



JUDICIARY OF  
ENGLAND AND WALES

# The Lord Chief Justice's Report 2020



# The Lord Chief Justice's Report 2020

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## Introduction by the Lord Chief Justice

The last seven months have been dominated by the courts' response to the COVID-19 pandemic. In this report I summarise some of the steps taken to sustain the administration of justice during these difficult times. The hard work of the judiciary, HMCTS, the Ministry of Justice, professions and all those who work in the court system ensured that in all jurisdictions, the work of the courts continued.



Even before lockdown I sent a message to all judges encouraging them to conduct hearings remotely if it was in the interests of justice to do so. The response was remarkable, despite the lack of technological resources in many courts and jurisdictions. Telephone conferencing facilities, before March not available to most judges, but rolled out in all courts extremely quickly, were critical in keeping things going. Commercially available online video platforms were also made available. Dedicated video facilities had been fitted in some courts, but not many. It is a tribute to all concerned that so much work continued despite the difficulties. That is something which was noted around the world.

While lockdown necessitated the temporary closure of some courts and a pause in jury trials, the judiciary led the thinking from an early stage on how to recover work. That is being done in all jurisdictions by using more fee-paid judges, reconfiguring courtrooms, and using additional venues, as well as continued use of video hearings. Remarkably, jury trials (which present the greatest challenge in a context of social distancing) restarted in a small number of Crown Courts on 18 May 2020 and we are now well on the way to having 250 Crown Court rooms capable simultaneously of hearing jury trials.

Whilst there have been significant achievements during the COVID emergency, I do not underestimate the difficulty in recovering the system to the position pre-COVID still less, in all jurisdictions, to achieve a better position, which is the aim of the judiciary. To that end, judges continue to seek pragmatic ways to increase efficiency and capacity to hear cases. Despite the immediate pressures, longer term efforts to improve the system have continued, such as the ongoing reviews of private and public family law and implementation of the modernisation programme.

Two things are clear. First, those areas of our activities which have benefited from digitisation and other aspects of reform were better able to cope with the shock of COVID. The reform and modernisation programme must be seen to its conclusion, with appropriate funding made available to complete the job. Most of the necessary expenditure has already been incurred by HMCTS.

Secondly, in determining the funding arrangements for HMCTS for the future, the starting point should be a realistic assessment of the outstanding work which needs to be done together with an evaluation of the likely work coming into the system. To recover from COVID and then make progress in dealing with what were unsustainable backlogs in any event, a concerted effort will be needed to use the court estate and judicial resources, including additional use of fee paid judges, to dispose of cases which are ready for hearing.

While the pandemic has dominated the agenda since March, work on many other issues has continued with equal commitment. Recruitment to the judiciary has continued to present difficulties for the Judicial Appointments Commission. A number of competitions have fallen short. The complement of judges in the High Court remains below the statutory quota, but the position has improved, so too the recruitment of circuit judges, but the district bench is well under strength. That is adding to the problems in the family and county courts.

In the course of this year the government has published its consultation document on changes to the judicial pension scheme. I look forward to changes being taken forward into legislation next year. Reform of the pension scheme remains a vital component in maintaining recruitment to the judiciary.

Work has continued to improve the social, gender and ethnic diversity of the judiciary. During the course of the last year the Lord Chancellor, I and Lord Kakkar (as Chair of the Judicial Appointments Commission) reformed and reinvigorated the Judicial Diversity Forum whose other members are the President of the Law Society, the Chair of the Bar and the President of CILEx together with the Chair of the Legal Services Board. A comprehensive set of statistical data was published in September 2020 to help inform debate on the subject and focus activities in areas which might improve the diversity of the pool of applicants from which the JAC selects candidates for appointment. The Diversity Committee of the Judges' Council is working on a new diversity and inclusion strategy which will be published soon.

Our engagement with schools and communities as well as international exchanges were as vibrant as ever in the first months of the year. I regret therefore that the situation since March has kept me from the stimulating experience of meeting young people in schools and universities. Such outreach is vital to broaden the range of people interested in a legal career and one day, we hope, a judicial one.

