

Witness Name: Nick Goodwin

Statement No: 2

Dated: 9 May 2025

UK COVID-19 PUBLIC INQUIRY

WITNESS STATEMENT OF HIS MAJESTY'S COURTS AND TRIBUNALS SERVICE

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

INTRODUCTION

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

BACKGROUND

3. HMCTS is an Executive Agency of the MoJ. It was created on 1 April 2011 through the merger of HM Courts Service, and the Tribunals Service. Since this time HMCTS has been responsible for providing the system of support, including infrastructure and resources, for the administration of the business of the courts in England and Wales and those tribunals throughout the United Kingdom for which the Lord Chancellor is responsible. HMCTS provides the support necessary to enable the judiciary, tribunal members, and the magistracy to exercise their judicial functions independently.
4. Reflecting the constitutional settlement safeguarding the independence of the judiciary, HMCTS is not a conventional Executive Agency. Rather, HMCTS operates through a partnership between the Lord Chancellor, the Lord, or Lady, Chief Justice (LCJ) of England and Wales, and the Senior President of Tribunals. This partnership is underpinned by the Constitutional Reform Act 2005 and governed by a 2014 Framework Document under which day-to-day operational management is delegated to a Chief Executive under the general direction and strategic leadership of the HMCTS Board, which has an independent Chair. I exhibit the 2014 HMCTS Framework Document here: **[NG/01 - INQ000104036]**.

HMCTS' specific role, function, and responsibilities in relation to the approach to testing, tracing and isolation

5. The key pieces of emergency legislation which supported the Government's approach to testing, tracing, and isolation ('TTI') during the COVID-19 pandemic were the Coronavirus Act 2020 and the regulations made under the Public Health (Control of Disease) Act 1984. Primary responsibility for this legislation in England lay with the Department of Health and Social Care (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. HMCTS had some, limited involvement in the adoption of this legislation insofar as TTI measures were concerned.
6. 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 below), or the police or other relevant bodies (such as local authorities), could issue a Fixed

Penalty Notice (FPN). Service of a FPN gives immunity from prosecution for 28 days and payment gives permanent immunity. There is no penalty for failing to pay a FPN, but the recipient is then liable to prosecution in a magistrates' court for the offence for which the FPN was issued. This means that there is typically a window of time between a new offence being brought into law under the regulations, and prosecutions under those regulations coming before the courts.

7. HMCTS is an administrative body. HMCTS does not itself 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.
8. HMCTS' role in the enforcement of the COVID-19 Regulations in both England and Wales consisted principally of preparing and disseminating guidance to legal advisers on the interpretation and application of the COVID-19 Regulations, the collection and enforcement of financial penalties, and the provision of facilities and services required by magistrates, prosecutors, and defendants, along with any other court user in order to facilitate the proper administration of justice during the pandemic.
9. HMCTS worked with MoJ in relation to the provisions of the Coronavirus Act 2020 concerning appeals to the magistrates' court against quarantine orders, which were set out in Schedule 26 of the Act. HMCTS also provided insight relating to the policy and operational implications of these proposals in conjunction with input from other government departments responding to the pandemic.
10. HMCTS was not consulted about the creation of offences under the Coronavirus Act 2020 itself, nor proposals relating to the development and implementation of the legal penalties associated with TTI policy enforcement as this would be the responsibility of the MoJ, not HMCTS as an Executive Agency. The MoJ is the government department which has overarching policy responsibility for criminal law, the cross-cutting issues relating to criminal law, and for legislating for offences not falling under the purview of other departments. The MoJ, alongside the independent judiciary, also has responsibility for criminal procedure, as well as the operation of the criminal (and civil) courts. Therefore, via MoJ and its Criminal Law Policy team, HMCTS did provide advice to the DHSC and the Home Office, on the existing criminal offences. In particular, the MoJ received and scrutinised Justice Impact Tests (JITs) submitted by government

departments who were considering policy proposals that may have an impact on the justice system. JIAs set out the relevant legislation and policy rationale to the proposal, including the likely timescales for implementation and, if applicable, the anticipated impact on the justice system. JIAs indicated whether proposed policies 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.

11. Regarding HMCTS being consulted more broadly – beyond the creation of new offences and penalties – it would be for the MoJ to lead on cross-government consultation of this nature as it holds the overarching policy and legislation responsibilities and represents its Executive Agencies for these purposes. For this to work in practice, MoJ and HMCTS officials nurture and maintain close working relationships.

PANDEMIC PREPAREDNESS

12. HMCTS operates from more than 350 locations across England, Wales, and Scotland and facilitates millions of in-person hearings annually. For many years prior to the pandemic, the use of audio and video technology had slowly increased across our courts and tribunals. Indeed, increasing the use of technology in the justice system was a key component of our £1.3bn Reform programme that was launched in 2016 and concluded in March 2025. This modernisation included a greater utilisation of what we refer to as “remote hearings”¹ – where some or all of the participants are not physically present in a courtroom. Video technology is now available in over 70 per cent of courtrooms, including over 90 per cent of Crown courtrooms. How a hearing is to be heard is decided by the presiding judge. However, the pandemic necessitated and accelerated the uptake of technology (and confidence using it).

13. At the onset of the pandemic in March and April 2020 we closed almost half of our courts, and jury trials were paused to minimise social interaction between court users. 157 sites were kept open for essential face-to-face hearings. A further 124 sites remained open only for HMCTS staff, the judiciary, and those from other agencies. These “staffed courts” supported the use of remote hearings and the progression of cases without hearings. All our other sites were temporarily suspended. Alongside this:

¹ Sometimes referred to as “video hearings” in exhibits I quote from, or variations on the phrase “video and audio technology.”

- 13.1. HMCTS staff were issued with letters to confirm their essential worker status from 20 March 2020;
 - 13.2. Thousands of laptops were procured to enable staff to work from home where roles allowed (staged rollout began in London on 20 March 2020);
 - 13.3. We rapidly expanded remote hearing capacity through the rollout of the Cloud Video Platform (CVP) across all jurisdictions and recruited 1,600 staff to facilitate its use.
14. A summary of the work which had been done in this area by April 2020 is set out in slides prepared for the General Public Sector Ministerial Implementation Group (GPSMIG) which I exhibit here: **[NG/02 - INQ000104040]**.
 15. At points during the pandemic, up to 90 per cent of court hearings involved remote access by one or more participants. This rapid change in our operational delivery was achieved through the hard work and dedication of the judiciary and HMCTS staff and supported by an additional £153m we invested in our courts and tribunal buildings over the course of the pandemic.
 16. It is important to remember, however, that many of our courts and tribunals were kept open and many hearings were held “in person” in a “COVID-secure way.” I am proud of the fact that ours was the first among comparable jurisdictions globally to resume jury trials in May 2020. For the courts which were kept open, all sites were maintained such that they were safe, clean, and had strict social distancing procedures in place. Over 150 additional cleaners were deployed in open and staffed courts, guidance on issues such as social distancing were published, changes were made to the security guidance and support, and supplies of hand sanitiser were readily made available in court. For the staff who were needed to continue to come to work, there was sensitivity and recognition around the additional anxiety about coming to work and for those who were not able to or were required to self-isolate, provision was made so that they were able to do so. I exhibit a document from April 2020 outlining the courts and tribunals response to COVID-19 here: **[NG/02 - INQ000104040]**.
 17. Together with the judiciary, our emergency response plans were developed and implemented at pace in the context of the virus emerging and spreading rapidly around the world. They were designed to ensure the health and safety of all court users against

the risk of infection and be in line with the wider public health measures being implemented by HM Government. The changes we made in March and April 2020, including for remote hearings and self-isolation in court buildings, were built from pre-existing systems and processes. But the success of how rapidly we pivoted is down to the dedication, resilience, and ingenuity of our staff and judges in the face of unprecedented circumstances. Regarding our ability to handle the prosecution of COVID-19 related offences, these were subsumed into our system as any new offence would be. As I will outline in greater detail below, we were able to utilise the pre-existing Single Justice Procedure (SJP) for much of this.

