



## Safety and Justice for all! A Compilation of reflections on the Judiciary and Criminal Justice System adapting during the Covid-19 Pandemic.

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### I. INTRODUCTION

The onset of the Covid-19 Pandemic in 2020 and the resultant safety restrictions had an unprecedented impact on the lives of the general public. However, although it might have felt like the world had ground to a halt, life had to continue. The Judiciary and Criminal Justice System in England and Wales had to continue to operate to ensure that justice was served but with the added task of ensuring the safety of all those involved.

This article is a compilation of reflective contributions from members of the Judiciary and Criminal Justice System highlighting the challenges faced and how they had to adapt in these times of crisis. It reflects the personal experiences of each contributor and provides a very unique insight into how the Business and Property Courts, the Crown Court and Prosecution Service and Family Court adapted to the “new reality” brought about by the Pandemic.

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## II. COVID-19: TRYING TO SAVE LIVES AND BUSINESSES IN THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES - The Hon Sir Alastair Norris

I still sit from time to time as a judge in the Business and Property Courts of England & Wales. Let me begin with two thumbnail sketches drawn from the opening paragraphs of two recent judgments.

*"The Selecta group of companies is the leading provider of coffee and convenience food vending machines in Europe. At its peak it served 10 million customers per day in sixteen countries; but it has been severely hit by the consequences of COVID 19. Sales are down some 50 per cent, and profits by some 80 per cent. Those who work from home have no need of vending machines located in offices or at transport hubs and stations. The consequence is that the cash resources of the Selecta group are under severe pressure, such that a coupon due on some bonds in October 2020 was not paid when due. The group is accordingly compelled to embark on a financial restructuring as an alternative to an accelerated sale of its assets and business, in an adverse market, under the shadow of formal insolvency proceedings."*

*"The COVID-19 lockdown and the subsequent COVID-19 restrictions threaten to devastate whole sections of the casual dining business sector which was already facing a challenging business environment. The Pizza Express Group is caught up in this turmoil. The Group had in the 2019 financial period reported an incurred loss of £354 million, and temporary closure followed by restricted trading has only worsened that position. On 20 March 2020, the Pizza Express Group closed all of its 449 company-owned restaurants in the United Kingdom and furloughed all of its 9,500 restaurant staff. It also closed 19 of its restaurants in Ireland. With the easing of restrictions in July, it began re-opening restaurants for dine-in customers and also extending its dine-out offering, but that programme has been disrupted by the renewed work-from-home directive and its impact upon the office worker market."*

These were the introductions to cases seeking the sanction of the Court to the financial and operational restructurings of previously thriving businesses which had hitherto faced no difficulty in obtaining and servicing finance.

The retail and casual dining sectors had faced pressure in 2019, largely related to property costs (rent and business rates) and largely addressed through company voluntary arrangements. Throughout 2019 there had also been a steady stream of applications for the approval of cross-border mergers and banking and insurance company transfers as UK companies transferred branches of their business to EEA entities as Brexit approached. But the Pandemic generated a much increased volume of applications for schemes of arrangement as a means of keeping in being previously successful businesses (often global brands), extending the maturity of debt, cutting the face value of the debt, and sometimes offering a debt-for-equity swap, to give bond-holders and lenders a share in the up-side should the business survive and (after the Pandemic) thrive.

The Court lists are full. But so far, the Courts have been able to cope with the rise in business whilst continuing to deal with the existing routine business. That is in part because the Pandemic did not generate an additional immediate upsurge in bankruptcies and liquidations. Rapidly passed legislation both provided temporary finance and prevented the presentation of applications and petitions where the insolvency arose directly out of the Pandemic. But this support will end, and then we can expect a rash of insolvency (rather than restructuring) work.

This legislation also introduced (after lengthy consideration of the mixed responses to a consultation) an additional Part 26A into the Companies Act 2006, making available to companies in financial distress a new “scheme of arrangement” targeted at relieving that distress. The Explanatory Notes to the legislation indicated that Parliament expected the existing jurisprudence on schemes under Part 26 to guide the development of this new jurisdiction. The first case under Part 26A (Virgin Atlantic) came before two highly experienced judges who laid out the framework, adopting that guidance: and in the second such case (PizzaExpress) I was able simply to follow them. This is the glory of the common law: the ability rapidly to develop innovative solutions to pressing commercial problems, and to establish them as precedents. The novel feature of the Part 26A scheme is its introduction of the “cross-class cram-down” (the ability of the Court to sanction a scheme notwithstanding dissent by one or more classes of creditor or member). Neither Virgin Atlantic nor PizzaExpress involved a dissenting class so that this new jurisdiction has yet to be developed. But it is unlikely to develop simply by the application of American decisions under Chapter 11 of the US Bankruptcy Code: and is very likely to require an increased focus upon methods of valuing an enterprise. We are having to think about that.

