i) fail to provide the information required in a passenger locator form without a reasonable excuse (regulation 6(1)(a)); and (ii) to intentionally or recklessly provide false or misleading passenger information (regulation 6(3)) (together “the information offences”). All of the offences were punishable on summary conviction by an unlimited fine.
173. As an alternative to prosecution, regulation seven authorised the issue of an FPN. The level of FPN depended on the nature of the requirement breached. Where a FPN was

issued for an information offence, the level was variable rising from £100 for a first offence to £3,200 for a sixth and subsequent offence. Where a FPN was issued for a self-isolation offence, the level was set at £1,000 irrespective of the number of times an offender had committed the offence.

174. In December 2020, MoJ was consulted on a proposal by the DfT to increase the level of FPNs for providing false information on a passenger locator form to £500 for a first offence, increasing to £4,000 for the fourth and any subsequent offences. MoJ officials met with DfT officials on 17 December 2020 to discuss the likely impact of increased FPN levels on the courts and the effectiveness of the FPNs acting as a deterrent. MoJ advised that the proposed increase in the level of FPN carried the risk that individuals would decline to pay, preferring instead to be prosecuted and fined by a magistrates' court which, in setting the level of fine, would have regard to the individual offender's circumstances. MoJ further advised the DfT to complete a JIT for the proposals in order to assess the impact on the courts (for example, when an individual did not or could not pay an FPN). A summary of the meeting between MoJ and DfT officials is contained within an internal MoJ email exchange on 17 December 2020 timed 14:21, which forms part of the email correspondence on this subject in exhibit **[JG/214 – INQ000147665]**.
175. The International Travel Regulations were amended with effect from 18 January 2021, setting the FPN levels for the information offences at the increased rates proposed by the DfT. A JIT in respect of the 18 January amendment to the International Travel Regulations was submitted retrospectively by DfT on 30 March 2021. The accompanying email is exhibited here: **[JG/215 – INQ000147678]** and the JIT itself is exhibited here: **[JG/216 – INQ000147679]**. HMCTS responded to the JIT to raise concerns that there would be a significant increase in the number of FPNs and prosecutions and therefore a significant impact on HMCTS in the short-term (particularly as international travel restrictions lifted and passenger numbers increased) this email exchange is exhibited here: **[JG/217 – INQ000147684]**. Following this, MoJ had no further input.

Use of existing criminal offences to prosecute individuals who lie on a passenger locator form by concealing their travel to a red list country prior to arrival in the United Kingdom

176. On 9 February 2021, the Secretary of State for Health and Social Care announced in Parliament that “anyone who lies on a Passenger Locator Form and tries to conceal that they’ve been in a country on our red list in the 10 days before arrival here, will face a prison sentence of up to 10 years”. This oral statement is exhibited here: **[JG/218 – INQ000147702]**. MoJ was not consulted prior to the announcement about the statutory provisions that may result in imprisonment for lying on a passenger locator form. In an ideal world, MoJ would have been consulted on this prior to the announcement. It is my understanding that the reason MoJ was not consulted in advance was due to the pace at which this change was developed and implemented. The Lord Chancellor raised this issue directly with the Secretary of State for Health and Social Care on 10 February 2021. Unfortunately, there is not a formal readout of that conversation, with the only feedback a short email which I exhibit here: **[JG/218a INQ000592535]**. The email suggests that the Secretary of State for Health and Social Care was under the impression that his officials had consulted with MoJ. Subsequent enquiries carried out within MoJ confirmed that this was not the case, and I exhibit **[JG/221 – INQ000147671]**, which is a brief to the Lord Chancellor following those enquiries.
177. Following this announcement, on the morning of 10 February 2021, the Cabinet Office contacted colleagues in the Home Office, the DHSC, and MoJ by email to seek urgent advice to brief the Prime Minister ahead of Prime Minister’s Questions on the applicable legislation and penalties for those who deliberately lie on the passenger locator form. The email chain is exhibited here: **[JG/219 – INQ000147670]**.
178. MoJ officials spoke with DHSC officials later that morning about the scope of the applicable legislation and existing penalties. DHSC officials wished to reach an agreed view on the applicability of the Forgery and Counterfeiting Act 1981 and/or the Fraud Act 2006 for individuals who lie on a passenger locator form by concealing that they have been in a red list country prior to their arrival in the UK. The email chain is exhibited here: **[JG/220 – INQ000147669]**.

179. The Lord Chancellor was advised by officials that the Forgery and Counterfeiting Act 1981 was unlikely to apply as it does not generally extend to the provision of false or misleading entries in a genuine document, such as the passenger locator form. The conduct could potentially amount to offences under the Fraud Act 2006, in particular fraud contrary to section 1, fraud by false representation contrary to section 2 or fraud by failure to disclose information when there is a legal obligation to do so contrary to section 3. Other legislative provisions were considered not to apply. The Lord Chancellor was further advised that the maximum sentence for the identified offences under the Fraud Act 2006 was 10 years' imprisonment, but that the sentencing court would have regard to the individual circumstances of an offender and the sentencing guidelines. I exhibit the note of the advice provided to the Lord Chancellor here: **[JG/221 – INQ000147671]**.
180. The Lord Chancellor had further discussions with the Attorney General and Secretary of State for Health and Social Care on this issue.
181. MoJ officials spoke with officials from the DHSC, the Home Office, and the Cabinet Office on 11 February 2021 to clarify the options for prosecuting individuals who provide false information on a passenger locator form by concealing that they have been in a red list country in the ten days prior to their arrival in the United Kingdom. A summary of the outcome of that call was circulated by the DHSC by email dated 11 February 2021 timed 10:59. I exhibit this here: **[JG/222 – INQ000147673]**.