18. Regarding HMCTS' general level of preparedness: it is true to say that we were not prepared to the level that was needed for this pandemic. The challenge we faced was unprecedented and different in some crucial respects from the pre-pandemic planning that was undertaken before 2020. We worked incredibly hard to adapt and respond to a fast-evolving situation and, in my view, did so successfully. The House of Lords Select Committee report 'COVID-19 and the Courts' suggests that we were far from 'adequately' prepared. You can read their full findings in their report which I exhibit here: **[NG/03 - INQ000575521]**. In a broader sense, HMCTS was prepared to deliver its services during the COVID-19 pandemic as we had cross-cutting plans to deal with crisis situations and disruptions, including a flu pandemic. These plans formed a strong basis to keep many courts and tribunals open throughout the pandemic, while following emerging health advice and regulations. The COVID-19 pandemic highlighted we could have been better prepared if our technology rollout had been further advanced. I expand on this theme in my reflections at the end of this statement. Also, for some courts and tribunals, the required physical distancing was not immediately possible, so mitigations had to be put in place before operating. HMCTS recognises that its contingency plans rely on a series of planning assumptions designed to reasonably evaluate potential impacts and they will always need to flex to respond to the particular circumstances.

19. For completeness, I shall expand specifically on the provisions for remote hearings, self-isolation in the court building, and the prosecution of COVID-19 related offences in more detail below:

Provisions for remote hearings

20. HMCTS prepared a Pandemic Flu Sector Resilience Statement of Preparedness in 2018. A generic contingency was in place containing specific sections dealing with Pandemic

Flu. It concluded that HMCTS had a 'reasonable level of preparedness across the estate.' A number of remote video link sites were available in each of its regions which enabled victims to give evidence from a location away from court. As of 2015-16, upgraded video systems had been installed in 130 Crown, magistrates', and civil courts. HMCTS had a 'significant concern' around the practicalities of the police / HM Prison and Probation Service (HMPPS) / Prisoner Escort and Custody Service (PECS) being able to produce prisoners for remote hearings, which was beyond the control of HMCTS. The Statement of Preparedness was the last such document to be published prior to the pandemic. I have exhibited copies of the Statements of Preparedness here: **[NG/04 - INQ000544613 (2017) and NG/05 - INQ000007182]**

21. On 9 March 2020, HMCTS tested its latest generic Business Continuity Plans in a challenge session with HMPPS. This included the pandemic flu plan alongside wider MoJ planning for the Reasonable Worst Case Scenario. The exercise concluded that the available court technology had worked well, and that a forthcoming rollout of compatible devices would provide further opportunities 'once the virus outbreak had passed.' I exhibit the readout from the challenge session here: **[NG/06 - INQ000546179]**.

22. On 2 March 2020, the Lord Chancellor agreed with his officials' recommendations to request the inclusion of the additional clauses in the Coronavirus Bill to extend audio and video links in court proceedings to enable remote hearings to take place and be observed by the media and public. These provisions had already been identified in the draft Pandemic Influenza (Emergency) Bill (which later became the Coronavirus Act 2020). I exhibit a submission to the Lord Chancellor regarding these provisions here: **[NG/07 – INQ000147599]**. The effect of these additional provisions sponsored by the MoJ was as follows:

22.1. expansion of the circumstances in which the courts could direct participation in proceedings through the use of audio and/or video links;

22.2. observation by the media and public to satisfy the open justice principle;

22.3. a new criminal offence was created for making unauthorised recordings of such proceedings;

22.4. provision was made to allow for appeals against video link directions.

23. These provisions were included in sections 53 to 56 and Schedules 23 to 26 of the Coronavirus Act 2020. 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 (and is) not a member. The Coronavirus Act 2020 received Royal Assent on 25 March 2020.
24. On 18 March 2020, HMCTS issued cross jurisdictional guidance on telephone and video hearings in Crown, magistrates', and civil and family courts. This set out when these remote hearings should be used. I exhibit the guidance here: **[NG/08 – INQ000546197, NG/09 – INQ000546196 and NG/10 – INQ000546194]**. Further funding was invested to increase the use of video technology. By 30 March 2021, HMCTS had installed Cloud Video Platform technology to support remote hearings in 782 courtrooms across all jurisdictions. This exceeded the original target of 750. I exhibit a HMCTS Board paper detailing this here: **[NG/11 – INQ000593515]**. Rollout in civil and family courts began on 14 April 2020; I exhibit the rollout plan here: **[NG/12 – INQ000593501]**.
25. On 30 March 2020, a cross-criminal justice group was convened under the name the Technology Enabled Justice Group to monitor the use by the courts of their extended powers to use live audio or video links. The terms of reference, which I exhibit here **[NG/13 – INQ000546198]**, identified the group's purpose in the following terms: to "ensure that the use of video hearings is maximised as far as possible" including by "assessing the impact for all stakeholders". The group met twice per week. The group was led by Michelle Filby, Deputy Director for the Crime Programme within HMCTS, and reported regularly into Criminal Justice System Strategic Command (CJSSC). This group existed prior to the pandemic and is responsible for convening and directing emergency response arrangements during major emergencies, in a co-ordinated way, across the various agencies of the criminal justice system ("CJS"). CJSSC was activated between March and August 2020, and again between September 2020 and February 2022 to specifically respond to the COVID-19 pandemic. CJSSC brought together representatives from across the CJS to coordinate emergency operational response and ensure continued maintenance of the rule of law and public order. The group was chaired by the Executive Director, Security Directorate, HMPPS, Richard Vince, and membership was comprised of representatives from agencies including the Police, the National Crime Agency, Public Health Wales, NHS England, the Ministry of Defence, and the Home Office, among others. The frequency of meetings varied throughout the Specified Period from daily to weekly. The impact of remote hearings ensured that the judiciary were able

to hear cases where they felt remote hearings were more appropriate. I exhibit their key updates here: [NG/14 – INQ000593503], [NG/15 - INQ000593507], [redacted], NG/17 – [INQ000593509], NG/18 – [INQ000593511] and NG/19 – [INQ000593512].

