

# The impact of COVID-19 on the legal system and access to justice

COVID-19 has forced the courts to encompass technology into their proceedings. Although the move towards virtual courts was permitted by the Coronavirus Act 2021,<sup>1</sup> it still poses the risk of infringing access to justice in the UK.

The courts have resorted to virtual proceedings in response to the COVID-19 pandemic. This potentially did modernise some aspects of the legal system, however, there was little preparation for this disruption. The courts facilitated remote trials through virtual platforms, such as Zoom and Microsoft Teams.<sup>2</sup> It appears that this had some positive impact on the legal sphere, evidenced through the survey 'Life after Lockdown', whereby 83% of 500 lawyers surveyed wanted virtual courtrooms to continue in the future.<sup>3</sup> This may exemplify how virtual courts can function successfully. However, inherent adverse factors still remain and have instigated some serious issues.

First and foremost, COVID-19 has impeded the operations of courts and prevented the mechanisms that ensure justice from being delivered in the UK. One main issue found with virtual courts is the delays in the court proceedings,<sup>4</sup> which could particularly be a concern for young offenders. For example, individuals who have committed offences at the age of 17, soon turning 18, may face trial as an adult rather than a child. This may result in these individuals receiving harsher punishments or sentences than they would have with earlier trials.<sup>5</sup> Additionally, there was a decline in cases heard in magistrates and Crown Courts,<sup>6</sup> causing an increase in outstanding cases in courts. Justin Russell has expressed that COVID-19 has created '...severe delays'<sup>7</sup> within UK courts, meaning individuals must '...wait longer for their cases to be heard'.<sup>8</sup> For example, in the last week of October 2020, 465 trials were postponed.<sup>9</sup> Data also indicates that from June to September 2020, there was a large increase in outstanding cases.<sup>10</sup> In the Crown Court, the volume of outstanding cases increased by 25% when comparing Q2 from 2020 and 2019, with the average waiting time for all cases being up 38% from Q2 2019.<sup>11</sup> This is 7.3 weeks compared to the pre-COVID 5.3 weeks.<sup>12</sup> By the end of August 2020, courts were still operating significantly below capacity.<sup>13</sup>

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<sup>1</sup> Coronavirus Act 2020.

<sup>2</sup> Aleks Valkov, Fiona Gillett, 'Keeping justice going: the UK Commercial Court's swift move to virtual trials' *Stewarts* (5 January 2021) <<https://www.stewarts.com/news/first-ever-fully-virtual-trial-in-the-commercial-court-case-study/>> accessed 12 December 2021.

<sup>3</sup> Richard Susskind, 'Covid-19 shutdown shows virtual courts work better' *Financial Times* (London, 7 May 2020) <<https://www.ft.com/content/fb955fb0-8f79-11ea-bc44-dbf6756c871a>> accessed 12 December 2021.

<sup>4</sup> Dr Natalie Byrom, Sarah Beardon, Dr Abby Kendrick "Rapid Review: The Impact of COVID-10 on the Civil Justice System", Reports and Recommendations, 2020 < <https://www.judiciary.uk/wp-content/uploads/2020/06/FINAL-REPORT-CJC-4-June-2020.v2-accessible.pdf>> accessed January 30th, 2020.

<sup>5</sup> The Justice Select Committee, *The impact of Coronavirus on the impact on courts*, (HC- 2019-21).

<sup>6</sup> Russell Webster, 'The Impact Of COVID-19 On Our Courts' (Russell Webster, 24 September 2020) <<https://www.russellwebster.com/covid-impact-courts/>> accessed 3 March 2021.

<sup>7</sup> Dominic Casciani, 'Covid and the courts: 'Grave Concerns' for Justice, warn watchdogs' BBC News, (United Kingdom, 19th January 2021) <<https://www.bbc.co.uk/news/uk-55712106>> accessed 12 December 2021.

<sup>8</sup> Ibid n<sup>o</sup>7.

<sup>9</sup> Ibid n<sup>o</sup>7.

<sup>10</sup> Ibid n<sup>o</sup>6.

<sup>11</sup> Russell Webster, 'The Impact Of COVID-19 On Our Courts' (Russell Webster, 24 September 2020) <<https://www.russellwebster.com/covid-impact-courts/>> accessed 3 March 2021.

<sup>12</sup> Ibid n<sup>o</sup>11.

<sup>13</sup> Ibid n<sup>o</sup>11.