Legal penalties for organising or facilitating public gatherings of over 30 people, house parties and indoor raves

182. On 12 August 2020, the Secretary of State for the Home Department⁶ issued a WR, which was copied to the Lord Chancellor, outlining a proposal to create two additional steps to strengthen enforcement of social distancing measures and to target those who are suspected of committing the most flagrant breaches. I exhibit this here:

⁶ The Home Secretary's formal title is Secretary of State for the Home Department. The Home Office is also known as the Home Department and is referred to as such in some official papers, including parliamentary publications.

[JG/223 – INQ000147650]. These were first, the introduction of a new offence for organising or facilitating unlawful gatherings of over 30 people, with authority to issue a FPN of £10,000 for breach, and second, laddering the level of FPN issued for subsequent breaches of the Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, and the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 (together the “Face Covering Regulations”) up to a maximum of £3,200.

183. In its response, MoJ expressed its broad support for the principle of using FPNs as penalties for breaches of the Regulations but raised two issues, which were similar in nature to those regarding the level of FPNs proposed for legal penalties for breaches of the International Travel Regulations and their likely effectiveness and proportionality. MoJ informed the Home Office that the Lord Chancellor had agreed to the proposals given the impending announcement but that his support was conditional on completion of a JIT that assessed *“the realistic impact on our courts, engages with our assessment of compliance levels, tackles legal aid impacts and is accompanied by an equalities impact test of the policy alongside this advice and a commitment that any justice costs incurred are refunded from the Home Office”*. The email chain is exhibited in [JG/224 – INQ000147654].

184. A JIT was prepared by the Home Office on 26 August 2020, which estimated that approximately 20-30 FPNs would be issued for the offence of organising or facilitating an unlawful gathering of over 30 people over the course of a single year. I exhibit this JIT here: [JG/225 – INQ000147651]. The anticipated number of cases was assessed to be low because of the targeted nature of the offence and the previous success of police forces in dispersing large gatherings and applying the 4Es model (engaging, explaining, encouraging, and enforcement) without the need to progress to enforcement. The likely deterrent effect caused by the measure was given prominence: the offence aimed to *“provide a useful deterrent effect to those who are currently breaking the law, as well as acknowledging that actively facilitating others to break the law by holding an illegal gathering is a more serious offence to merely participating and poses considerable public health risks.”* The scope was said to be *“targeted and limited, as the exemptions in the Regulations are comprehensive.”* The JIT was circulated within MoJ on 10 September 2020, with responses due by 30 September 2020. I exhibit this here: [JG/226 – INQ000147690]. MoJ subsequently

responded to the JIT on 23 February 2021 agreeing that there would be a minimal impact on the justice system and the following day, the Home Office confirmed they would fund any downstream costs to the justice system. This confirmation is contained in an email from the Home Office which I exhibit here: **[JG/227 – INQ000147674]**.

185. An Equality Impact Assessment (EIA) was carried out by the Home Office and shared with DHSC. MoJ, alongside other government departments, was copied into the email to DHSC which I exhibit as **[JG/228 – INQ000058172]**. The EIA highlighted that young males from a Black and Minority Ethnic(BAME) background were most likely to be impacted by the proposals and, amongst other things, set out a number of mitigation measures. The EIA was shared with MoJ with a short timeframe for any comments to be shared. To the best of my knowledge, MoJ did not respond to this EIA specifically, rather in relation to the JIT.
186. On 28 August 2020, the Health Protection (Coronavirus) (Restrictions on Holding of Gatherings and Amendment) (England) Regulations 2020 entered into force. They inserted a new regulation 5A into the principal Health Protection Regulations criminalising the organisation or facilitation of large indoor gatherings and gatherings of more than 30 people. Regulation 9(6) authorised the issue of a FPN of £10,000 for breach.
187. On 21 January 2021, the Secretary of State for the Home Department announced the introduction of a new £800 FPN for those attending house parties (defined as indoor gatherings of more than 15 people), with the level of FPN doubling for repeat offences to a maximum level of £6,400. The announcement was made following discussion with and the agreement of the Lord Chancellor. The Lord Chancellor raised concerns about the level of the FPN, which at £800 for a first offence was higher than the majority of FPNs issued under other COVID-19 regulations and wished to introduce an early payment option that would halve the amount to be paid if payment was made within 14 days. The concerns are outlined in a briefing to the Lord Chancellor which I exhibit here: **[JG/229 – INQ000147666]**. Agreement was subsequently reached with the Secretary of State for the Home Department to allow for an early payment discount. This was given legal effect in the Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021, regulation 14 with effect from 29 March 2021.

188. On 25 January 2021, Home Office colleagues sought the views of MoJ and other Government departments on a proposal to extend the scope of the regulations to include indoor raves (defined as indoor gatherings of 20 or more people who trespass on land) such that attendance would be subject to the same FPN regime as house parties. MoJ informed the Home Office that the Lord Chancellor agreed with the proposal on condition that the early payment scheme available for FPNs issued for house parties was also extended to FPNs for indoor raves to maintain parity and *“on the basis that it will likely lead to greater payment rates and reduce pressure on the courts.”* The Lord Chancellor sought *“reassurance on the equalities impacts given his concern about disproportionality entering the justice system.”* The Lord Chancellor’s views were communicated in an email from his Private Secretary to the Home Office and other departmental colleagues dated 26 January 2021 timed 11:09. I exhibit that email chain here: [JG/230 – INQ000147667]. MoJ had no further involvement.