Provisions for self-isolation in the court building

26. The HMCTS' Statement of Preparedness (referenced above) did not anticipate the need for self-isolation associated with COVID-19. The assessment did consider how well prepared the sector was to cope with the anticipated levels of staff absences during a pandemic. Within the statement, HMCTS set out the minimum service that the sector could expect to continue during a pandemic. Plans had been developed at a local operational level for short, medium, and long-term staff shortages, and assumed absence rates of between 15 to 20 per cent would be reached during a peak clinical attack rate, with a small percentage increase for those with caring responsibilities. It was assessed that the impact on managing key business priorities would be minimal.
27. When assessing whether there were any key roles or functions which were particularly vulnerable to staff absence during a pandemic, the judiciary, legal advisers, listing officers, court clerks/associates, ushers/jury bailiffs, and security staff were identified as groups critical to keeping the maximum number of courts/tribunals running during an emergency. Monitoring the impact of any pandemic on these staff cohorts was considered vital. I have exhibited copies of the Statements of Preparedness here: [NG/04 – INQ000544613 (2017) and NG/05 – [INQ000007182]].
28. The assumptions regarding the potential impact of a pandemic were based on Cabinet Office advice and are exhibited here: [NG/20 – [INQ000593498]]. The Cabinet Office advised that organisations employing large numbers of people, with flexibility of staff deployment, should ensure that their plans were capable of handling staff absence rates of up to 15 per cent over the two-to-three-week peak of a pandemic (in addition to usual absence levels).
29. An early alteration to these plans occurred on 18 March 2020, when the Lord Chancellor received a submission on whether MoJ should waive the fee for applications to adjourn or stay proceedings if one or more parties were not available to attend because they were either in self-isolation or were vulnerable to contracting COVID-19. This was

consistent with government advice at this time, which required individuals with symptoms to isolate for seven days if they lived alone or for 14 days if a member of their household exhibited symptoms, and it was recognised that not waiving the fee could result in people attending court and potentially infecting others or becoming ill because of heightened vulnerability. The Lord Chancellor authorised that in certain cases the fee could be waived for applications to adjourn a civil or family hearing. Following this, guidance was issued advising that civil and family court staff could use their discretion to waive the application fee for any requests to adjourn a civil or family hearing because of COVID-19. I exhibit the advice to the Lord Chancellor and the guidance here: **[NG/21 – INQ000546180, NG/22 – INQ000546190 and NG/23 – INQ000255151]**

30. On 20 March 2020, MoJ delivered a commissioned presentation on the impact of COVID-19 on prisons, probations, and courts for a GPSMIG meeting. At this time HMCTS was following guidance issued by the Prime Minister on 16 March 2020 that those with the most serious health conditions should be largely shielded from social contact for around 12 weeks. This was anticipated to increase staff absence from its current level of around 10 per cent to at least 25 per cent staff absence, but locally this could increase to 50 per cent or higher and would have a serious impact on victims and defendants. On 19 March, 16.8 per cent of magistrates booked could not attend, and significant numbers of jurors were applying to withdraw from 23 March 2020. The magistracy was identified as a significant risk given that many tended to be older than the general population; and HMCTS stats showed that they were the group most likely not to be attending through illness or self-isolation. The presentation is exhibited here: **[NG/24 – INQ000546189]**. It includes a table showing the impact on other critical court staff or users – legal sector, jury members, defendants, claimants, witnesses, and other necessary trial participants, in terms of the numbers of those self-isolating in each region. The full HMCTS paper prepared before the meeting is exhibited here: **[NG/25 – INQ000546187]**.

31. On 23 March 2020, the LCJ announced that jury trials would be paused for a short time, following the message from the Government to take all measures to avoid unnecessary contact. This meant that no new trials could start, and jurors would be contacted and asked to remain at home. Trials already underway could potentially be adjourned for a short period to put safety measures in place. I exhibit the guidance issued by the LCJ here: **[NG/26 – INQ000593499]**. This was followed by the announcement on 27 March 2020 of the closure of a number of HMCTS courts due to the pandemic (the detail of which I have outlined above). These temporary changes were designed by HMCTS and the judiciary to maintain a core justice system focusing on the most essential cases and

would be kept in place for as long as necessary to comply with government and public health advice. While these changes were not anticipated by the HMCTS Pandemic Flu Sector Resilience Statement of Preparedness and associated Cabinet Office advice, they were prompted by the need to comply with Government and public health advice and respond to the unique challenges posed by the pandemic, including the need for those exhibiting symptoms or exposed to COVID-19 to self-isolate. In the MoJ and HMCTS press release exhibited here: [NG/27 – [INQ000593518]], the Lord Chancellor recognised the Government’s absolute priority to save lives and protect the NHS along with the need to ensure the safety of the public, judges, legal professionals, staff, and all those attending hearings. Although provisions for self-isolation were not originally a part of the HMCTS pandemic preparations, actions were taken promptly to respond to the unprecedented challenges posed by COVID-19.

The prosecution of COVID-19 related offences

32. As outlined above, during the pandemic COVID-19 related offences were prosecuted using existing mechanisms. I outline in greater detail below the history and operation of the SJP.
33. HMCTS does not enforce regulations, prosecute, or make judicial decisions; these are respectively for the police and/or other prosecuting authorities, and the judiciary. It is a matter for the prosecuting authorities (not HMCTS) to decide the most appropriate method for prosecuting a defendant, including the use of SJP. To the best of my knowledge, HMCTS did not consider a scenario prior to COVID-19 where multiple new offences would be created within a short timeframe, such as linked to a pandemic influenza, or where the use of existing prosecution methods may not be applicable or appropriate. Whilst HMCTS did plan for pandemic influenzas, the COVID-19 pandemic was unprecedented. Between November 2017 and February 2018, HMCTS produced two Pandemic Flu Statements of Preparedness, which described the status and preparedness of their assets in case of a pandemic. I have exhibited copies of these here: [NG/04 - INQ000544613 (2017) and NG/04 - INQ000544614 (2018)].
34. HMCTS' role in the prosecution of the COVID-19 Regulations in both England and Wales consisted principally of preparing and disseminating guidance to legal advisers on the interpretation and application of the COVID-19 Regulations, the collection and enforcement of financial penalties, and the provision of facilities and services required by

magistrates, prosecutors, and defendants, along with any other court user in order to facilitate the proper administration of justice during the pandemic.

35. While the SJP was not part of any pre-COVID-19 planning specifically, the technology that facilitates SJP, and the resilience of this, meant we could deal with the new COVID-19 SJP work just as effectively while working remotely during the pandemic, without resulting in reduced performance. Defendants could still request a conventional hearing, and magistrates would move cases to physical courts if necessary. The SJP also played a key role in reducing footfall in the magistrates' courts to keep people who had to attend our buildings safe. I believe that the use of SJP was appropriate, proportionate, and to be encouraged were a similar situation to arise.