This year was also due to see Wales host the conference of the Commonwealth Magistrates and Judges Association. While such large gatherings are not possible, we will make best use of video conferencing, as I did recently for a stimulating exchange with a group of Chief Justices from Commonwealth jurisdictions.

I finish where I began – with COVID – and by paying tribute to judges, staff and officials, the professions and all those others who have enabled the wheels of justice to continue to turn since March. Without their dedication and intense hard work, in the most demanding and unprecedented of circumstances, the justice system would be in a far worse position now.

# 1. The COVID-19 pandemic and the response of the judiciary

Much of the second half of this year was spent focusing on the emergency response to and managing the fallout from the impact of COVID-19 on the courts and tribunals. The judiciary, HMCTS staff and legal professionals pulled together during an unprecedented emergency to ensure continued access to justice.

On 19 March 2020, four days before lockdown, the Lord Chief Justice issued a statement encouraging judges in all jurisdictions to move immediately to conduct hearings using available technology and thereby reduce the need for attendance at court. After lockdown that message was reinforced with more detailed guidance for each jurisdiction.

This enabled the work of the courts to continue in many areas. The High Court and Court of Appeal continued their work effectively, hearing many cases remotely and others in courtrooms when the case required a physical presence. Leadership judges prioritised cases carefully to ensure the most urgent cases could be heard in each jurisdiction so that, for example, the most pressing family issues could be dealt with swiftly.

However, it quickly became clear that the availability of technology was inconsistent and regrettably inadequate in many respects. The stark difference between parts of the system which had received funding through reform and those which had not was quickly apparent. Where court processes remained heavily dependent on paper bundles, for example, in the County Court, it was much harder and less efficient to prepare for and hold hearings remotely, leading to greater delay.

Yet with prompt action and excellent collaboration, plans for improved technology, long in development, were brought forward. As well as conducting hearings by telephone conferencing, judges were given improved access to a range of commercially available audio-video platforms such as Skype for Business and Microsoft Teams. Great care was taken to minimise any impact on access to justice. Cloud Video Platform technology, which allows participants to appear in court via video link was already available in some parts of the system; HMCTS quickly expanded its availability across all jurisdictions and into most court and hearing rooms, improving the experience for many. This was all done when everyone was working from home, many facing real challenges not only in their professional lives but also in their personal lives as a result of the pandemic. The determination to ensure the continued administration of justice was remarkable.

It was clear that support was needed from HMCTS staff to establish links and to help run hearings. The administration for "hybrid hearings" where some participants are in court or hearing rooms and others attend remotely was found to be particularly burdensome. Setting up connections of any kind can be time-consuming and place a significant burden on judges where they lack staff support. To their great credit, judges simply got on and did this themselves when staff were unavailable.

The judiciary have learned and continue to learn from the different ways it has become necessary to operate, including through short surveys. In a few areas, it became clear that audio and video hearings were less suitable and judges have adapted practices and guidance accordingly. For example, some litigants did not have access to sufficiently robust technology to engage in the hearings and in the absence of the formality of the courtroom some have found it challenging to understand the seriousness of the cases in which they were involved.

For many hearings however remote technology has been very effective, demonstrating the widespread benefits to be gained from modernisation, for example by removing the need to attend court and tribunal centres for short hearings. Although remote hearings are not always as efficient as physical hearings (they are more tiring; can be slowed by technical difficulties; and do not allow for parties to come together in the margins of the hearing to resolve issues outside of court) the convenience offsets some of the negative aspects. It was clear that many procedural hearings, relatively short hearings and some of those involving argument rather than contested evidence were satisfactorily conducted remotely, although decisions on this still need to be taken by judges on a case-by-case basis in the interest of justice. There is no doubt that the lessons learned from operating in a pandemic will lead to greater use of technology in the longer term, supported by the HMCTS Reform Programme.

On 27 March the Lord Chief Justice and the Lord Chancellor announced a network of priority courts and tribunal buildings that would stay open to keep the justice system functioning during lockdown, with others open to judges and staff only, or temporarily suspended. This enabled HMCTS administrative, cleaning and security staff to focus on a smaller number of buildings and ensure they were fully compliant with PHE/PHW guidelines and safe for all users.