Legal penalties for failing to self-isolate

189. On 20 September 2020, the Secretary of State for Transport, the Secretary of State for the Home Department, and the Secretary of State for Health and Social Care circulated a WR (copied to the Lord Chancellor) outlining a proposed increase in the level of FPN for failing to self-isolate when an individual has tested positive for COVID-19. The level of FPN was an increase from the level agreed by ministers at the COVID-O meeting held on 18 September 2020, to which the Lord Chancellor was not invited and did not attend. I exhibit this correspondence here: [JG/231 – INQ000147655]. The WR provided that the increase was at the request of the Prime Minister, with the level of FPN increased from £1,000 (as initially suggested) to a sliding scale up to a maximum of £10,000 for multiple breaches. At the same time, the level of FPN for those who breached the self-isolation requirements in the International Travel Regulations would also be increased in alignment.
190. On 22 September 2020, the Prime Minister announced new measures to restrict the transmission of COVID-19 including expanded requirements to wear face coverings and increased penalties of up to £10,000 for those who continued to breach this requirement. This public announcement was made before any engagement with MoJ. In an ideal world, MoJ would have been consulted on this prior to the announcement. I have not seen any evidence that MoJ raised this with DHSC or others. A day later,

DHSC shared with MoJ, Home Office, and Cabinet Office colleagues a draft FPN proposal which I exhibit here: **[JG/232 – INQ000147657]**. DHSC requested comments on the approach to FPNs, including the number and definition of the different thresholds, whether repeat offences should see an increase in FPN levels, and any additional example breaches. For this I exhibit: **[JG/233 – INQ000147656]**. Responses were sought by the end of the day.

191. MoJ responded on 23 September 2020 in an email timed 17:12, which I exhibit as **[JG/234 – INQ000147659]**. In its response MoJ referred the DHSC to the advice it had previously given the Home Office on setting the level of FPN. MoJ reiterated that from a policy position a balance needs to be struck between a high FPN being a deterrent, and the FPN being so high that it is worth risking a prosecution in court to secure a fine which reflects the offender's means. The response also noted that a scaled approach seemed sensible, but that this would put a strong burden on those issuing FPNs to decide the appropriate level of FPN and that this could open the door to further challenge (i.e., opting to go to court because the individual believed their behaviour was lower risk). MoJ advised that clear guidance was needed to avoid challenges. In further responses on 24 September 2020, MoJ officials gave more detail as to the FPN process and considerations. This is exhibited here: **[JG/235 – INQ000147658]**.
192. On 26 September 2020, the Minister for Small Business, Consumers and Labour Markets circulated a WR outlining a prospective new regulation making it a criminal offence for employers to require individuals who should be self-isolating to work outside the home. I exhibit the WR pro forma here: **[JG/236 – INQ000147660]**. The offence would be punishable by a FPN up to a maximum of £10,000 for multiple breaches. The FPN level was described as being in line with other fines for employers who breached the COVID-19 regulations. The Lord Chancellor was copied into the correspondence, which was sent for information only. I exhibit this here: **[JG/237 – INQ000147661]**. The proposal in the WR was given legal effect in the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 ("Self-Isolation Regulations"), which entered into force on the same date. The Self Isolation Regulations imposed a legal requirement to self-isolate for those who have tested positive for COVID-19 or who were identified by NHS Test and Trace as a close contact of a positive case and it criminalised employers of a self-isolating worker who

knowingly allowed the worker to attend work, punishable by a FPN from £1,000 to £10,000.

Single Justice Procedure (SJP)

193. 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.
194. 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. The evidence supporting the offence, and the duties of the prosecutor are the same, whatever means of prosecution is used. 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”. I exhibit this here: **[JG/238 – INQ000104037]**.
195. 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.

196. 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 (as far as HMCTS is aware) do not have the IT infrastructure in place to operate it.
197. 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.
198. The key benefits of the SJP, from the perspective of HMCTS, include the freeing up court time and facilities which allows 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 and travel commitment occasioned by having to attend court.
199. 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), 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. I exhibit that protocol here: **[JG/239 – INQ000104074]**.

200. 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.
201. 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. I exhibit that article here: **[JG/240 – INQ000104077]**. A further article titled "Common misconceptions on Single Justice Procedure" was published on 2 November 2021 and I exhibit that also: **[JG/241 – INQ000104076]**.

Guidance to Justices' Legal Advisers

202. The dissemination of amended or new legislation and regulations to the judiciary is not within HMCTS' purview. However, HMCTS employs justices' 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 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. 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. 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. Seven senior lawyers in Legal Operations (the Heads of Legal Operations and the Head of Legal and Professional Services) are authorised by the Chief Justice to direct legal advisers as to the advice they give magistrates and are independent of HMCTS when exercising this function.

203. 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.
204. In order to meet the challenges presented by the COVID-19 pandemic, a JCS COVID-19 team comprising one senior 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. The guidance, as outlined below, included guidance related to testing, tracing, and isolation.
205. On 17 March 2020, JCS sent out early legal and procedural advice for legal advisers on the pandemic and I exhibit this here: **[JG/242 – INQ000104038]**.
206. 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.

207. 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. I exhibit this here: **[JG/243 – INQ000104039]**.
208. 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. I exhibit that guidance here: **[JG/244 – INQ000104041 and JG/245 – INQ000104042]**. It was updated multiple times, and the below table outlines when those updates took place. For each, I exhibit the updated guidance too:

Date guidance was updated	Exhibit of that guidance
May 2020 (a “short guide”)	[JG/246 – INQ000104048]
June 2020	[JG/247 – INQ000104049 and JG/248 – INQ000104050]
August 2020	[JG/249 – INQ000104054]
December 2020	[JG/250 – INQ000104060 and JG/251 – INQ000104061]
February 2021	[JG/252 – INQ000104063]
March 2021	[JG/253 – INQ000104066]
August 2021	[JG/254 – INQ000104072 and JG/255 – INQ000104071]

Other early newsflashes and guidance relevant to coronavirus related offences in the magistrates’ courts included a newsflash of 26 April 2020 entitled “Coronavirus offences, removal of “changed mind” defence and other amendments in England”, I exhibit that here: **[JG/256 – INQ000104043]**.