These insolvency processes, of course, require approval by classes at meetings: and meetings cannot take place. So we have had to think about the essence of “meetings” and how this can be captured in remote gatherings: and the process of sanction now involves consideration by the Court of how the meeting was convened and conducted and whether there were technical hitches which might render its outcome suspect.

Just as stakeholder procedures have adapted by the introduction of digital tools, so the Court processes have likewise adapted. About 85% of the work of the Insolvency and Companies Court has continued throughout “lockdown” and working from home. Some cases simply cannot be fairly dealt with by remote, digital means; and it is a judicial (and not an administrative) decision case-by-case. Long trials with extensive cross-examination or cases involving litigants in person can present particular challenges. But where the evidence is written and largely uncontentious, or is capable of being tested by video cross-examination, where the parties are represented or are on an equal footing, then a hearing by Skype or Teams is usual.

The fundamental requirement is for open justice: of ensuring that the case is listed as being heard remotely, with sufficient detail being given to enable the public and interested parties to view what is going on; of ensuring that any judgment not given in Court but circulated by e-mail is published on an immediately accessible site. The skills we have learned and the experience we have gained will not be discarded when the consequences of the Pandemic lessen.

So how has the Pandemic changed the way I and my colleagues in the Insolvency and Companies Courts work? It has changed the nature of our work, the volume of our work, the tools available to us to do our work, and the way we go about our work. But it has not changed the standards and values we apply to our work.

### III. INNOVATION IN THE “OPEN” CROWN COURT OF WOLVERHAMPTON: SAFETY AND FAIRNESS - HH Judge Michael Chambers Q.C. (The Recorder of Wolverhampton)

At Easter 2020 I took over as Resident Judge at Wolverhampton Crown Court, one of the busiest criminal justice centres in the country in terms both of volume and seriousness of work. Whilst I welcomed the lack of traffic for my daily commute, the impact of the “lockdown” and continued restrictions have presented huge challenges to the administration of justice; in other words, keeping the criminal courts functioning.

From the outset of the Covid-19 Pandemic, the Lord Chief Justice has been determined that the Crown Court should continue to sit as both a symbolic and real sign that the rule of law is being maintained. Secondly, in order to achieve that, we have had to embrace new and flexible working practices. Thirdly, in making good progress despite the difficulties, we have been reminded that, like policing in this country, our courts system is largely dependent on the consent and cooperation of its essential participants: witnesses, lawyers and the defendants. Remarkably, we have had few instances of defendants using the dubious sudden onset of symptoms or the need to self-isolate on the morning of their hearing as an excuse not to appear.

In March the holding of jury trials was suspended nationally. However, Wolverhampton was designated as an “Open Court”. That meant that we had sufficient cleaning and social-distancing measures in place so that it was deemed safe for barristers and defendants to attend in person. In practice, most hearings took place remotely on video link. There was a virtual court with the judge sitting robed in the courtroom at Wolverhampton. To start with the hearings were via Skype or Teams. There would be a link to the prison and the barristers connected from home (dressed we suspected in suit tops, but pyjamas off screen). Defendants often dialled in on their mobile phones. We just hoped we had the correct defendant pleading guilty to the correct offence. The video links often broke off leaving frustrated judges shouting at the screen.

The Coronavirus Act 2020 expanded the lawful permitted use of live links for criminal proceedings. May saw the introduction of the Common Video Platform. This was a more sophisticated and much improved platform for video hearings. It has been very successful. We had the ability to have a split screen in multi-defendant cases comprising the defendants in custody, the barristers, the CPS, and interpreters. Even the Press can be granted access. We have also had combinations of some defendants on bail in the courtroom. By this means, although not doing trials from Easter to July, we completed a vast number of sentences, plea hearings, case management and appeals. In fact, through long lists and a dedicated staff adapting to new IT, we kept on top of our non-trial workload. Almost without exception, defendants were polite and cooperative on the links and counsel were always well prepared and patient. As well as endeavouring to maintain our justice system, we were mindful that it was essential to support the Criminal Bar at a time when they were not being remunerated for trials.