As conditions allowed, HMCTS worked alongside the judiciary to reopen court and tribunal buildings as necessary, adapted and reconfigured so they could be used safely in the context of the pandemic. The local initiative of leadership judges was critical in establishing how best to use space in line with central guidance on social distancing. Now, almost all judges are back in court buildings and the support that can be offered by staff has improved and the challenge is to increase capacity available to deal with backlogs. That is being achieved by continued use of technology, making good use of fee-paid as well as salaried judges, the use of so-called Nightingale Courts and piloting COVID Operating Hours in some courts to identify the best ways to increase capacity. In all jurisdictions continued dedication will need to be matched with funding and technical resources in order to achieve the ambition of reducing backlogs even to pre-pandemic levels.

During the crisis of the pandemic, the importance of a shared commitment to the rule of law became apparent. Excellent and close cooperation between judges, magistrates, court staff, policy officials, the legal profession, government and all those on whom the courts depend, was vital to success. The effective and appropriate collaboration of the Lord Chief Justice, the Lord Chancellor and the Senior President of Tribunals along with other senior leadership judges was particularly important in setting direction. But judicial leadership at all levels, then enacted by HMCTS staff through their statutory responsibility towards judges, ensured that across the country the response was relevant and timely.

## 2. Leading a modern judiciary

### Leadership of the judiciary

Leadership judges at all levels of the judiciary undertake a vital role in addition to their own judicial responsibilities. The events of this year have emphasised how essential the work of those judges is in areas such as induction, training, development and morale for the whole of the judiciary.

The Lord Chief Justice considers that it is important that leadership judges are equipped with the necessary skills and appropriate support to allow them to lead in the best way possible. In particular he welcomes the recent announcement by the government to implement the recommendation of the Senior Salaries Review Body to recognise significant judicial leadership roles (Resident Judge, Designated Family Judge and Designated Civil Judge) by way of a financial allowance. These are important leadership positions for which workload and levels of responsibility have increased over the years. The allowance recognises the increased expectations on judges in these roles.

Training and development on leadership and management matters has progressed and continued despite the challenges posed by COVID-19, with some new subject areas having been added to the curriculum. Some leadership programmes were also rapidly redesigned and delivered online.

### Career conversations and appraisal

Work has continued to develop the appraisal arrangements for the judiciary. The Recorder Appraisals Scheme is now well established in crime and has recently been embedded in civil with additional appraisal judges trained in early 2020. Work continues on the pilot for the family jurisdiction (although temporarily interrupted by the pandemic) with the result that once finalised all recorders will be appraised on a routine basis.

Career discussions which offer an opportunity for salaried judges to discuss their aspirations, development needs and other work issues with their leadership judge have been taking place since their introduction in 2018. They continue to offer a valuable means for judges to focus on their own development drawing on the experience and advice of more senior colleagues and provide opportunities to discuss wellbeing.

At Deputy High Court level a pilot on enhanced mentoring arrangements for Section 9(4) judges commenced in March 2020 in the Chancery Division in addition to existing mentoring arrangements currently in place across Divisions including Family and the Queen's Bench Division. These arrangements offer a way for Deputy High Court Judges to discuss their work and development therefore strengthening any future application for a salaried role.

### Welfare

The Lord Chief Justice has responsibility for the wellbeing of judges working in the courts and regards the welfare of the judiciary as vital to the delivery of justice.

The judicial welfare package includes access to a confidential judicial helpline, counselling support, a judicial professional support service, trauma support, resilience training, access to topical webinars through LawCare and internal online learning. Judicial HR also give judges direct access to the judicial occupational health provision. In addition to the pastoral responsibilities of the leadership judges, portfolio responsibility for welfare for the judiciary sit with appointed welfare judges. Welfare judges provide an alternative route for judges to raise welfare concerns and they can also offer advice to leadership judges.

Leadership judges are supported by the Judicial HR welfare and casework team, HR specialists dedicated to providing case specific advice on sickness absence management and welfare in accordance with the policy on Judicial Health and Welfare. The judicial welfare support services were quickly adapted to ensure continued support to the judiciary throughout the pandemic. Additional support was offered including provision of additional guidance on wellbeing while hearing cases remotely alongside reminders of resources and support services already in place and available to the judiciary.