WORKING WITH THE DEVOLVED ADMINISTRATIONS

36. The territorial extent of HMCTS is England and Wales (except for certain tribunals in Scotland). Broadly speaking, Scotland and Northern Ireland are separate legal jurisdictions, the responsibility for which rests with the Scottish Parliament and Government and the Northern Ireland Assembly and Executive, respectively. Because courts and tribunals are devolved and were operated to different COVID-19 regulations and procedures, HMCTS did not liaise formally with counterparts in those nations from an operational perspective. However, officials within MoJ did regularly meet with officials from the Scottish Government and Northern Ireland Executive to discuss a range of operational and policy issues. I do not consider that anything beyond this would have been useful.

DEVELOPMENT AND USE OF SJP FOR THE PROSECUTION OF COVID-19 OFFENCES

HMCTS' role in the development of COVID-19 offences

37. In terms of cross-government consultation regarding the development of coronavirus legislation or creation of specific offences, HMCTS was not consulted. As mentioned above, HMCTS is an administrative body and therefore does not play a leading role in the formulation of government policy or the creation of legislation; it provides the administrative support for the courts and tribunals across the United Kingdom. The MoJ, of which HMCTS is an Executive Agency, was involved in the consultation of coronavirus legislation. For the formulation of government policy (and its implementation via legislation), the MoJ acts on behalf its Executive Agencies and Arms-Length Bodies.

SJP background

38. 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.
39. Under the SJP, specified "relevant prosecutors" designated by the Secretary of State for Justice² may institute proceedings by issuing a written charge with an '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, convict, or 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 with two or three other magistrates; and the hearing need not be in public. Written case statements and written guilty pleas have been standard practice in magistrates' courts since 1957 and were not newly introduced with the SJP. A fuller description of the SJP process, as it operated prior to the pandemic, can be seen in the March 2017 Protocol agreed between HMCTS and a number of "relevant prosecutors" [NG/28 - INQ000104037].

Safeguards

40. 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

² Since this post's inception in 2007 it has been held concurrently with the post of Lord Chancellor by all postholders.

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.

41. Only "relevant prosecutors", as defined in the Criminal Justice Act 2003 (section 29(5)), may prosecute by this method. Such prosecuting authorities include the Crown Prosecution Service (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 (insofar as HMCTS is aware) do not have the computer infrastructure in place to operate it. However, the CPS was under a duty to prosecute these cases unless the Attorney General specified the COVID-19 offences for the purposes of section 3 by virtue of their general duty, under s3(2) Prosecution of Offences Act 1985, to conduct criminal proceedings instituted by a police force.
42. 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.
43. The key benefits of the SJP, from the perspective of HMCTS, include: freeing up court time and facilities; allowing for the progress of other cases, including priority cases involving allegations of domestic violence or vulnerable complainants; and the swift resolution of cases. Outcomes in SJP matters are achieved in less time than is required for cases prosecuted by way of written charge and requisition. Benefits to defendants include reducing their time commitment occasioned by having to attend court.

Transparency

44. 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 upcoming SJP cases on GOV.UK for each court sitting day. As outlined in HMCTS' media protocol (September 2022) [NG/29 - INQ000104074], 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.
45. Therefore, in my 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.

SJP and the prosecution of COVID-19 Offences

46. On 28 April 2020, the courts portfolio manager for the National Police Chief's Council (NPCC) contacted staff in the Single Justice Service of HMCTS to ask how imminent prosecutions for breach of the COVID-19 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, Association of Criminal Records Office (ACRO), and the CPS to discuss the options for managing prosecutions in the magistrates' court where FPN for breaches of the COVID-19 No. 1 Regulations have either not been paid or are contested. The meeting explored two enforcement options: use of the SJP, which was ultimately preferred, and Proceeding in Absence ('PIA').
47. PIA requires the commencement of proceedings using a written charge and requisition, which invites 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 and in what numbers would have meant that HMCTS would have had to reduce lists significantly in any event, in order to maintain social distancing.

48. As mentioned, the SJP was the mechanism preferred by all the stakeholders. The benefits in the context of the pandemic (in addition to those identified above), 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. I exhibit the papers relating to that meeting here: **[NG/30 - INQ000104045, NG/31 - INQ000104044 and NG/32 - INQ000104046]**.

Authorisation to prosecute COVID-19 Offences using SJP

49. 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).

50. Therefore, in order to successfully operate the SJP for the prosecution of COVID-19 No. 1 Regulation offences, the preferred option for the stakeholders was to invite the Attorney General to specify those offences under the Prosecution of Offences Act 1985. At the same time, the CPS and HMCTS would make contingency plans for the CPS in the event the Attorney General declined to specify (see, for example these meeting notes from 12 May 2020): **[NG/33 - INQ000104047]**.

51. 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.

52. 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).

CPS and SJP

53. As mentioned above, in the specific circumstances of the period, it is HMCTS' understanding that the CPS did not have the technical (namely IT) facilities in place to use SJP for the prosecution of COVID-19 offences. It is also HMCTS' understanding that the CPS explored whether it would be possible themselves to conduct prosecutions under SJP, rather than via the police, but were unable to develop the processes and software. The alternative for the CPS would have been to prosecute the cases by requisition in court which would have required more input from the CPS and the police and defeated the object of avoiding attendance to court during the pandemic. The Inquiry may wish to seek further clarity from the CPS itself if it has not already done so. I exhibit here a joint letter from the Lord Chancellor and Attorney General to the First Minister for Wales which contains a rationale for the use of the SJP: **[NG/34 - INQ000104062]**.

The Police and SJP

54. HMCTS would not have had concerns about the police being the appropriate authority to prosecute COVID-19 offences as, since its inception in 2015, the SJP had been extensively used by the police for matters including most types of road traffic offences. 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. Therefore, the police were very familiar with the use of the system. Furthermore, from April 2020, HMCTS worked with various stakeholders such as the CPS, the NPCC, and ACRO on the most appropriate process for dealing with the enforcement of COVID-19 Regulations. It was found that the SJP was the mechanism preferred by all the stakeholders.

Appealing or Reviewing the outcome of SJP Cases

55. Like with other offences, and as outlined, the SJP for COVID-19 related offences presented a defendant with the same rights of appeal to the Crown Court as under the standard procedures under criminal law. Any defendant who was unaware of proceedings could make a statutory declaration to that effect, which would render the proceedings void. If a mistake or error had been made in conviction or sentence, the court could use its discretion under section 142 of the Magistrates' Courts Act 1980 to reopen the proceedings.

SJP and Wales

56. The SJP process was used in both England and Wales. HMCTS understood Welsh Ministers were reluctant to use SJP for the following reasons:

56.1. Welsh Ministers did not have data on the numbers of FPNs currently unpaid under Welsh regulations which enable them to better consider the impact of the proposal throughout Wales.

56.2. There was concern that defendants may not know that the opportunity to put forward the fact that they had a reasonable excuse was still open to them via SJP.

56.3. Without access to affordable legal advice, a defendant may also not know if the FPN was issued correctly under the version of the regulations in force on the date in question.