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

209. 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 (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.

210. 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 had either not been paid or were contested. The meeting explored two enforcement options: use of the SJP, which was ultimately preferred, and Proceeding in Absence (PIA). I exhibit the stakeholders' meeting brief here: **[JG/257 – INQ000104045]**. Alongside this, I also exhibit the minutes and actions of the 5 May 2020 meeting **[JG/258 – INQ000104044]** and the minutes and actions of the 6 June 2020 meeting **[JG/259 – INQ000104046]**.
211. 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.
212. The SJP was the mechanism preferred by all the stakeholders. The benefits in the context of the pandemic 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; and increased capacity for the magistrates' court to also list more serious offences, including those involving high harm and vulnerable complainants and witnesses.

213. 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).
214. 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. For example, the notes and action points from a meeting between CPS, HMCTS, ACRO and National Police Chief's Council on 12 May 2020 are exhibited here: **[JG/260 – INQ000104047]**.
215. 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.
216. 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).
217. 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. I exhibit this guidance here: **[JG/262 – INQ000104053]**.

Accompanying this was a newsflash which I also exhibit here: **[JG/261 – INQ000104052]**.

218. 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 which I exhibit here: **[JG/263 – INQ000104051]**.
219. 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.
220. 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).

PUBLIC MESSAGING

221. In answering this part of the request for information, I have interpreted this question as the Inquiry seeking to understand which Government department was responsible for communicating information to the public regarding the enforcement of COVID-19 regulations. This includes explaining the difference between non-legal guidance on restrictions on behaviour that did not carry criminal or civil penalties, and primary and secondary legislation with penalties for an alleged breach.

222. As indicated previously, MoJ was not the lead government department for any of the regulations and as such did not have the primary responsibility to communicate this information. MoJ will have utilised its communication channels throughout the pandemic to disseminate key COVID-19 updates to its staff, those who use our services, and people in our care. However, I have not provided details of this as it is my understanding that the Inquiry is not seeking these details at this stage. As a demonstration of the distribution of key messages within MoJ, on 14 April 2020, the Director General of Prisons, Phil Cople wrote to staff and prisoners regarding COVID-19 and I exhibit this email here: **[JG/263a – INQ000592519]**. The email was distributed to Prison Group Directors using the HMPPS Communications mailbox. Attached to the email was a message to be shared with staff discussing the challenges of the COVID-19 pandemic and managing the presenting risks and revealing that the NHS had made available testing for prison and probation staff. I exhibit this here: **[JG/263b – INQ000592520]**. This message was also cascaded via the HMPPS intranet. The email also included another attachment with a separate message for all prisoners in adult establishments with instructions to print the prisoner message in establishments as a Notice to Prisoners and distribute to every room and I exhibit that here: **[JG/263c – INQ000592521]**.
223. In relation to communications with the public on COVID-19 more generally, MoJ fed into a request from the Cabinet Office in May 2020 for a new, Government-wide process for all departments to follow when developing, updating, clearing, and publishing guidance relating to COVID-19 on GOV.UK. The Cabinet Office presentation on the guidance clearance process is exhibited here: **[JG/264 – INQ000224011]**. MoJ contributed on topics within its portfolio; for example, on prisons, courts, and tribunals
224. On 30 April 2021, MoJ responded to a cross-government commission from the Cabinet Office C-19 Taskforce for evidence for their social distancing review. I exhibit that response here: **[JG/265 – INQ000532513]**. The purpose of the review was to establish what needed to be in place to lift social distancing between family and friends, and in public and business settings. Government departments were asked for evidence relating to social distancing within each department's areas of responsibility. MoJ's response included concerns from HMPPS that "A difference in easing of restrictions in the community compared to prisons (i.e. a quicker relaxation of community restrictions)

could lead to stability issues, particularly in scenarios where social distancing needs to be reintroduced in response to an outbreak. This increases the risk to safety of staff, prisoners, and children in our care.” HMCTS stated: “Re-introducing measures can bring behavioural challenges where HMCTS users may become complacent and/or frustrated. Users can become aggressive towards staff when they are reminded to wear masks or socially distance. This can be expected this [sic] to increase if they are not required to do so elsewhere/the measures are reintroduced following a period of relaxation”. The additional information provided by HMCTS for the response is exhibited here: [JG/266 – INQ000532514].

LESSONS LEARNED

225. Primary responsibility for policy and regulations for TTI in England lay with DHSC, along with the Cabinet Office in its role of supporting the Prime Minister and ensuring the effective running of government. The MoJ provided input relating to the policy and operational implications of proposals from other government departments to respond to the pandemic and implemented this policy within its estate. MoJ maintained good communication with DHSC, PHE and PHW throughout.

Testing, tracing, and isolation

226. On 3 March 2021, a retrospective summary was sent to the HMCTS COVID-19 Board regarding an exercise that was held to review the lessons learned and highlight the successes following the implementation of the pilot test site at Manchester Civil Justice Centre. The summary of the retrospective included what worked well, the areas of improvements and the next steps. Examples of actions that worked well were:
- 226.1. Using a national risk assessment template for HMCTS on-site testing facilities, which had been used for wider rollout and shared with Other Government Departments.
- 226.2. Using a blended approach to booking, with scheduled slots and a ‘walk-in’ option.