### Training

The Lord Chief Justice has statutory responsibilities for judicial training. The Judicial College delivers training for approximately 19,400 judicial office-holders (including judiciary, tribunals, coroners and magistrates).

In the 2019/20 training year, the College delivered 408 courses attended by 12,905 participants. Training was also provided to 890 coroners and coroners' officers. Training encompasses substantive jurisdictional induction and continuation training; EU Exit and transition training; and cross-jurisdictional issues including judicial skills, welfare and resilience, judicial ethics, leadership and management and judgecraft. Social context and diversity principles are embedded through case studies and e-diversity modules.

In 2019/20, the Judicial College's Faculty launched a new cross-jurisdictional Faculty Induction Seminar which provides an induction to judgecraft for all newly appointed judicial office holders within their first 12 months of appointment. It also launched two additional levels of leadership training to help leadership judges more effectively to support their judges in welfare, resilience and other areas.

The College also prepared a range of distance learning and training packs for local delivery by magistrates and accredited legal advisers and published a number of bench book updates for approximately 13,000 magistrates and 1,130 legal advisers.

Other recent College publications include the Equal Treatment Bench Book, the Crown Court Compendium, jurisdictional bench books, the Tribunals Journal and e-letters that provide updates in the crime, civil and family jurisdictions and for those who sit in Wales.

From mid-March 2020 the Judicial College's training programme and approach required urgent revision to mitigate the impact of COVID-19. This required a swift shift to a digital learning platform and a reprioritised programme to support recovery, focused on induction, supporting digital ways of working and reform and training in preparation for the end of the transition period following the UK's departure from the EU.

Between 1 April and the end of September 2020, the College delivered 139 digital seminars for 3,393 judicial office holders and ran 12 Digital Ways of Working webinars.

## 3. Appointments and Diversity

### Appointments

Steps taken last year have improved recruitment in many areas but shortages continue so sustained action is needed to attract the best people into salaried office to maintain the world class judiciary.

The Forward Programme for recruitment is coming to the end of its third year and has again seen the Judicial Appointments Commission run a high number of salaried and fee-paid recruitment campaigns across the courts and tribunals to date. These resulted in over 900 recommendations for appointment including Master of the Rolls, Senior President of Tribunals and eight Court of Appeal judges.

The senior judiciary work closely with the Judicial Appointments Commission to improve selection processes. This year saw the rollout of a single Combined Qualifying Test (CQT) as the first stage of three large selection exercises for fee-paid judges, meaning that by completing one CQT candidates get the opportunity to apply for up to three roles without having to take multiple tests for each thereby streamlining the recruitment process.

### Diversity

The Lord Chief Justice is committed to encouraging the best lawyers from the widest pool, irrespective of background, to apply for and secure judicial appointment. The Judicial Diversity Committee is undertaking a wide range of initiatives focused on encouraging talented lawyers into the judiciary whilst supporting existing judges to progress. The Committee delivered new support programmes focused on two distinct groups: one for underrepresented lawyers wanting to become s9(4) Deputy High Court Judges and one for solicitors run in conjunction with the City of London Law Society. Both programmes offer bespoke workshops and mentoring from High Court judges. The Committee also offered shadowing and mentoring opportunities and application seminars for serving judges and members of the professions including presentations from the Judicial Appointments Commission on the application process and from a judge on the judicial role. Restrictions implemented as a result of COVID-19 created opportunities to take much of the outreach online for several targeted events and this increased the audience across England & Wales.

Judges collaborated with the professions, Judicial Appointments Commission and the Ministry of Justice to continue to deliver the Pre-Application Judicial Education programme (PAJE). PAJE offers participants from all legal backgrounds the opportunity to develop their understanding of the role and skills required of a judge through a series of digital resources developed by the Judicial College which show judges talking about their work and the judiciary. PAJE welcomes applications for places on a judge-led discussion group course to explore the realities of being a judge. Applications for these courses have been prioritised for under-represented groups within the judiciary. 101 places were allocated in total to judge-led discussion group courses running from January to March 2020.

A diversity event to celebrate the contribution of women in the judiciary and to mark the 100th anniversary of the Sex Disqualification (Removal) Act 1919 took place at the Royal Courts of Justice on 24 October 2019. The event was also marked by the display of the robes worn by the first female High Court judge. Over 500 guests from across the legal system were invited to the event to promote interest in and applications to the judiciary from a diverse range of lawyers.