The main challenge has concerned the obstacles in progressing the cases of defendants in custody. Firstly, defence solicitors have had limited opportunities to have legal visits or prison video links for them to take instructions. Secondly, the courts have been unable to hold trials within the statutory custody time limits. A point of tension has been applications to extend those limits in cases where the defendants are said to be a risk to the public. As a matter of law, they can only be extended if there is “a good and sufficient reason” and the prosecution have proceeded with “all due diligence and expedition”. There is usually no criticism of the prosecution. The argument is whether “Covid-19” amounts to a good reason. In some

cases, the defence have sought, unsuccessfully, to make political submissions that it is really a consequence of pre-existing underfunding.

As the first lockdown eased, Wolverhampton was one of the first places to be a designated trial centre. In July we resumed trials. The backlog was significant notwithstanding that generally the crime rate had gone down. The lockdown was not a good time for house burglars. To maintain social distancing we spread the jury across the courtroom and had the barristers in the jury box. We had to use another courtroom for the jury retirement. Then came the introduction of plastic screens between jurors. They are now back in the jury box but are squeezed in as if they are embarking on a long flight in Economy.

The number of defendants in a dock is limited. We have had to be innovative. I have been trying a four defendant murder trial by having two defendants in the dock in the main courtroom with the five QCs in that room, while the other two defendants and junior counsel are on a live link from another courtroom. We even have had a second murder trial running next door.

We are now slowly but effectively working through our trials as well as completing big lists of other work. Safety and fairness have been our dual aims. Despite a very strict regime of social distancing and constant cleaning, like other centres we have not been immune from Covid-19 outbreaks, but we continue to be open for business. However, there will still be challenges ahead before we return to a conventional regime that Rumpole would have recognised.

#### **IV. CRIMINAL JUSTICE IN THE MIDLANDS: PUBLIC SERVANTS AS KEY WORKERS IN THE PANDEMIC. - HH Judge James Burbidge Q.C. (The Honorary Recorder of Wolverhampton 2015 to April 2020. Current Honorary Recorder of Worcester)**

On Tuesday 17 March 2020 the Lord Chief Justice of England & Wales, Lord Burnett of Maldon, issued a statement in the following terms: "Trials in the Crown Court present particular problems in a fast-developing situation because they require the presence in court of many different participants including the judge, the jury, the defendant, lawyers and witnesses as well as staff. Given the risks of a trial not being able to complete, I have decided that no new trial should start in the Crown Court unless it is expected to last for three days or less."

This of course was a consequence of the general "lockdown" of society due to the Coronavirus epidemic that had struck not just this country but worldwide.

Some jury trials that were then in full flow were able to proceed to a conclusion, if verdicts were not too distant. In the case of *R v GP* [2020] EWCA Crim 1056 defence counsel sought to argue that due to the first lockdown and the strictures made by the Prime Minister that a jury who returned on that Friday 20<sup>th</sup> March, [after the Judge sat late on Thursday to complete his summing up] were under significant pressure to reach verdicts that Friday such that that pressure might well have caused adverse verdicts. The Court of Appeal Criminal Division found no merit in that argument.

In fact at the time, the "lockdown" and the social distancing rules commenced this caused greater issues with conducting criminal cases than merely the general cessation of the listing of trials.

Wolverhampton Crown Court where I was then the Resident Judge was categorised as a court to remain open for business and was designated an "Open Court". This meant we were obliged to carry on listing all cases, for sentence and administrative hearings such as plea hearings

albeit it was not possible to list jury trials due to the social distancing rules of two metres. No courtroom on site was able to achieve that. On one level Wolverhampton Crown Court was fortunate in that it remained what was termed an "Open Court". Defendants could attend for their hearings and to a limited degree the public were able to enter the building. Although due to the need for social distancing this was not encouraged.

I say Wolverhampton was fortunate on one level, as it was open. Those who were interested in the justice system operating through crises were pleased, as all who serve the court system were. But the Covid-19 Pandemic was an unknown and a worrying entity to the public at large and that included those who worked out of the courts. The court staff as well as Judges were deemed in effect to be Key Workers, and were obliged to work. This caused some anxiety to many that should not be underestimated. Those with pre-existing health conditions or having to care for others in that condition were persuaded to stay away.

There were two other designations for the Criminal Courts. One designation was a "Closed Court" and this required the smaller Crown Courts to be obliged to close for all business. Its work was to be carried out either in a nearby court of the first category of an "Open Court" or in the third category of a "Staffed Court".

Towards the end of April 2020 I moved courts to become the Resident Judge of Worcester and Hereford. This had been designated as a "Staffed Court". This court continued with criminal work, but did not permit members of the public to enter the court. Thus Judges presided over those cases that could be processed by the utilisation of facilities that enabled remote working. The systems of 'Skype for Business', 'Microsoft Teams' and 'BT Meet Me' were utilised to secure the advocates and any other participants attendance. The use of 'Zoom' was regarded as insufficiently secure for the criminal justice system of England and Wales to utilise.