These statistics highlight how defendants were put at a disadvantage compared to their pre-pandemic counterparts, as their cases are being heard considerably slower. Additionally, cases have been postponed and rescheduled, some of which even into 2022.<sup>14</sup> This is particularly problematic with around 1 in 6 prisoners being on remand,<sup>15</sup> especially concerning considering that virtual court cases take around twice as long as normal cases.<sup>16</sup> Therefore, this poses extensive issues on access to justice.

Concerns also stem from the lack of legal advice given to prisoners during COVID-19. During the pandemic, prisoners' access to legal advisors became extremely restricted. For instance, solicitors were waiting eight weeks to consult their clients,<sup>17</sup> so hearing dates were often offered before prisoners could take legal instruction.<sup>18</sup> This may emphasise how the legal system's use of technology did little to facilitate access to justice for prisoners, as their procedural rights were restricted. Thus, it appears that adaptations to the legal proceedings of prisoners to be more inclusive of technology has triggered an issue of national justice. Moreover, Julie Doughty comments how remote conditions during COVID-19 can impact an individual's confidence when participating in their trials. This issue is highlighted through the case of *Re A (Children)*,<sup>19</sup> where an individual was unable to '... engage sufficiently with professional evidence'<sup>20</sup> using an iPad, as it was not 'fair or adequate'<sup>21</sup> due to technical concerns. This exemplifies how remote hearings can create unjust results in comparison to in person trials, which once again threatens the legitimacy of access to justice. Nevertheless, in the case of *Re B (Children)*,<sup>22</sup> it was stated that remote hearings, whilst they may replicate parts of in-person trials, may cause infringements on fundamental principles<sup>23</sup>. However, the Law Society opposes the argument that access to justice has been protected throughout the pandemic, despite remote hearings and technological adjustments. For example, their survey indicated that vulnerable clients are less able to 'effectively participate'<sup>24</sup> in remote hearings. This illustrates that there is indeed a barrier between virtual courts and access to justice because of COVID 19. Therefore, the adjustment to court processes and the lack of legal advice available have had a vast impact on access to justice.

The functioning of the court proceedings, including the fundamental role of judges in upholding impartiality, has also been significantly impacted. For example, in *C (A Child)* [2020],<sup>25</sup> Mrs Justice Judd was taken off a case 'after 'pejorative comments' she made about the child's mother'<sup>26</sup> during a remote hearing. This was because she had left the virtual courtroom open on her laptop while making these comments. This illustrates the consequences that virtual courts have on the way in

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<sup>14</sup> Hazel Blake and others, 'Law Under Lockdown: The Impact of COVID-19 Measures on Access to Justice and Vulnerable People', The Law Society, 2020 <<https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>> accessed 3 March 2021.

<sup>15</sup> HM Prison Service, 'Offender management statistics quarterly: April to June 2020' (HM Prison Service, 2020). <<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2020/offender-management-statistics-quarterly-april-to-june-2020>> accessed 3 March 2021.

<sup>16</sup>Owen Bowcott, 'Covid leading to four-year waits for England and Wales court trials' The Guardian (United Kingdom, 10 January 2021) <<https://www.theguardian.com/law/2021/jan/10/covid-leading-to-four-year-waits-for-england-and-wales-court-trials>> accessed 9 March 2021.

<sup>17</sup> Ibid n°15.

<sup>18</sup> Ibid n°15.

<sup>19</sup> *Re A (Children) (Remote Hearing: Care and Placement Orders)* [2020] EWCA Civ 583.

<sup>20</sup> Ibid n°20 [56].

<sup>21</sup> Julie Doughty, 'Remote Justice – Family Court Hearings During the Pandemic' (2020), 42/3, 2020, Taylor and Francis Online <<https://www.tandfonline.com/doi/full/10.1080/09649069.2020.1796221>>.

<sup>22</sup> *Re B (Children) (Remote Hearing: Interim Care Order)* [2020] EWCA Civ 584.

<sup>23</sup> *Re B (Children) (Remote Hearing: Interim Care Order)* [2020] EWCA Civ 584 [4].

<sup>24</sup> Hazel Blake and others, 'Law Under Lockdown: The Impact of COVID-19 Measures on Access to Justice and Vulnerable People', The Law Society, 2020, 15 <<https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>> accessed 3 March 2021.

<sup>25</sup> *C (A Child)* [2020].

<sup>26</sup> Ibid n°26.

which judges must conduct themselves. This is particularly important because for justice to be achieved, dependants must be seen to have an impartial judge, which was no longer the case with Mrs Justice Judd.