The Judicial Diversity Forum's combined statistical report was published in September. The publication brought together data on the diversity of the judiciary, judicial appointments and from the relevant professional bodies (the Law Society, the Bar Council and the Chartered Institute of Legal Executives (CILEx).

The report showed improvements over time in the representation of both female and ethnic minority members of the judiciary but also illustrated that further progress was needed, particularly at more senior levels.

The publication also reported that those who apply for judicial roles have considerably more legal experience than the minimum required by statute, whilst ethnic minority and female representation was lower for more experienced and for more senior members of the profession.

## 4. Courts and Tribunals Modernisation

The judiciary have continued to work with HMCTS to drive forward the development and delivery of the Reform Programme.

The judiciary and magistracy have continued to participate in Judicial Engagement Groups (JEG) and Judicial Working Groups to assist with the design of jurisdictional service models and review the design of proposed products and plans for delivery. Over the past year, judicial participation in Working Groups across crime, civil, family and tribunals has proved invaluable.

In crime, judges and magistrates have continued to make a significant contribution to the advancement and development of the Common Platform. It was rolled out to the first early adopters in early September 2020. There has been an expansion of the digital services to a wider number of users in Civil Money Claims and in family. Users are now able to process and case manage care and supervision applications digitally from start to finish on the new online Public Family Law service. The judges and magistrates involved in reform continue to work to key design principles established during the 2018 Judicial Ways of Working exercise and to learn from the experience of the COVID pandemic.

This year has seen an increased need for speedy innovation and change of approach. Despite the challenges that COVID-19 has posed judges have been able to maintain the regular schedule of engagement with the programme. As this development work gathers pace the judicial contribution becomes increasingly important.

## Judicial Library and Information Service

The Judicial Library and Information Service (jLIS) is responsible for ensuring that all judges in the courts and tribunals have access to up to date legal information. In 2019/20 jLIS supplied 30,705 print publications to over 8,000 judges and legal advisers.

The Lord Chief Justice strongly encouraged judges to make greater use of online resources rather than print which has the advantage of currency and accessibility regardless of location and contributes to the ongoing HMCTS Reform Programme.

To support this move jLIS priorities for last year were to intensify the rollout of training in the use of online resources and to review the current protocol which guides the provision of publications to the judiciary to ensure that judges have access to the information they need in the most appropriate format. Initial plans to visit courts and tribunals were disrupted by the impact of COVID-19, so all training and engagement had to be done remotely rather than by face to face meetings. Without those geographical limitations, jLIS was able to train more judges than originally planned and engage with a wider range of judges than expected. The sudden need for judges to work from home without access to hard copy publications highlighted the value of having access to online resources. Judges' reliance on print in favour of online is expected to reduce further in the coming months.

Business as usual continued throughout the year and at the height of the pandemic priority was given to ensure that legal publications were available wherever they were needed.

## 5. External engagement

### Working with government and parliament

The Lord Chief Justice and other senior judges regularly meet the Lord Chancellor, Justice Ministers, the Permanent Secretary to the Ministry of Justice, the Home Secretary, the Attorney General, and, ad hoc, other ministers and Permanent Secretaries. The Lord Chief Justice also meets the Prime Minister.

The Lord Chief Justice has continued to meet members of the House of Commons Justice Select Committee and the House of Lords Constitution Committee and the Parliamentary Clerks, supporting them informally and regularly. The strong working relationship between officials in the Judicial Office and the Parliamentary Clerks supports the judiciary's readiness to assist parliament within constitutional boundaries.

The Lord Chief Justice appeared before the House of Commons Justice Select Committee and also the House of Lords Constitution Committee in May 2020. This annual appearance was over Zoom due to COVID-19. Much of the questioning was focused on the judiciary's response to the pandemic. His evidence covered a wide range of topics including open justice, the use of digital technology in the courts and the use of remote hearings and attendance. He also gave evidence on other broader issues such as the constitutional balance, jury trials and legal aid.

Members of Parliament, Peers, and Parliamentary Clerks at the invitation of the judges visit courts and tribunals to see their work first-hand.