Video Links to prisons could be maintained to proceed with sentencing of those in custody who had or intended to plead guilty. As we have proceeded through the Pandemic the court system have developed its own bespoke remote link system. This is known as CVP [Cloud Video Platform].

There was a reluctance to accept the efficacy or efficiency of seeking those who were on bail to join a court hearing by these remote methods. An accused person on bail who wanted to plead guilty at the earliest opportunity and get the maximum credit permitted by the Sentencing Council Definitive Council Guideline on Reduction in Sentence for a Guilty Plea, had and has difficulty in doing that. Many solicitors' offices were closed and their staff furloughed. Their clients attempting to be connected to the court by the internet through alien systems from their homes was not entirely appropriate given the lack of privacy even if likely to achieve success.

Of course it was inevitable that the backlog of cases awaiting for trial and sentence grew. For trials could not be undertaken as few court buildings across the country could accommodate a jury of 12 socially distanced before even considering the additional presence of other participants that would be necessary for an effective trial in a courtroom.

Gradually, however, those "Open Courts" such as Wolverhampton and others in our major cities developed systems in which jury trials could be undertaken. Thus in "Open Courts" a jury could be spaced out two metres from one another in one court, with the Judge and two advocates. Any other participants such as a witness or a member of the public would engage in the trial remotely. Albeit remotely in this sense was by the proceedings being linked into an adjoining court.

Whilst this ingenuity has allowed trials with 12 jurors to proceed, clearly there are still significant issues in pursuing trials as the backlog grows. Whilst it appears crime abated to some extent through the first lockdown there had been a backlog of cases before the Pandemic, as during the move through austerity court sitting days had been cut.

There is evidence that the National Crime Agency were able to pursue alleged criminals engaged in serious crime in organised crime groups during lockdown as they were all battened down, in their homes just like the rest of us! So arrests in serious crime increased. General crime figures have gone down. Less violence as less ability to be drunk on the streets. Worryingly crimes of domestic violence have increased and the adverse effect on families and children still not fully discovered.

Other innovations have been created to pursue jury trials within the court estate especially to allow there to be one metre plus attendance by jurors. They are separated by Plexiglas panels as they sit in the jury box as are counsel in their rows. Some docks are able to separate defendants behind screens in that manner. In Worcester before we were able to be provided with Plexiglas we were able to use a gallery balcony above the jury box and put a proportion of jurors in that space. Thus to those of us addressing the jury they appeared like the panel in University Challenge on the television in tiers! The advocates having to move to the witness box to address the jury in their opening and closing speeches so that they could address the whole jury panel in full view.

In places such as Birmingham and Northampton Crown Courts porta-cabins have been placed in the court car parks to provide retirement rooms for juries at appropriate socially distanced levels.

However, docks remain too small to conduct many multi-handed cases, which is with accused more than two in number. In Worcester we are running one of our two courts without using a dock manned by security officers, as we cannot gain appropriate social distancing there. I am assessing cases to ensure that the trials are of a nature in that court that provides no risk to the participants. This has actually started to promote a debate amongst our local judges about whether docks manned by security guards are in fact necessary in our system. After all many continental countries operate trials without a dock as do many states in the US [albeit often in the latter they have armed Marshalls present at court proceedings].<sup>1</sup>

Her Majesty's Court Service have also started to look for sites for what have been called 'Nightingale Courts' adopting the terminology used for the large Hospitals created to take Covid-19 patients on the verge of needing ICU treatment. Thus in London the Southwark Crown Court, which tries many cases of fraud, are utilising large commercial office spaces for courts. In Manchester Courts have been established in the Lowry Theatre which can hold jury trials whilst maintaining appropriate social distancing. All court centres are looking at different locations outside the court buildings to deal with criminal cases. Of course the need is not just to deal with criminal cases but family and civil cases. The Moot Court facilities of Worcester University were considered to try contested family and civil cases, but did not realise due to the start of term.

At one stage it was thought by many who engage in the criminal justice system that the Government might implement legislation perhaps to reduce the number of jurors that compile a jury to sit on a Crown Court trial and this would facilitate the ability to have more social

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<sup>1</sup> The past Lord Chief Justice Lord Thomas was a keen proponent of conducting cases without the utilisation of a dock. A thought provoking article on such a subject appeared in Archbold Review Issue 3 April 17th 2015. Long before the pandemic. Perhaps this issue for practical reasons has been brought into sharper focus.

distanced trials in our court estate. This happened for example during the Second World War. A Coroner's Court can hold an inquest with six jurors.