- 226.3. Test participants providing qualitative feedback via a questionnaire at the end of the test and using the feedback to improve the site operation.
- 226.4. Close working with DHSC to ensure that specific groups, such as representatives of the legal profession, were clear about the scope of testing.
227. Examples of areas for improvement were:
- 227.1. The original site plan not providing for screens to be used. These were installed following anecdotal feedback from test operatives.
- 227.2. The registration process was laborious, so pre-registration on the NHS portal was encouraged.
- 227.3. Minimal uptake of testing service from professional court users, court clerks, security staff, cleaners, and court users.
228. The outcomes of the retrospective were used to inform the wider rollout of testing solutions within HMCTS. I exhibit a summary of the retrospective, including its objectives, what worked well and areas for improvement here: **[JG/267 – INQ000532485]**.
229. On 29 April 2020, HMPPS decided to commence Prison based research testing. Working with PHE and ONS, a plan was produced to research how to respond to outbreaks, similar to the studies for social care homes by DHSC. The proposal was for a subset of 30 prisons to participate in the study to capture symptomatic and asymptomatic data to understand prevalence and incidence of infection in a closed setting. The proposal/submission for the research and testing is exhibited as **[JG/268 – INQ000532426]**. Whilst the research would feed into a much larger Government programme of work, it would be highly beneficial to the selected establishments as test results would trigger protective isolation increasing the ability to keep staff and prisoners safe whilst informing how to manage the virus in prisons in the future. The Lord Chancellor approved, and testing began with data feeding into regime recovery plans. I exhibit an operational guidance document for the research and testing here: **[JG/269 – INQ000532428]**.

230. On 7 September 2020, HMCTS issued guidance for managing suspected and confirmed COVID-19 outbreaks. This is exhibited at **[JG/270 – INQ000532442 and JG/271 – INQ000532441]**. The guidance was built on lessons learned and provided clarification on what to do when people were symptomatic/positive including guidance on self-isolation timescales and when to arrange a test. It also included guidance for staff for actions to be taken if they were symptomatic or received a positive test result and their responsibility to report that.
231. On 15 April 2021, POMC agreed to extend the funding for Contact Tracing Leads (CTLs) in prisons. The CTLs were viewed as comparable to Test and Trace in the community and allowed HMPPS to isolate staff. Over the course of the pandemic the role expanded, and all aspects of the work significantly contributed to the reduction in both the number and the time taken in staff absences due to isolation. It was submitted that this work was of such high value that it needed to continue not only to embed mainstream testing into the 'business as usual' but to continue to achieve greater compliance with COVID-19 measures through various methods including testing and isolating. This role was granted funding for a further 6 months on 13 January 2022, with a possibility to extend to 12 months. I exhibit a submission detailing elements of the proposal for continued funding for CTLs in prisons here: **[JG/272 – INQ000532505]**. I also exhibit a PowerPoint presentation on the proposal for continued funding for CTLs in prison here: **[JG/273 – INQ000532507]**. Furthermore, **[JG/274 – INQ000532512]** exhibits minutes from the HMPPS Management Committee Meeting where the above is discussed, **[JG/275 – INQ000532581]** exhibits an agenda for a HMPPS Prisons Operational Management Committee dated 13 January 2022, **[JG/276 – INQ000532582]** exhibits a document setting out the role, continued funding and operation of Health Resilience Leads (formerly CTLs) in prisons, and **[JG/277 – INQ000532585]** exhibits minutes from a HMPPS Prisons Management Committee Meeting dated 13 January 2022.
232. On 21 September 2021, Parliament's Joint Committee on Human Rights published their report on the Government's response to COVID-19: Human Rights Implications, which I exhibit as **[JG/278 – INQ000075367]**. The report examined the use of contract tracing, privacy concerns and compliance with GDPR. The risks associated with manual contact tracing which was favoured by HMPPS were also discussed and it was

noted that as time had progressed changes had been implemented with this method, but concerns remained. The use of FPNs and SJP was also examined to ensure compliance with Human Rights.

233. Also on 21 September 2021, PRB discussed prisons recovery and moving away from the National Framework. Recovery progression was attributed to the continuation of adapting policies and guidance based on learning gained from ongoing monitoring to identify and limit local risk to prevent further outbreaks. Implementation of testing when transferring prisoners between green sites removed the requirement for Reverse Cohorting upon arrival, assisting with capacity issues in addition to supporting the wellbeing of those individuals in custody. I exhibit a decision paper from the Joint Strategic Policy Unit addressed to PRB detailing the future of the National Framework and Recovery here: [JG/279 – INQ000532532]. I also exhibit minutes from a PRB meeting dated 21 September 2021 here: [JG/280 – INQ000532535].
234. On 24 September 2021, the House of Commons Justice Select Committee published its report: COVID-19 and the Criminal Law. The report discussed that a central lesson from the COVID-19 pandemic was that future responses to pandemics needed to be cross-governmental from the outset, with MoJ having a greater oversight over the creation of criminal offences in response to public health emergencies, including pandemic. This would ensure the offences are proportionate and necessary, taking into consideration the impact on the wider justice system. The report also examined the inconsistent approach to drafting legislation, quoting an example of the isolation regulations not providing sufficient objective criteria to allow people to determine whether they were compliant with the rules. The enforcement of such offences was also observed as being challenging and that lessons should be learned going forward. A summary of the lessons to be learnt is available on page 3 of the report which I exhibit at [JG/281 – INQ000075337] and included *“a central lesson from our inquiry has been that the Government needs to ensure that the criminal law is fully considered within future pandemic planning. In addition to creating a public health crisis, the covid-19 pandemic has shown that pandemics can have an enduring impact on our criminal justice system and courts. Given the speed and scale with which the Government needed to create new regulations in response to the pandemic, in future it needs to have the requisite tools in advance to respond in a swift and proportionate manner that does not risk criminalising behaviour in ways incompatible with widely understood*

principles of the rule of law, and avoids any lasting damage to our criminal justice system”.

235. On 22 February 2022, the National Preventive Mechanism published its 12th annual report – Monitoring Places of Detention during COVID-19, which I exhibit as **[JG/282 – INQ000055782]**. It was reported that SCHs had adapted periods of isolation for newly admitted children based upon two negative test results at day one and day five. Should both have produced negative results, the isolation could end. It was widely reported that long term periods of isolation were significantly impactful upon children, therefore decisive action had been required to rectify this .