### The legal profession

The judiciary have an inherent interest in the legal professions. The adversarial system works only when advocates and litigators embody the highest standards of conduct and ethics and owe an overriding duty to the court. The Lord Chief Justice and Judicial Office have regular meetings with the representative and regulatory bodies. This has been of particular importance during COVID-19.

## Schools

Judges actively engage with state schools across England & Wales to enhance understanding of the justice system and encourage future lawyers and judges. This year the Lord Chief Justice visited schools in Ipswich, Dagenham and Mold. A Judicial Question Time event was held in December 2019 with students from different schools forming the audience putting questions to a panel of judges, including Lady Justice Simler, the Chair of the Judicial Diversity Committee.

Fifty new Diversity and Community Relations Judges (DCRJJs) were appointed by the Lord Chief Justice bringing their number to 128. They have reached over 20,000 schoolchildren, college and University students.

A Massive Online Open Course 'The Modern Judiciary: Who they are, what they do and why it matters' was launched in February 2020. It was designed in partnership with King's College London and FutureLearn to explain the workings and purpose of the modern judiciary to young people across the country.

The format included a range of interactive content including quizzes, mini-lectures, articles, case studies and interviews with judges and magistrates from England & Wales. No previous legal knowledge was required to take part.

The course was due to be live for five weeks but was extended until 19 April 2020 due to the pandemic. A total of 3,718 learners signed up to take part with two-thirds of them coming from the UK. Feedback from learners through FutureLearn was overwhelmingly positive.

The course was run again over August 2020 during which an additional 3,452 people completed the course.

## Social media

To reach younger and more diverse audiences the Judicial Office has been using new platforms on social media. The Instagram page has doubled its number of followers to more than 1,370 and Twitter has amassed over 57,000 followers. The Instagram page hosts a variety of content including interviews, virtual Question Times and images of judges visiting schools and communities across the UK. The social media channels are also being used to raise awareness of the magistracy, particularly focused on younger magistrates, to increase the appeal of volunteering for the role.

## 6. Judicial Data Protection Panel

Progress has continued raising awareness within the judiciary of data protection requirements and embedding compliance. This work continues to be overseen by the Judicial Data Protection Panel.

The Panel reviews all judicial data incidents to identify themes and inform advice and guidance. In response to the pandemic and due to increased home working which meant that judges were keeping more court papers in their homes than usual, in April 2020 it published guidance on the storage of trial bundles and court files in judges' homes, in order to minimise any security risk.

The Panel considers complaints from individuals about how their personal data has been processed by a court, tribunal or individual when acting in a judicial capacity. Revised guidance for complainants was published in May 2020.

## 7. Criminal Justice

### Court of Appeal Criminal Division

Over the last year there has been a slight reduction in case receipts, including references by the Attorney General.

Since October 2019 new legislation added 14 more offences to the Unduly Lenient Sentence scheme which enables members of the public to ask the Attorney General to consider whether a sentence should be reconsidered by the court and potentially be increased.

Following the successful pilot, the court introduced “easy read” appeal forms for use by Litigants in Person in both conviction and sentence cases. These forms were developed in collaboration with the Criminal Procedure Rules Committee and with the assistance of the Criminal Cases Review Commission. They are supplemented by a booklet produced by HMCTS “Help for Applicants” and have been distributed throughout the prison estate. The forms and booklet together address the increase in the number of Litigants in Person applying to the court and recognise the need to address potential barriers to justice faced by them.

In response to the measures imposed by the government to deal with the pandemic, the Criminal Appeal Office worked closely with the senior judiciary and HMCTS to provide the court with digital bundles in all cases. This was achieved by developing the Digital Case System used in the Crown Court and adapting eJudiciary software. The instant move from paper to digital bundles, combined with new ways of remote working and the use of Cloud Video Platform and other similar technology to facilitate remote hearings, were all implemented together in order to continue the work of the court both during and after the COVID-19 lockdown period.

Despite the obvious difficulties presented by COVID-19 these changes enabled the Court of Appeal Criminal Division to sit throughout the lockdown period to deal with urgent cases and to achieve a significant reduction in the total number of outstanding cases, including in the number of older conviction cases.