Another suggestion aired was conducting trials of either way offences [not indictable offences] not by a jury but a Judge and two Magistrates. Then a Judge having to give a reasoned verdict of the three person court which of course would be subject to scrutiny in the Court of Appeal Criminal Division. Some argue that justice would be done in this manner for a jury's verdict does not require a declaration of reasons for their determination of Guilt or otherwise but a court convened in this manner would. Others argue that a person should be tried by a random selection of his/her peers and there should be no dilution in any way of this as this is real justice.

None of these suggestions found its way to the legislative table. It is clear that such changes would have required much debate and analysis by the legislature. It would be interesting to consider whether either of these systems would deliver justice equivalent to that delivered by our present system.

That which was enacted by the legislature was the Coronavirus Act 2020.<sup>2</sup> Essentially though, without going into its provisions, it provided for many more hearings to be conducted by the remote intranet mechanisms by amendments to existing legislation rather than requiring in person hearings.

A number of issues have arisen during this Pandemic that would need fuller discussion than an article of this nature permits. I set them out not in any particular order of import but all require consideration.

- Justice delayed. Jury trials are delayed for many if not all.<sup>3</sup>
- "Restricted" confinement. Those detained in custody or indeed sentenced by the courts find that their time in custody means more time confined to their cells; lack of recreation; limited visits by family; lack of ability to undertake courses.<sup>4</sup>
- Those offenders who are subject to Community Orders imposed by Judges on sentence are unable to undertake the courses directed to be carried out and advanced by the

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<sup>2</sup> A neat distillation of this statute and its effect on the criminal justice provision during the Pandemic can be found at Archbold Review Issue 4, 29<sup>th</sup> May 2020 by HHJ Lana Wood 'The Coronavirus Act 2020 and its impact in the Crown Court'. The editors of Blackstones and Archbold were quick to provide practitioners and Judges with an aide to the Coronavirus Act.

<sup>3</sup> Those in custody are at risk of being denied the right for trial within the 182 time limit directed by s 22 Prosecution of Offences Act 1985 and the Prosecution of Offences (Custody time Limits) regulations 1987. This has been extended to 238 days. Complainants if they are true victims have been denied appropriate justice and are having to await giving their version of events which no doubt compound their anxiety and the effect of the crime upon them, not permitting 'closure' for many months more than could previously have been envisaged. There is also a further issue in relation to delay: The tension that exists in the substantial delay from the commission of the crime to the punishment of it caused by the Pandemic. If an offender has denied the offence and the case set off for trial which cannot be heard for a year or more. Then convicted after that year. How does a Judge assess the appropriate sentence for an offender who has stayed out of trouble for that year but denied responsibility [and thus lied] but due to the passage of time shows evidence of rehabilitation and ability to avoid crime? Yet a victim has had to await a year plus of their lives awaiting to give evidence of receive justice. This is a difficult balancing act for a Judge who has to sentence an offender, yet consider the impact on a victim. The LCJ has in *DPP v Crown Court at Woolwich and Young-Williams and others* [2020]EWHC 3243(Admin) analysed the response to the pandemic by the Government and HMCTS when determining whether custody time limits should be extended in any particular case.

<sup>4</sup> The Lord Chief Justice in the case of *R v Manning* [2020] EWCA Crim 592 recognised these factors accentuate any custodial sentence served by an offender and thus it is a factor for Judges to take into account either when determining length of sentence when a custodial sentence is inevitable or even affecting the determination of whether an immediate custodial sentence is necessary. Indeed in *R v Jones* [2020] EWCA 764 it appears the CACD reduced the sentence that was imposed by a Judge before lockdown had been announced by reason of the lockdown thereafter! Although this 'discount' or 'reduction' or 'benefit' does not necessarily apply to an offender who has committed a significant crime see: *Wayne* [2020] EWCA CRIM 1303 & *Fisher* [2020] EWCA CRIM 1189.



probation service or undertake their unpaid work/community service orders for the community as reparation for their crimes for some time and well distant from the time they committed their crimes. Does this mean that the punishment will not meet the crime committed or indeed provide the guidance and professional instruction at a relevant time to reduce the risk of offending?

- The use of remote procedures for criminal justice hearings: Do they advance justice or deny or diminish the same?<sup>5</sup>
- How has the issue of remote justice affected the access of those who are more vulnerable in society to criminal justice? Some studies are ongoing.

The Jurisprudence of many of these issues are significant and well worth discussion and contemplation. Many if not all have come to the fore during the Pandemic. However at the core of it all, it must be said that the highly developed criminal justice system in England and Wales has met the challenge of continuing justice for all: victims and accused given the limits of the court estate, which includes staffing levels.