Legislation and regulations

236. The Inquiry has asked MoJ for the details of the impact of any lessons learned / reflections following from decisions made on penalties and enforcement, particularly with regard to the House of Commons Justice Select Committee report entitled “Covid-19 and the criminal law”. In the Government’s response to that report, MoJ accepted the Committee’s recommendation that guidance should be updated to highlight that other Government departments should be consulting MoJ as a matter of course when considering new, or amending existing, criminal offences or penalties. Reflecting this, guidance will include standard timeframes for responses and what to do in urgent situations. This updated guidance will be published in due course. Understandably, the process is more dynamic when measures are needed on an urgent basis and MoJ will continue to support other Government departments pragmatically in such instances, including by receiving retrospective JIT submissions, as occurred during the course of the pandemic.
237. The JIT guidance on GOV.UK is already clear that completing a JIT is a “mandatory specific impact test, as part of the impact assessment process that considers the impact of government policy and legislative proposals on the justice system. The guidance sets out for policy officials the steps they need to take when developing proposals to assess and quantify the justice impacts, so that these impacts can be anticipated and planned for at an early stage.” This includes the need to engage with MoJ “as early as possible” and that JIT forms should be “submitted as soon as the policy is broadly finalised (i.e. unlikely to substantively change)”. I exhibit the JIT

guidance here: **[JG/183 – INQ000147698]**. MoJ sought to engage constructively and swiftly with retrospective JITs during the pandemic. While it is usually the case that the longer MoJ has to plan for the potential impacts of a proposed policy, financial or otherwise, the better, JITs are not time sensitive. Receiving JIT submissions retrospectively for the Coronavirus Act 2020 was understandable given the pressures across Government at the early stages of the pandemic. In respect of the amended International Travel Regulations, because the likely volumes remained unknown, this meant that the costs to the justice system – and potential wider impacts to the justice system – remained unknown at the point of implementation too. That said, the timing of receipt of JITs does not have an impact on the wider policy development (such as the consideration of the appropriateness or otherwise of a proposed offence). During the pandemic, public health was the priority with costs, where possible, to be determined at later stages. In such cases, should the impact have been significant it would have been possible to recover funding based on actual impact.

238. By 22 September 2021, HMPPS PRB and POMC agreed that as part of the transition away from the National Framework, a new overarching policy would be created to replace the outbreak management and control guidance with a national response model for risk management setting out the roadmap for prison reform. The Joint Strategic Policy Unit began work to create an outbreak management 'playbook,' sourcing methods to support the most difficult prisons and establishing a future central structure and national-level response. I exhibit a submission, dated 21 September 2021, from the Joint Strategic Policy Unit addressed to PRB detailing the future of the National Framework and Recovery **[JG/283 – INQ000532533]**. I also exhibit the minutes from the HMPPS Prisons Management Committee meeting dated 22 September 2021 **[JG/284 – INQ000532540]**.
239. The Justice Select Committee also found that in future, the Government should not solely rely upon high FPNs to deliver compliance with public health restrictions. The Committee referenced the £10,000 FPN for holding large gatherings, in particular. It recommended that the Government conduct a review of FPNs for COVID-19 offences which considers the effectiveness of the scheme in delivering public compliance; the alternative options; and whether FPNs should be limited to certain types of offences in the future. In response to that recommendation, the Government stated that it was conscious of the concerns raised about the FPN regime, its proportionality and

process, and recognised that it presented challenges for enforcement and compliance. The Government has said it will take this recommendation into consideration alongside any findings from the Inquiry as it develops its planning and preparedness for any future pandemics. I exhibit the House of Commons Justice Committee report titled 'Covid-19 and the criminal law' dated 21 September 2021 here: **[JG/281 – INQ000075337]**.

240. On 27 July 2021, PRB agreed that, as HMPPS moved through regime recovery, there was an opportunity to reflect upon the work of the PRB in relation to how it was supporting HMPPS to respond to and recover from the pandemic. I exhibit the PRB meeting note from 27 July 2021 here: **[JG/286 – INQ000532522]**. The day before, on 26 July 2021, a lessons learned exercise in recovery commenced also and I exhibit the relevant submission to the PRB here: **[JG/285 – INQ000532521]**. All 22 core members of the PRB were invited to take part in this exercise and 14 responded. The lessons learned exercise was completed and reviewed at a PRB meeting on 24 August 2021 and I exhibit the note of that meeting here: **[JG/285a – MOJ000183150]**. Overall, the findings from these interviews with Board members suggested that the Recovery Board was considered to have operated very well up to this point and was viewed as playing a critical role in both the timely and effective response to the continuing pandemic and the subsequent recovery. After reviewing the findings of the lessons learned exercise, the Board recommended revisiting the ToR, membership and reporting, to explicitly include a process for winding down the recovery programme. **[JG/285b INQ000592544]** is the lessons learned report dated August 2021.
241. Where government departments are considering criminal penalties, it is important that they consult with officials in MoJ in order to understand the potential impacts of those penalties, including the behaviours such penalties might incentivise and how these penalties will fit in the overall criminal law framework. Where that advice is sought and received, the government departments concerned should respond to MoJ explaining their rationale for the course that they have taken, particularly where they have chosen to go against the advice.
242. It is without doubt that the pandemic presented a serious threat to the administration of justice. Officials across MoJ, its agencies and public bodies worked at pace and in challenging circumstances, alongside the Judiciary and others, to ensure the proper

administration of justice continued. I would like to pay tribute to their commitment and professionalism. MoJ is committed to supporting the Inquiry Chair so that lessons can be learned to prevent future loss of life and loss of quality of life. A key lesson is that criminal law needs to be part of any pandemic preparation and response. The establishment of the UK Health Security Agency (UKHSA) to plan for, prevent and respond to public health crises, such as pandemics, is a positive step forward with MoJ, through its agencies, working together with UKHSA colleagues. MoJ, represented by the DOC and with input from its Executive Agencies as necessary, is also a member of the Cabinet Office run Pandemic Disease Capabilities Board (PDCB).⁷ The PDCB was established in July 2021 to focus on identifying critical capabilities across government for pandemic disease preparedness that should be maintained, developed or initiated. I exhibit the PDCB's Terms of Reference here: **[JG/287 – INQ000147681]**.