56.4. There was a belief that there was no practical option available to contest the issue of a coronavirus-related FPN without risk of acquiring a criminal conviction. (Note: HMCTS' position was that in fact FPNs were appealed regularly).

56.5. Coronavirus regulations were "novel" and subject to frequent amendment and their enforcement requires an element of judgement as to the existence or not of a reasonable excuse. Imposing fixed penalties in these situations would be extremely unusual as they are usually issued as an alternative to prosecution where the commission of the offence was a matter of plain fact. I exhibit here a letter from the First Minister for Wales to the Lord Chancellor: **[NG/35 - INQ000104065]**.

56.6. Their understanding was that court backlogs in the magistrates' courts in Wales were shorter than England at that time and therefore did not consider SJP necessary.

57. HMCTS did not share the reluctance outlined by Welsh Ministers. HMCTS provided reassurance to Welsh Ministers that, in the specific circumstances of the pandemic, the SJP process was the most efficient way to proceed at that point in time.

58. On 8 February 2021, the Lord Chancellor and Attorney General jointly wrote to the First Minister for Wales, explaining that the Attorney General would make an Order to allow for offences against the COVID-19 (No. 2) Regulations in Wales to continue to be prosecuted through the SJP. The rationale for the use of the SJP explained in the joint letter was as follows:

“Rationale for the use of the Single Justice Procedure

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

- *“Cases can be heard on any date and any place through the SJP process: the requisition process is less flexible as cases must be heard on a specific date in a specific court.*
- *“The SJP process only requires one magistrate and one legal adviser working remotely proving both cost effective and, more importantly, safer without any impact on the delivery of justice. The requisition process is more resource intensive and costly, as it requires more than one magistrate. an usher and a CPS prosecutor. In addition, the requisition process requires more input by the police, and requires input by the CPS. in SJP cases, the CPS is not involved unless a defendant pleads not guilty, or the single justice refers the case to a hearing in which CPS prosecutes;*
- *“Each additional requisition case places pressure on the system by taking up court time and delaying other cases. Furthermore, defendants are required to attend court for requisition hearings whilst SJP cases can be*

managed remotely. This increases footfall into the courts at a time when courts are being encouraged to conduct hearings remotely where possible due to the national lockdown restrictions; and

- *“Currently, in many parts of England and Wales, a requisition case takes double the time from issuing the charge to first hearing (c.56 days in comparison to 28 days). As requisitions tend to take longer to be processed than single justice notices, there is a greater risk of a defendant changing address and not receiving notice of the court hearing.”* I exhibit a copy of this letter here: **[NG/34 - INQ000104062]**.

59. On 2 March 2021, the First Minister for Wales responded to the Lord Chancellor and the Attorney General seeking reassurance that the number of FPNs rescinded by the police was being evaluated, and that those evaluations were specific to Wales. I exhibit that letter here: **[NG/35 - INQ000104065]**. The Lord Chancellor and the Attorney General addressed the concerns in a further joint letter on 6 May 2021, highlighting the quality assurance and scrutiny work being undertaken by HMCTS, the CPS, and NPCC (which is discussed further below). I exhibit that response letter here: **[NG/36 - INQ000104067]**. To the best of my knowledge, Welsh Ministers did not express any further concerns on this issue with MoJ or HMCTS after this exchange of letters.

EFFECTIVENESS OF THE SJP IN THE PROSECUTION OF COVID-19 OFFENCES

Guidance to legal advisors

60. 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). As a result, HMCTS in general does not direct or in any way influence what advice legal advisers should give. It is the role of the Justices' Legal Advisers and Court Officers Service, known as the Justices' Clerks' Society (JCS) through the Specified Period, which operates within Legal Operations, a division of HMCTS, to provide general guidance to legal advisers to keep them up to date with changes to legislation and regulations. Those who undertake this work are either

nominated by the LCJ to exercise his functions under section 28 or authorised by his nominee to provide advice to magistrates.

61. 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 because the leadership of JCS is made up of senior officers (heads of legal operations and the head of legal and professional services) who are authorised by the LCJ to direct legal advisers as to the advice they give, and who enjoy statutory independence from executive direction when making those directions.
62. In order to meet the challenges presented by the COVID-19 pandemic, a JCS COVID-19 team comprising one legal adviser and two trainee legal advisers was established in order to prepare national guidance on COVID-19 legislation for legal advisers. Such guidance was produced and updated 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.
63. On 17 March 2020, JCS sent out early legal and procedural advice for legal advisers on the pandemic. I exhibit this document here: **[NG/37 - INQ000104038]**.
64. 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.
65. On 30 March 2020, the HMCTS Legal Operations division distributed to legal advisers a second edition of the 'Legal and Procedural advice for legal advisers' document on the Coronavirus Act 2020. I exhibit this here: **[NG/38 - INQ000104039]**.
66. 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 published in April 2020 and regularly updated as per the table below:

Date	Guidance
April 2020	[NG/39 - INQ000104041 and NG/40 - INQ000104042]
May 2020 (a "short guide")	[NG/41 - INQ000104048]
June 2020	[NG/42 - INQ000104049 and NG/43 - INQ000104050]
August 2020	[NG/44 - INQ000104054]
December 2020	[NG/45 - INQ000104060 and NG/46 - INQ000104061]
February 2021	[NG/47 - INQ000104063]
March 2021	[NG/48 - INQ000104066]
August 2021	[NG/49 - INQ000104072 and NG/50 - INQ000104071]

67. Other early newsflashes and guidance relevant to coronavirus related offences in the magistrates' courts included: Newsflash of 23 April 2020 entitled "Coronavirus offences, removal of "changed mind" defence and other amendments in England". I exhibit this newsflash here: [NG/51 - INQ000104043].

68. HMCTS did not provide guidance to justices directly as the dissemination of amended or new legislation and regulations to the judiciary is not within HMCTS' purview and guidance was distributed by the JCS as detailed above.

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

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

70. Early in September 2020, legal advisers who were leading on the preparation of the JCS legal guidance identified technical and quality issues in the SJP proceedings initiated by the police. The types of errors identified by the legal advisers and communicated to HMCTS included, for example:

- 70.1. The wording of the charge not matching the offence in the Regulations;
- 70.2. The evidence not matching the charge;
- 70.3. Charges of non-existent offences;

70.4. Prosecutions under Regulations which had not been specified i.e. prosecutions under the COVID-19 No. 2 or other Regulations, which had not, at this time, been specified;

70.5. Prosecutions for offences against the Coronavirus Act, rather than the Regulations;

70.6. Prosecutions for conduct which did not amount to a criminal offence on the date it was committed but which was subsequently criminalised; and,

70.7. Prosecutions under the Welsh Regulations in England and the English Regulations in Wales.

71. These errors were reported by a senior legal adviser who had been alerted during the delivery of training to legal teams in the Southeast on COVID-19 offences, with a particular focus on SJP courts. After reviewing some court results, the same legal adviser was asked to carry out an informal review of all prosecutions under the SJP for breaches of the COVID-19 No. 1 Regulations between 11 August 2020 and 9 November 2020 to identify the level and nature of the problem.