It must be recognised that there has been a superb standing up to the plate of responsibility and duty by those employed by the Her Majesty's Court and Tribunal Staff [HMCTS] at ground level in Wolverhampton and Worcester Combined Court Centres to keep the courts engaged for all. This amidst constantly changing scenarios during the Pandemic, is a shining example of public service of those who believe justice should continue in the most arduous of times without diminution.

## **V. DEALING WITH "REMOTE EMOTION": ENSURING FAMILY JUSTICE IN TIMES OF CRISES - HH Judge Sally Dowding (Designated Family Judge Wolverhampton and Telford)**

The Family Court at Wolverhampton deals with many and various contentious issues arising in the course of modern family life. The majority of our work consists of a mixture of disputes between separated parents as to the arrangements for their children; applications for protective orders (injunctions) where one party to a relationship alleges domestic abuse by the other party, or applications by local authorities for public law orders to protect children from significant harm attributable to the acts and omissions of their parents. In addition, we deal with applications for adoption orders; we sort out financial issues between separating partners and spouses, and we consider making Parental Orders when children have been born as a result of surrogacy arrangements; in short, we are involved in many areas of family life, many of which are highly emotive and contentious.

The Family Court itself is arranged into Designated Family Judge areas, with the Designated Family Judge (DFJ) having frontline responsibility for the delivery of family justice across his or her area. Our 'patch' extends to six local authority areas: Wolverhampton, Walsall, Sandwell, Dudley, Telford and Shropshire. We are by some distance the busiest DFJ area within the Midland Circuit, and the impact of the Pandemic on family lives, and in particular the general heightening of our collective stress levels by lockdown and all its implications, has led,

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<sup>5</sup> Prof David Ormerod QC [Editor of Blackstone] and Prof Cheryl Thomas of University College London are presently undertaking a study of Judges' opinion on this issue. The study is called 'Review of Emergency Measures in the Crown Court' the results area awaited and yet to be published.

unsurprisingly, to an inexorable increase in family disputes and difficulties, and to a corresponding increase in the court workload.

The first lockdown in March 2020 brought an abrupt, temporary, end to all attended hearings in the Family Court, with all work moving to remote platforms. This was a significant shock to the system in a jurisdiction accustomed very much to human interaction, and where the emotional component of the subject-matter should never be underestimated. However, child protection cannot wait, and all the family judges, and indeed the practitioners, faced a steep learning curve rapidly to acquire the skills necessary to conduct all our hearings by Skype, Microsoft Teams, or, if all else failed, by conference telephone call. It is never ideal to hear an application to remove a child by remote means, but neither should a child ever be left in perceived danger: every case involves a balancing act between protecting the rights of the parents and assuring the right of the child to be safeguarded.

It would be fair to say that the primary casualty of lockdown was achieving finality for children when the plan for the child is not agreed and therefore a contested final hearing is required. These could not take place until July 2020, when several of our courts were deemed to be 'Covid-19 -compliant', and we set about listing the backlog of trials, as well as ensuring that we kept on top of all the new work coming through our doors. The 'new normal' still looks and feels very different, with strictly-controlled footfall within the building, many chairs marked 'do not sit here', and most professional witnesses continuing to give evidence remotely; however, enabling parents to give evidence directly to the court again, and to have ready access to their legal teams, marks very significant progress. It was a particular concern that parents were joining hearings from their own homes, possibly facing the prospect of losing their children, and sometimes entirely unsupported: this rather inhumane situation required to be addressed as quickly as possible.

In terms of locations, whilst our primary court is the Combined Court Centre at Pipers Row, we also use courtrooms in Wolverhampton Magistrates Court; at Walsall and at Telford – where, in addition to our existing court house, we have a 'Nightingale Court', set up specifically to assist in addressing the backlog of stalled trials.

In addition to attended contested hearings, we continue to deal with a large volume of remote hearings, primarily addressing case management, but sometimes dealing with contentious issues. Where possible, we use platforms where the parents are at least able to see who is involved in the hearing and are able properly to participate – telephone hearings within this jurisdiction are very much a last resort. All agree that the ability to hold hearings remotely has been pivotal to ensuring that family justice remains accessible and responsive to the needs of the community. However, it is not the ideal vehicle for managing the high emotions properly and inevitably generated by issues relating to children, and it is the hope of most family justice professionals that the routine use of remote hearings will soon become as distant a memory as the Pandemic itself.