### Crown Courts

On 23 March 2020 the Lord Chief Justice made the decision to suspend jury trials because of the need for social distancing. Work began immediately to identify steps that could be taken to allow jury trials to go ahead safely. A judicially led working group was set up to facilitate a multi-agency approach.

A small number of jury trials resumed on 18 May 2020 with rigorous social distancing and the number grew steadily. Ingenuity and action taken at local and national level, such as reconfiguring courts and installing plexiglass, made the material difference. Careful work has also been necessary to allow for proper distancing in the public area of the court building. HMCTS has set out the steps being taken to increase Crown Court capacity in the "Covid-19: Update on the HMCTS response for criminal courts in England & Wales". Work is on track to have 250 courtrooms hearing jury trials simultaneously by the end of October 2020.

All work other than jury trials continued throughout the pandemic.

Judges are again listing to the maximum possible in all available courtrooms and making best use of all technology available. Youth cases and those involving vulnerable defendants have been prioritised. Multi-handed cases pose real difficulties and the judiciary across the Circuits are working with HMCTS to address the need for these trials to be heard. A working group is looking at increasing the opening hours of court buildings to enable more cases to be heard. At the end of 2019, the outstanding caseload at the Crown Court was 37,434 cases. The backlog at the end of September 2020 was 48,700 cases.

The Senior Presiding Judge and President of the Queen's Bench Division agreed a temporary protocol with HMCTS and the Crown Prosecution Service for the efficient and expeditious handling of applications to extend Custody Time Limits where necessary which was published on 9 April 2020. The operation of the protocol was monitored during the pandemic and was subsequently withdrawn on 3 September 2020 as local practices reflected the good practice set out in the protocol.

Members of the judiciary have been involved in advising HMCTS on the development and rollout of Section 28 to 18 Crown Courts. Its effect is to enable vulnerable victims and witnesses to be cross examined via video link much closer to the time of the alleged offence than the trial. This reduces delay and stress for the witnesses. The national rollout was started in June 2020.

The Crown Court (Recording and Broadcasting) Order 2020 was passed in March 2020 which will allow for the first time the broadcasting of sentencing remarks from Crown Courts in England & Wales. The aim is to improve public understanding of the criminal justice system by enabling the public to hear judges explain the reasons behind their sentences for the most serious offences.

## Magistrates

Large numbers of magistrates will reach the statutory retirement age over the next decade. The judiciary are working with the Ministry of Justice and HMCTS to increase recruitment to the magistracy through new digital recruitment processes and raising its profile and diversity through social and print media campaigns.

The morale of magistrates continues to be of concern and it will be vital to ensure that proper levels of support are in place to reinforce the value of some 13,000 volunteer judicial office holders.

The Strategy for the Magistracy, developed by the Magistrates' Leadership Executive (MLE), was published in December 2019. This seeks to consolidate the position and future of the magistracy with six key priorities, including recruitment, training, and raising the public profile of the magistracy. The MLE together with HMCTS developed a new communications site for magistrates hosted on eJudiciary under the banner of 'Magistrates' Matters'.

Due to social distancing requirements and difficulties with the court estate in many areas only a small number of magistrates could sit in March and April 2020. However tens of thousands of cases were completed remotely by magistrates and legal advisers under the Single Justice Procedure and as it became safe to do so, the benches returned to courts over the subsequent months.

District Judges (Magistrates Courts) worked to ensure that courts were able to hear urgent cases. Their willingness to adapt to increased digital working and sit for additional sessions, including Saturdays, enabled the Magistrates' Court to maximise the number of cases heard.

Judicially led taskforces, alongside the multi-agency Magistrates' Courts Hearings Working Group chaired by the Chief Magistrate enabled decisions to be taken quickly and consistently which in turn ensured a continual increase in work conducted in courts.

The continued efforts of the District Bench and the support of the magistracy alongside measures put in place to maximise the use of court space will assist in addressing the backlog in the Magistrates' Court. It is anticipated that caseloads should return to normal levels by the end of the financial year.

## The Criminal Procedure Rule Committee

The Committee's considerable programme of work included replacing and consolidating the Criminal Procedure Rules 2015 and its amendments with the Criminal Procedure Rules 2020. To ensure the Rules remain accessible and comprehensible to everyone a general introductory note has been added to each Rule part which will explain in simple terms what the Rule does.