72. Following an analysis of the data available to 23 November 2020, the error rate was identified as ten per cent in England and four per cent in Wales. The analysis of this review is exhibited here: **[NG/52 - INQ000104068]**.

73. Simultaneously to the data review being undertaken, a JCS Newsflash was published, which explained the errors and provided solutions upon identification of the errors. There were no specific mechanisms for review of COVID-19 offences as part of SJP proceedings, however pre-existing mechanisms for review of cases were in place as mentioned above. I exhibit the referenced newsflash here: **[NG/53 - INQ000104058]**.

74. Legal advisers started identifying errors when sitting on cases in the first instance and did report them and as outlined above, succinct guidance was produced at pace to help minimise future errors in 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.

75. In recognition of the complexity of the COVID-19 offences which changed frequently to reflect the evolving risks associated with the virus, and the fact that they were 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', as detailed above.
76. HMCTS considers the JCS conducted both an essential and effective exercise in identifying and simplifying the complex rule changes which were then communicated clearly and in a timely fashion to magistrates' and legal advisers. As a result, courts could apply the correct law and identify the correct pieces of legislation to which they applied. Regrettably, a small number of errors were made by police or legal advisers, relating to the identification of the regulations and the elements of the offences that were applicable on a specific date and location that the alleged offence occurred. It is recognised that these were errors made in the context of an unprecedented and rapidly evolving pandemic and complex legislation with which both the police, legal advisers, and magistrates were initially unfamiliar.
77. The majority of errors were identified by legal advisers and magistrates in the course of dealing with the case under the SJP. In many cases, for example where the police had not provided evidence of a key element of the offence, or charged under the wrong regulation, the magistrate dismissed the charge and acquitted the defendant. In some cases, such as where charges were poorly worded, the decision was often made to adjourn for further review and amendment by the police. I attach an exhibit in relation to this here: **[NG/54 - INQ000104055]**.
78. In cases in which the errors were identified as sentences which were too lenient, as compared with the relevant sentencing guidelines, the decision was made not to interfere with them. Errors which resulted in wrongful convictions were all put back in court and the convictions revoked. This is outlined in a February 2021 Newsflash which I exhibit here: **[NG/55 - INQ000104064]**.
79. HMCTS worked closely with the NPCC and the CPS to track and monitor caseloads, and to identify possible solutions to problems as they arose. As part of this ongoing liaison work, HMCTS provided input into urgent guidance issued by the NPCC to police forces in respect of the identified errors, including a request that all SJP cases listed for the coming week to be urgently reviewed. I exhibit a note from the NPCC to Chief Constables & Heads of Criminal Justice in relation to this point here: **[NG/56 - INQ000104057]**.

80. HMCTS was also involved in discussions in October 2020 with the CPS and the Police National Legal Database to amend standard offence wordings for charging purposes, to reflect the various versions of the Regulations in force at different times. These standard offence wordings were placed on the database for access by all police forces across England and Wales, the CPS and HMCTS, thereby facilitating consistent wording of charges. I exhibit an email chain in relation to this here: **[NG/57 - INQ000104056]**.
81. On 12 November 2020, HMCTS participated in a NPCC-led workshop with officials from the police and the CPS to discuss learning from the initial period of SJP, develop the process and guidance, and address and mitigate any concerns raised by the CPS to inform next steps and the evidential review process. I exhibit the agenda for this meeting here: **[NG/58 - INQ000104059]**.
82. On 22 February 2021, in anticipation of SJP proceedings for breaches of the COVID-19 No. 2 and later Regulations reaching the courts, JCS issued a Newsflash to legal advisers **[NG/55 - INQ000104064]**.
83. Legal advisers were urged to review the latest iteration of the JCS Guide to Coronavirus Offences, and also to read the Newsflash in respect of lessons learnt following the "first wave" of SJP use, in which time errors were found in 10 per cent of cases. Whilst guidance had since been issued by the NPCC and College of Policing, court scrutiny was necessary. As to avoiding court errors, the guidance stated:

"A review of outcomes from the first wave of prosecutions has shown some unhappy outcomes. It is important for legal advisers to remember that the law in an SJP trial is the same as any other, except for the limited materials the court can take into account.

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

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

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

84. SJP prosecutions under the COVID-19 No. 2 and later Regulations commenced in March 2021.

85. In March 2021, HMCTS agreed with the NPCC and CPS to introduce an audit of COVID-19 SJP prosecutions, starting with a pilot in Wales. The Welsh pilot ran from 29 March to 16 July 2021. The objective was to sample 20 cases dealt with under the SJP and 20 withdrawn cases per fortnight. A total of 104 cases were reviewed. There were errors in eight cases, which is 7.7% of the total number reviewed. Most defects had been discovered by the legal adviser and single magistrate when dealing with the case. A small number were discovered during the pilot audit, requiring the case to be re-opened under section 142 of the Magistrates' Courts Act 1980. The outcome of the pilot audit was notified to Chief Constables of police forces and the Commissioner of the Metropolitan Police Service. It was recommended that the auditing work be rolled out nationally (with slight amendments to the process) [NG/59 - INQ000104070]. The proposed audit procedure is set out in [NG/60 - INQ000104069] – please note that the date on this document should read 23 July 2021.

86. In August 2021, the audit was rolled out across England and Wales. This comprised a sample review of just over 300 COVID-19 SJP cases for the period September 2021 to December 2021, looking at the way police forces charged breaches of the COVID-19 Regulations and the way courts dealt with them. This sample review identified that both courts and police made errors in 9 per cent of cases; the total percentage of cases with

errors being 15 per cent. The total percentage is lower than the sum as, if the court did not pick up a police error in a case, the case was counted as both police and court errors. This breaks down for England as court errors at 1 per cent, police errors at 8 per cent and the total cases with errors at 8 per cent. This breaks down for Wales as court errors at 13 per cent, police errors at 10 per cent and the total cases with errors at 19 per cent. The sample size for Wales was twice the sample size for England, which is why the sum of the percentages for the two countries is different from the overall percentages [NG/61 - INQ000104073].

87. In relation to the audit, the analysis we undertook was purely in relation to COVID-19 offences as this was where errors had been identified and thus was where officials needed to focus their attention. We did not at the time or since undertake any wider analysis comparing error rates relating to COVID-19 offences with other SJP cases. Similarly, we have not tried to assess whether any other system would have reduced the error rate. The only alternative would have been conventional proceedings in open court. The pressure of a busy courtroom, where legal advisers in particular are dealing with up to a dozen participants and juggling 20 – 30 cases while performing in public, is arguably more susceptible to error than two people reviewing documentary files in a quiet room. Since the second quarter of 2021, HMCTS has introduced a qualitative audit (a 'Key Control') of all criminal proceedings in magistrates' courts, where senior legal managers review a random sample of cases of all types. My understanding is that it demonstrates that errors are more common in standard proceedings than in SJP.