**VI. PROSECUTING FOR THE SAFETY OF ALL! THE CROWN PROSECUTION SERVICE AND THE PANDEMIC – Suzanne Llewellyn (Deputy Chief Crown Prosecutor)**

Had I been asked in January 2020, would I be leading my team; the largest Regional Crown Court and Complex Casework Team in the country at the Crown Prosecution Service (CPS) from my dining room table, I would have shaken my head vigorously and said, 'Of course not'. Similarly, I would have treated any suggestion that the Criminal Courts would move from face to face advocacy to virtual advocacy overnight with a high degree of incredulity.

However, the Covid-19 Pandemic has brought about unprecedented change. Those involved in the delivery of criminal justice have remained focused, innovative and above all determined that criminal justice would remain functional.

When the first National "lockdown" was announced in Spring 2020 the Crown Prosecution Service, Police and Courts were recognised as essential services who played an important role in retaining social order in changing and challenging times. There was of course the need for reassurance, that criminality would be investigated and prosecutions brought where relevant, to uphold law and order. The law is a powerful tool at the hands of legislators to deal with new threats. Legislation remains agile and can be quickly introduced to regulate behaviours. In the case of the Pandemic, coronavirus regulations were quickly put in place to promote public safety.

I believe the CPS has a pivotal role in shaping society. The Pandemic brought with it frightening times, the mere act of leaving your home and having everyday contact with others carries a risk of transmission of the virus and we have all seen sadly how the virus has led to many deaths; it is, as has been said by many others, the invisible enemy in our society.

During the Pandemic, the CPS had a key role to ensure action was taken against those flouting the safety measures aimed at protecting us all. For example, my teams saw a swathe of offending against emergency service workers, involving police and paramedics being spat at or coughed on by suspects who declared they were infected with the virus. These were deliberate acts aimed at causing unnecessary fear. It has never been more important to ensure there is a Criminal Justice System that is open and available to curb such behaviours for the safety of society as a whole. A further example of the importance of the Criminal Justice System is its ability to protect the most vulnerable in our society. During the lockdown domestic abuse has continued to affect many people, it has therefore been very important to ensure that victims have access to the Criminal Justice System to ensure action can be taken to regulate contact from perpetrators. Sadly, serious offending such as organised crime and homicides have continued and a swift criminal justice response has been required to keep society safe.

Perhaps the most remarkable response to the Pandemic, has been the dynamism of the Criminal Justice System. Each constituent part of the Criminal Justice System has collaborated at breakneck speed to find innovative ways to enable Justice to be delivered. Within a week steps were put in place by the Police, CPS, Probation, Prisons and Courts Service working together to establish processes which enabled the courtroom to become a 'Virtual Place,' enabling advocates, the judiciary, victims, witnesses and defendants to appear at a 'virtual' courtroom. These steps allowed the Criminal Justice agencies to reduce staff travel to a minimum which was vital to reduce the spread of the virus and ensure the capacity and resilience of CJS agencies. This wholesale shift to digital working had never been tried or tested before, either in-house or on a cross- agency basis. Very quickly IT solutions were put in place and users upskilled to make this both an effective and efficient way of working. During the early months of the Pandemic this approach enabled all priority work such as all new custody work and sentencing to be completed. There has, however, been an inevitable delay in respect of some types of casework, the most notable of which being trials. It was not logistically

possible in the early days of the Pandemic for the Courts to bring together large numbers of the public to constitute juries, or provide sufficient space to ensure social distancing at court for trial work.

As the months have passed, as with our personal lives, we have learned to live with this global health Pandemic. Since July there has been a blended approach taken by the courts with a mixture of virtual and in-court hearings. This has allowed trials to resume behind the safety of newly erected screens installed in courtrooms to protect court users. It is not unusual for one Crown Court trial to be spread across several courtrooms, linked up by video to ensure social distancing requirements can be observed. Each court centre has to operate under strict Public Health guidance, to ensure the safety of all court users. These measures have inevitably reduced the number of cases which can be progressed at any one time. To increase overall capacity, a series of Nightingale Courts have been identified and opened across the country. Again, in line with other innovation, courts are springing up in the most unusual places, for example the Salford Lowry Theatre in Manchester and in our own region at The Library of Birmingham and Birmingham Repertory theatre as a 'Nightingale Court'.

As part of our modernisation plan, over the recent years the CPS has moved to digital working. This is our 'business as usual' approach to working in respect of case preparation. The Police routinely supply case papers to the CPS digitally and the CPS provide the same to the Court and Defence practitioners. This has stood the CPS in good stead to quickly adapt to the challenges presented by the Pandemic and enabled our staff to readily and effectively work from home. This is a real achievement, particularly given my teams at CPS West Midlands serve not only the West Midlands Region but also prosecute all cases investigated by British Transport Police in England and Wales. The additional move to digital advocacy has taken this way of working to the next level and I am very proud of how adaptable my in-house advocates and the external Bar have been to these changes.