REQUEST FOR ENFORCEMENT DATA

243. I exhibit in the following document, **[JG/288 – INQ000532613]**, which contains statistics regarding the total number of people impacted in relation to testing, tracing and isolation following aspects of enforcement of COVID-19 regulations. This exhibit includes the number of people issued with SJP Notices and the number of people prosecuted for offences in breach of COVID-19 regulations. Unfortunately, it is not possible to provide the SJP data by age or gender variables. This is because the information used to derive number of defendants dealt with via an SJP notice doesn't include the sex or age of defendants. In order to produce robust data relating to the sex and age of defendants dealt with via a SJP notice, MoJ would have to carry out significant additional data development to link distinct extracts of the legacy data and compile this in a consistent way with the more granular data coming from the reform

⁷ The membership of the Board was as follows: Department of Health and Social Care (Co-Chair); Crown Commercial Service, Cabinet Office (Co-Chair); UK Health Security Agency; NHS England, Ministry of Housing, Communities and Local Government; Ministry of Defence; GO-Science; Home Office; HM Treasury; Ministry of Justice; Department for Transport, Department for Business, Energy and Industrial Strategy; Department for Environment, Food and Rural Affairs; His Majesty's Revenue and Customs; Department for Education; Department for Work and Pensions; Department for Digital, Culture, Media & Sport; Foreign, Commonwealth & Development Office; Health and Safety Executive; and the COVID-19 Taskforce, Cabinet Office.

system. The SJP data derives from published timeliness estimates - not from a data pipeline that specifically focuses on the SJP volumes and defendant demographics. Some of this is complicated by the fact that MoJ has data from legacy systems and new systems, but it is limited by pre-aggregated outputs on the legacy systems, e.g., MoJ receive grouped up data and always have done, so MoJ can't access the underlying raw to apply defendant demographics if they're not already held. Further notes regarding the data presented are available within the exhibit.

STATEMENT OF TRUTH

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.

Personal Data

Signed: _____

Dated: 08/04/2025

ANNEX A – NATIONAL TESTING AND TRACING EVENTS

Date	Title	OGD
15/01/2020	DHSC publish clinical guidance.	PHE
10/02/2020	PHE update on coronavirus diagnostic test.	PHE
26/02/2020	Public Health England update on new surveillance system for early detection of COVID-19	Other HMG announcement
27/03/2020	CDL led daily briefing (testing for frontline workers).	HMG press conference
03/04/2020	Testing prioritisation meeting takes place.	National
04/04/2020	DHSC publish testing strategy.	Other HMG announcement
09/04/2020	DHSC update on diagnostic lab network to test for coronavirus	Other HMG announcement
10/04/2020	Health Secretary led daily briefing (testing)	HMG press conference
12/04/2020	Health Secretary led daily briefing (launch of new NHS app).	HMG press conference
17/04/2020	Health Secretary announcement on tests for public service staff.	Other HMG announcement
17/04/2020	Health Secretary at the Health Select Committee announces that testing capacity is now sufficient to give tests to other public sector workers outside of the NHS, such as prison officers and the judiciary	National
23/04/2020	Health Secretary led daily briefing (testing).	HMG press conference
23/04/2020	Testing extended to all essential workers.	National
28/04/2020	Health Secretary led daily briefing (testing).	HMG press conference
01/05/2020	Health and Social Care Secretary led daily briefing (testing).	HMG press conference
04/05/2020	Health and Social Care Secretary led daily press briefing (test and trace in IoW)	HMG press conference
05/05/2020	Trials of the NHS contact-tracing app start on the Isle of Wight.	Other HMG announcement
07/05/2020	Baroness Dido Harding appointed to lead the programme of testing and tracing.	Other HMG announcement
18/05/2020	Health and Social Care Secretary statement to Parliament (general update, testing, contact tracing)	Parliament
20/05/2020	Prime Minister's Questions (track and trace system)	PM announcement
27/05/2020	Health and Social Care Secretary led the daily press briefing (NHS Test and Trace launch)	HMG press conference
28/05/2020	First NHS contact tracing weekly bulletin (28 May - 3 June)	Other HMG announcement
28/05/2020	Test, track and trace launched and operational.	National
31/05/2020	DHSC press release: UK reaches 200,000 coronavirus testing capacity target a day early	Other HMG announcement