88. The CPS conducted a review of the COVID-19 prosecutions which they prosecuted (i.e. those that proceeded by way of written charge and requisition and not under the SJP) for the period 26 March 2020 to 31 March 2021. This was a different time period and focus to the sample review undertaken by HMCTS. For example, the CPS figure arose from a specific search for errors, so may have resulted in a higher error rate than the HMCTS review. The methodology for the HMCTS review was to take a random sample of and identify the number of errors, resulting in a percentage against the total.

89. No specific analysis of the error rate was conducted because the errors were identified shortly after they occurred, the specific circumstance for the error was identified, and they were immediately rectified. HMCTS did not conduct an analysis of errors comparing SJP cases before and during COVID-19, which would have required very extensive work which would not have delivered any benefit to HMCTS or the public. HMCTS did not consider that an alternative to SJP would have reduced the errors. Indeed, the error rate

in COVID-19 prosecutions was higher under the standard procedure (based on CPS's data). Nor has it ever been part of HMCTS's role to oversee decisions of the independent judiciary – auditing the quality of their decision-making was a novel departure, made in response to requests from MoJ. It was also recognised that the pandemic was a novel set of circumstances where HMCTS, at speed, found an efficient method to ensure that the courts continued to run smoothly and avoided a backlog of cases. Thereafter HMCTS introduced a procedure to check for procedural errors by legal advisers or magistrates. It was not deemed necessary to commission a further report to analyse the findings of the audit.

90. It is right to acknowledge that we needed to maintain a functioning court service in order to avoid a backlog. We were mindful of the risk to court staff, judges, and other court users falling ill to the virus. Having said that, an audit reactive to the issues being raised did occur at the behest of staff in MoJ, in response to pressure from the media and an external organisation. It was found that, at the beginning of the pandemic, the errors were caused by both the police and legal advisers due to unfamiliarity with the legislation and misreading or misunderstanding of the guidance, but, over time, the error rate began to fall because police and legal advisers were becoming increasingly familiar with the remit of the legislation and correctly applying guidance. I exhibit information on this audit here: **[NG/60 - INQ000104069 and NG/61 - INQ000104073]**.

91. As mentioned above in paragraph 87, there was no analysis conducted regarding the reasons for the SJP error difference between England and Wales. With hindsight, the reason for the difference can be simply explained as follows: Compared to England, Wales has a smaller population and a relatively smaller caseload. The manager who conducted the audit in Wales sampled a higher proportion of cases than was sampled in England as well as higher than the recommended minimum. The proportion of cases sampled in England was smaller and therefore subject to a higher deviation (meaning variation). As Wales sampled a higher proportion of their caseload, its results had a smaller deviation and was therefore more representative of the situation regarding the error rates mentioned above. It was an unsurprising result because Wales has a relatively small caseload compared with England. The data set was quite small and thus subject to a high deviation. However, the higher numbers surveyed in Wales probably smoothed and reduced the deviation for the combined percentage errors in England and Wales.

EQUALITIES

92. HMCTS did not undertake any specific equalities analysis (in line with the Equality Act 2010 and Public Sector Equality Duty) in relation to SJP and its use for prosecuting COVID-19 offences. This is because SJP was already an established procedure before the pandemic, and it is the responsibility of MoJ to conduct impact assessments when introducing legislation and therefore SJP would already have been subject to equalities analysis. It would be improper for HMCTS to conduct further reviews of the appropriateness of legislation implemented by Parliament; its role and that of the judiciary is simply to apply it. However, HMCTS did consider the impact of COVID-19 on vulnerable, minority or disadvantaged court users, as detailed a HMCTS Gold Command board paper which I exhibit here: **[NG/62 - INQ000593500]**

93. It is important to emphasise how quickly and decisively HMCTS was required to act in order to ensure that the court and tribunal systems continued to operate during the pandemic and that care was taken to oversee action taken was proportionate. Regarding remote hearings, it was considered that their use would enable everyone to have access to justice during the period of restrictions, in particular certain sectors of society who were vulnerable due to health conditions who would experience personal difficulty or anxiety resulting from a requisition to attend court. These themes are elaborated on in the House of Lords report "COVID-19 and the Courts" which I exhibit here: **[NG/03 - INQ000575521]**. Equally, it is recognised that there were unintended impacts from the use of remote hearings for people with disabilities and people experiencing digital exclusion (e.g. limited access and limited skills to use a computer). Therefore, going forward, greater consideration will be given to ways to accommodate people with protected characteristics more effectively. I exhibit a paper which went to HMCTS Gold Command in April 2020 and an action plan here: **[NG/62 - INQ000593500 NG/63 - INQ000593505]** Whilst there has not been an equality impact assessment carried out on the use of remote hearings within the courts, we are committed to ensuring court users continue to receive the support they need. Throughout the pandemic, the courts have continued to prioritise cases of the utmost seriousness, where the safety of the public and individuals is a concern.

LESSONS LEARNED

94. HMCTS has learned a great deal from the COVID-19 pandemic. Focussing in on the SJP, we believe that we could have put in place more robust audit mechanisms to check for errors sooner. Having said that, we did well conducting an analysis of errors to ensure the correct processes were being followed, and rectifying any errors found. If a similar situation arises again in the future, we now have the 'Key Control' check on errors in magistrate courts (mentioned previously in paragraph 87) which will enable us to check for error rates as soon as possible, particularly when new legislation is changing rapidly. I am proud of the work my staff did in such extraordinary circumstances to keep the justice system operating.
95. The demands during the pandemic from various sources in government and the judiciary for data, while understandable, imposed a significant burden on staff who, in addition to their key functions, were working tirelessly to maintain a functional court system and support staff. Much of this data collection was ad hoc and required extensive manual data collection. Since the pandemic, HMCTS has improved its data collection and analysis, including quarterly reviews of errors in magistrates' courts, which means it should be better able to provide data in the event of a future crisis.
96. As early as 29 April 2020, HMCTS Gold Command endorsed the scope and approach to capture lessons learned from HMCTS' response to the COVID-19 pandemic. The focus was on what should be done to ensure HMCTS were in a strong place and prepared for the next disruption on a similar organisation-wide scale. At the same time, Gold Command asked the Deputy Senior Presiding Judge about the best way to gather feedback from the judiciary. As a result, a HMCTS' formal initial COVID-19 control measure checklist was introduced. This was designed to provide immediate support to both experienced and less experienced Senior Persons on Site (SPOS), to help with the task of ensuring that sufficient safety control measures were in place. I exhibit documents relating to this here: [NG/64 INQ000593502], NG/65 INQ000546210 and NG/66 INQ000532574].
97. As the UK entered its first lockdown in March 2020, HMCTS recognised the potential for new, rapidly introduced working practices and processes to adversely affect vulnerable, minority, or disadvantaged court and tribunal users. On 27 March 2020, the Cabinet Office issued a commission asking if MoJ had considered the impacts of these changes on vulnerable users, and if so, what those impacts were. Following a paper to Gold

Command on 6 April 2020 that highlighted potential issues and impacts, HMCTS created the Vulnerability Action Plan (VAP) to outline mitigation efforts aimed at reducing or eliminating the impact on vulnerable users during key stages of their user journey. This included considering the impact of remote hearings on disabled people, in line with recommendations from the Equality and Human Rights Commission (EHRC) interim report, 'Inclusive Justice: a system designed for all.' The EHRC had conducted an inquiry into the pre-trial phase of the criminal justice process, focusing on accessibility for individuals with cognitive impairments, mental health conditions, and neurodiverse conditions. Their interim report, published in advance of a final report due to the then current expansion of video hearings, revealed that reforms in the justice system were making it increasingly challenging for some defendants or accused individuals to participate effectively. Although the inquiry began before the COVID-19 pandemic, its findings were deemed particularly relevant due to the rise in remote hearings. I exhibit the relevant papers here: [NG/62 - INQ000593500], NG/67 - [INQ000593504] and NG/68 - [INQ000593505].