It has been really important to me to focus on looking forward during these challenging times and to take steps to retain public confidence, for example my team have reached out to witnesses by virtual means to keep them updated on changes and looked for greater opportunities to use witness evidence at court from digital platforms.

We have worked hard to ensure our business remains as close to normal as possible, setting up virtual recruitment processes and induction training to ensure that we can retain momentum on recruiting staff despite the Pandemic.

We value our engagement with local Universities and have found ways of continuing with our longstanding commitment to provide work experience opportunities for local students by rolling out a new virtual work experience programme. This is an important opportunity to provide students with insight into careers at the CPS.

It has been very uplifting for me to open many of our work experience events. I appreciate the challenges students have faced during the Pandemic, so it is encouraging to see how students have readily adapted to using digital tools to complete their studies. It is also pleasing to see that students remain as enthusiastic as ever to commence their professional careers in law. I am confident that the recent transition to digital working will have equipped students well for future advocacy in the new digital era.

In conclusion, the Pandemic has presented many challenges but has also demonstrated that, from adversity, innovative thinking has allowed us to adapt the way the Criminal Justice System works, possibly forever. I am confident that 2020 has shown that the CPS continues to play a

pivotal role in shaping society, providing reassurance to our communities and ensuring the Scales of Justice continue to balance.

## VII. REASSESSING HOW WE LIVE AND HOW WE WORK IN COVID-19: PROTECT THE CORE VALUES! – Michael Mansfield Q.C. (Nexus Chambers, Lincoln's Inn)

I believe that in times of crisis it becomes important to take the time and opportunity to reassess how we live and how we work. The Pandemic cannot become a convenient excuse for cutting corners and denying justice.

In my view, if the principles of the criminal justice system are distilled we are left with two core values which might be at stake in our reaction to the Covid-19 Pandemic: i) Trial by our peers – this must be protected and preserved; and ii) Access to the courts, funding and the power to challenge through judicial review – access to justice and the accountability of the system are vital elements of the criminal justice system.

Whatever the reaction by the Government in this time, it should protect the core values of our justice system and not allow any political views to cloud their approach and judgment.

## VIII. CONCLUDING REMARKS

### (a) *Property and Business Court*

The Covid-19 Pandemic saw not only a rise in many people struggling for survival but also companies. As the disease's infection rate climbed, so the number of businesses experiencing financial decline increased, with many of these companies turning to the court for assistance. The temporary measures brought about by the Companies and Insolvency Governance Act of 2020 prevented the presentation and applications for the winding up of companies but what is clear is that the Property and Business Courts will have to brace for a rash of insolvency (rather than restructuring) work when these measures cease to apply.

### (b) *Criminal Court and Crown Prosecution Service*

Keeping the criminal courts functioning required innovation in administering justice whilst keeping all the essential participants safe through social distancing and near constant cleaning. The need to continue with criminal proceedings in this time effectively classified court staff and judges as key workers, under the obligation to work. Understandably, this caused a great deal of anxiety for the people involved. Yet, they all performed their tasks with a remarkable sense of commitment.

The Pandemic saw a change in the criminal landscape in as far as the type of crimes being committed and prosecuted. There was a sudden surge in crimes related to the flouting of Covid-19 restrictions but even more worrying was the increase in domestic violence cases, obviously being caused by the near constant confinement of the perpetrators to their homes.

### (c) *Family Court*

The increase in domestic issues brought about by the Pandemic was also evident in the corresponding rise in the workload of the Family Court. Unfortunately, the nature of the cases dealt with in this court is often volatile and emotive and as such extremely difficult to reconcile with the need for remote or virtual hearings caused by the Pandemic.

(d) *Information Technology (IT) and virtual proceedings*

It is evident from all the reflections across the different courts that technology has played a pivotal part in continuing to provide services. Overcoming the obstacles associated with moving to online platforms was not easy. A lack of infrastructure, IT skills and experience and worries relating to security issues made this task even more challenging.

However, here as well the remarkable spirit of perseverance and ingenuity led to the innovation of a "Common Video Platform" which could be used safely to administer justice, remotely.

This is not the first time that humanity has been faced with a crisis and it will not be the last. How today's crisis is dealt with and reacted to will determine how the next crisis will be survived. The extraordinary resilience and innovative measures implemented by the Judiciary and the Criminal Justice System during this Pandemic to ensure that justice is done and seen to be done are cause for hope for all future crises.