Date	Title	OGD
11/06/2020	Health and Social Care Secretary led no.10 press conference (testing)	HMG press conference
18/06/2020	Health and Social Care Secretary led daily press conference (vaccines, test, and trace)	HMG press conference
30/07/2020	Statement from the UK Chief Medical Officers on extension of self-isolation period.	Other HMG announcement
18/09/2020	The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020 came into force setting out requirements for businesses taking personal details for contact tracing and the use of QR codes.	Legislation
24/09/2020	NHS launched contact tracing app across England and Wales.	Other HMG announcement
03/11/2020	DHSC announcement on Liverpool testing pilot.	PM announcement
10/01/2021	DHSC update on asymptomatic testing.	Other HMG announcement
13/07/2021	UK's first megalab opens in Royal Leamington Spa.	Other HMG announcement
19/07/2021	Press release on frontline health and care staff.	Other HMG announcement
27/07/2021	Press release on contact testing across critical sectors.	Other HMG announcement
30/07/2021	COVID-19 contain framework updated.	Other HMG announcement
02/08/2021	NHS COVID-19 app updated to notify fewer contacts to isolate.	Other HMG announcement
16/08/2021	Part of the Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) Regulations 2021 came into force. This SI changes isolation rules in certain circumstances.	Legislation
16/08/2021	The rules on self-isolating as a contact will change for people who are fully vaccinated or are under 18 as they will not have to self-isolate but are advised to take a PCR test if they come into contact with a positive case.	National
22/09/2021	DHSC update on UK manufactured rapid tests	Other HMG announcement
27/10/2021	COVID-19 Schools Infection Survey technical article estimating pupils testing positive for antibodies, England: November 2020 to July 2021	ONS
27/10/2021	COVID-19 Schools Infection Survey, England: Round 6, pupil antibody data, June 2021	ONS
10/11/2021	Press release: Glasgow COVID-19 lab passes 20 million tests	Other HMG announcement
22/11/2021	Ministers confirmed Daily Contact Testing (used in prisons, where identified close contacts can test each day rather than isolate if negative) will run until the end of February in line with winter planning	DHSC
24/11/2021	Coronavirus and self-isolation after testing positive in England: 1 November to 6 November 2021.	ONS

Date	Title	OGD
10/12/2021	COVID-O met and agreed to the roll out of daily contact testing to the general public.	National
14/12/2021	The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) (Amendment) (No. 6) Regulations 2021 came into force bringing in new isolation rules for close contacts.	Legislation
01/01/2022	UKSA blog: Using lateral flow tests to reduce the self-isolation period	UKHSA
11/01/2022	People with a positive lateral flow test no longer required to take confirmatory PCR test	UKHSA
17/01/2022	An overview of NHS Test and Trace, including what happens if you test positive for coronavirus (COVID-19) or have had close contact with someone who has tested positive.	UKHSA
18/01/2022	NHS Test and Trace in the workplace. Guidance update (please see additional link for update history)	UKHSA
24/01/2022	The latest terms and conditions plus standard operating procedure for coronavirus (COVID-19) workplace testing. (Updated guidance, please see additional link for update history)	UKHSA
01/02/2022	Survey for the UK Health Security Agency (UKHSA) Coronavirus (COVID-19) Antibody Testing Service goes live.	UKHSA
04/02/2022	Coronavirus (COVID-19) testing for anyone working in adult social care who is not part of regular testing at work.	UKHSA
04/02/2022	Guidance on asymptomatic regular testing for eligible extra care and supported living (ECSL) services.	UKHSA
04/02/2022	Guidance on regular asymptomatic rapid lateral flow testing for staff and service users in eligible adult day care centres.	UKHSA
08/02/2022	Sets out how and when to use a PCR home test kit to test for COVID-19 before a hospital procedure.	UKHSA
10/02/2022	Rosalind Franklin laboratory processes 5 million PCR tests	UKHSA
10/02/2022	UK completes over 2 million SARS-CoV-2 whole genome sequences	UKHSA
02/03/2022	Coronavirus (COVID-19) Infection Survey, UK: characteristics of people testing positive for COVID-19, 2 March 2022	ONS
02/03/2022	Form (E53) for genome sequencing for SARS-CoV-2.	UKHSA
03/03/2022	Experimental statistics on NHS Test and Trace since its launch on 28 May 2020. Includes reports on NHS Test and Trace (people tested and contact tracing) and rapid (lateral flow device) testing for people without symptoms.	UKHSA
03/03/2022	Guidance and spreadsheet to record the details of people you have tested for coronavirus on that day. This is updated guidance, please see additional link for update history	UKHSA

Date	Title	OGD
03/03/2022	NHS Test and Trace Programme: 2021 to 2022. Background and methodological information on COVID-19 response financial figures quoted by the Prime Minister in his 'Living with COVID-19' statement.	UKHSA
03/03/2022	Weekly Statistics for NHS Test and Trace (England): 17 to 23 February to 2022	UKHSA
04/03/2022	Coronavirus (COVID-19) Infection Survey: UK: 4 March 2022	ONS
07/03/2022	Experimental statistics on NHS Test and Trace since its launch on 28 May 2020. Includes reports on NHS Test and Trace (people tested and contact tracing) and rapid (lateral flow device) testing for people without symptoms.	UKHSA
08/03/2022	Guidance setting out how and when to use a PCR home test kit to test for COVID-19 before a hospital procedure. This is updated guidance, please see additional link for update history	UKHSA
09/03/2022	Coronavirus (COVID-19) Infection Survey, UK: antibody data, 9 March 2022	ONS
10/03/2022	Final results of real-time assessment of community transmission of coronavirus (COVID-19) during February 2022.	UKHSA
11/03/2022	Coronavirus (COVID-19) Infection Survey, UK: 11 March 2022	ONS
16/03/2022	Coronavirus (COVID-19) Infection Survey, UK: characteristics of people testing positive for COVID-19, 16 March 2022	ONS
18/03/2022	Coronavirus (COVID-19) Infection Survey, UK: 18 March 2022	ONS
18/03/2022	Guidance for prospective providers on how to be listed as a testing provider for general population testing. Please note this is updated guidance, please see additional link for update history.	UKHSA
18/03/2022	Minimum standards for private sector providers of COVID-19 testing. This is updated guidance, please see additional link for update history.	UKHSA
23/03/2022	Guidance, Coronavirus (COVID-19): antibody testing. Please note this is updated guidance, please see additional link for update history.	UKHSA
29/03/2022	Government sets out next steps for living with COVID. New guidance outlines free COVID-19 tests will continue to be available to help protect specific groups once free testing for the general public ends on 1 April.	Other HMG announcement
30/03/2022	Changes to COVID-19 testing in England from 1 April.	UKHSA