98. The full EHRC inquiry report was shared with the Lord Chancellor on 9 June 2020. I exhibit it here: [NG/69 - INQ000185233].

99. On 7 July 2020, the Lord Chancellor wrote to the chair of the EHRC providing assurance of HMCTS' ongoing collaboration with the EHRC while considering the findings and recommendations in their report. HMCTS were committed to ongoing reforms aimed at simplifying the legal system, which included designing inclusive services that meet the needs of everyone. In addition to the work already underway following the interim report, HMCTS would explore how to gather and share protected characteristics information. I exhibit the correspondence and associated advice to the Lord Chancellor here: [NG/70 - INQ000593513] and NG/71 - [INQ000593510].

100. The aforementioned VAP was published in July 2020 as part of HMCTS' response to COVID-19 to support vulnerable users. Initially, this was a short-term measure. Due to its success, which had facilitated collaboration among business areas and sharing of good practices whilst addressing issues raised, HMCTS developed the VAP into a longer-term plan, thereby ensuring vulnerable court and tribunal users can continue to participate and engage with HMCTS service delivery into the future. I exhibit a paper which went to the HMCTS Service Excellence Committee here: [NG/72 - INQ000593517].

101. On 31 March 2021, HMCTS shared a delivery summary and lessons learned report on the screen installation programme for January and March 2021. The report detailed what the anticipated outcomes and lessons learned were from the four key HMCTS courtrooms. The report also summarised the high-level successes and set out future work projects that could be delivered more effectively. I exhibit this report here: **[NG/73 INQ000593516]**.

102. On 30 July 2020, the House of Commons Justice Committee published “Coronavirus (COVID-19): The impact on courts”. I exhibit that report here: **[NG/74 - INQ000544648]**.

103. On 23 November 2020, the Government’s response to the Justice Committee’s report was published. I exhibit that report here: **[NG/75 - INQ000546240]**. The response stated:

103.1. *“HMCTS have reviewed the implementation of remote hearings” and “identified some key issues which can make remote hearings less efficient and highlighted some of the user experiences HMCTS needs to address. Delays which prevent the hearing from starting on time (joining, recording, access to documents), troubleshooting technical issues during the hearing, hearings which include interpreters/ witnesses and the practical issues of facilitating hearings remotely can all impact how smoothly a remote hearing runs.”*

103.2. *HMCTS was taking learning from the implementation of CVP “to inform the thinking around progression into fully video remand hearings.”*

104. On 30 March 2021, the House of Lords Select Committee on the Constitution published a report entitled “COVID-19 and the Courts”. I exhibit the report here: **[NG/03 - INQ000575521]**.

105. On 28 May 2021, the Lord Chancellor responded to the recommendations from this report:

105.1. *“The second stage [of the evaluation of the use of audio and video hearings] involves a formal evaluation of these revised audio/video processes. This evaluation will cover hearings that occurred from July 2020 onwards, and its findings will inform our use of audio/video technology through the Reform programme and further into the future, helping us to address issues around user experience, the administration of hearings, staff support for hearings, technology, and quality standards. Surveys and*

interviews with a range of user groups are currently being conducted, and the study is expected to be completed by summer 2021. A research report summarising the findings will be published in the Autumn following an external peer review process.” I exhibit the Government response with the Lord Chancellor’s cover letter here: **[NG/76 – INQ000147682]**.

106. 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”. The report examined the use of contact 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. I exhibit the Committee’s report here: **[NG/77 - INQ000075367]**

107. 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 pandemics. 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. I exhibit that report here: **[NG/78 - INQ000075337]**

108. 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.

109. 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. The Committee's report is exhibited here: **[NG/78 - INQ000532534]**.

110. 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.

111. It is without doubt that the pandemic presented a serious threat to the proper administration of justice and thus the rule of law. Officials across HMCTS, MoJ and its other Executive Agencies and public bodies worked at pace and in challenging circumstances, alongside the independent judiciary and others, to ensure the proper administration of justice continued. I would like to pay tribute to their commitment and professionalism. HMCTS 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. MoJ, with input from HMCTS and its other Executive Agencies as necessary, is also a member of

the Cabinet Office run Pandemic Disease Capabilities Board. I exhibit the terms of reference for this board here: **[NG/79 – INQ000147681]**.

112. HMCTS' £1.3bn Reform Programme digitised multiple services and transformed the experience of using and administering many services across our courts and tribunals. Through the programme we have installed remote hearing technology in 70 per cent of our courtrooms, including 90 per cent of Crown courtrooms, allowing parties to join hearings remotely. We have managed over 2.3 million criminal cases (up to December 2024) through Common Platform, a single digital case management system in the criminal courts. We have also established five modern service centres which, alongside our national business centres, use the latest technology and answered over 2.8 million calls during 2024, providing a centralised, dedicated service to the public and other justice system users. We have also reduced processing times across services and are achieving consistently high user satisfaction rates. We have made courts and tribunals services easier to use and more efficient to run. We can provide faster access to justice for those people who need it – often when they are facing very difficult periods in their lives. Importantly, new digital services have provided greater resilience. Where services have been moved onto a single digital platform, we can continue to administer justice in times of crisis - even when people may not be able to attend courts, tribunals, or service centres physically. While the Reform Programme has concluded, work continues to enhance our services. With modern digital systems in place, we have the foundations in place to explore how our people, new technology, and ways of working can continue to improve what we do and how we do it. We will continue to find ways to improve and enhance our services. Using data will ensure we are targeted in our efforts and will help us to pursue opportunities for innovation to achieve value for money. This is all vital resilience for the future, especially should a future pandemic or similarly disruptive event occur. During the COVID-19 pandemic, a huge amount of resource had to be dedicated to providing real time data to help Ministers and senior leaders manage the crisis. Much of this was manually driven and, while the reporting was excellent, the level of resource required to deliver it was unacceptable and reduced the time our staff had to deliver our services. We must continue with our modernisation and digitisation efforts to ensure, in the future, as much of this as possible is automated.

113. However, I take huge pride in what was achieved to keep the justice system operating in unprecedented and extraordinary circumstances – delivering vital services to some of the most vulnerable people in our society.

STATEMENT OF TRUTH

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

Signed: PD

Dated: 9 May 2025