The Committee also made temporary changes to parts of the Rules to reflect modifications made to legislation governing the provision of live links in criminal proceedings by the Coronavirus Act 2020. These temporary amendments are retained by the Criminal Procedure Rules 2020.

## Sentencing Council

April 2020 marked the 10th anniversary of the Sentencing Council for England & Wales. At its inception the Council set itself two goals for its first 10 years: to update all the guidelines produced by its predecessor body (the Sentencing Guidelines Council) and to produce new guidelines for all the most frequently sentenced offences. In meeting these goals, the Council has produced 27 sets of definitive guidelines encompassing 145 separate guidelines covering 227 offences and eight overarching topics.

The Council's primary duty is to develop guidelines that promote a clear, fair and consistent approach to sentencing while maintaining the independence of the judiciary. Over the past year it has continued to fulfil this duty by publishing or bringing into effect new definitive guidelines covering public order offences and for sentencing offenders with mental disorders, developmental disorders or neurological impairments.

The Council has also reached the stage of consultation on a number of proposed or revised guidelines which are moving towards completion. These include firearms, terrorism, assault and attempted murder, drug offences; unauthorised use of a trademark; and amendments to the Magistrates' Courts Sentencing Guidelines.

To mark the Council's 10th anniversary it launched "What next for the Sentencing Council?", a consultation calling on all those with an interest in criminal justice and sentencing to contribute to a discussion on what the Council's future objectives and priorities should be.

## The Court Martial

The Court Martial was one of the first parts of the justice system to go into full lockdown at the start of the pandemic and one of the first to recommence full operation. Backlogs have been kept to manageable levels by sitting through vacation periods and by conducting as much work as is consistent with the interests of justice by remote means. This has involved the conducting of preliminary hearings and the hearing of some witness evidence by remote, electronic means. A decision to move away from paper files and develop an electronic case filing system was taken in February 2020 and represents an important step in the modernisation of the Service Courts and the wider Service Justice System. The pandemic required a more rapid development and adoption of electronic case filing than would have been usual in normal times but this has been achieved successfully leading to increased efficiency and helping to minimise backlogs.

## 8. Civil Justice

### Court of Appeal Civil Division

Prior to the pandemic the Court of Appeal Civil Division was concentrating on reducing the pre-existing backlog of cases and increasing efficiencies in order to reduce the time taken for cases to be concluded. This had been largely successful. Before COVID the time taken by the Court to give judgment on a case with permission to appeal had reduced on average by about 35% since 2017.

The Court adapted quickly to the COVID-19 crisis and has continued to hear cases either remotely or increasingly in Court (when the parties agree). Permission to Appeal applications are now being dealt with electronically as well as on paper. The Court is working through the backlog that initially built up at the start of the pandemic. The indication is that although there will inevitably be delays in some cases, there will not be a significant knock on effect on the work of the Court. This is being kept under constant review.

The live streaming of appeals continues to prove a success. Following discussions between the Master of the Rolls and government, a Statutory Instrument was laid earlier this year to allow certain family hearings also to be live streamed, further opening the work of the Court to public interest and scrutiny.

### High Court Civil

General civil work has continued to attract a large and varied number of claims in tort and contract as well as injunctions, appeals and committal hearings. There was a slight fall in receipts of claims in April and May 2020 due to the pandemic but overall the levels have remained as high as in 2019.

The Administrative Court remains very busy; the number of claims (across all areas of work) has been consistent with last year. The Court met the challenges presented by the lockdown period. It was able to handle many claims arising from legislation put in place to address the consequences of COVID-19 and which needed to be dealt with urgently and in addition continued to process and hear a large proportion of its "ordinary" business.

The Media and Communications (MAC) List dealt with an increased number of claims but resolved most of them swiftly. The judges devised procedures to allow early judicial decisions on the meaning of the words complained of, which promotes settlement. MAC List judges responded flexibly to the demands of the pandemic with all hearings fully remote for many weeks and very few cases adjourned. As the restrictions eased a way was found to conduct some high-profile libel trials in court with social distancing measures in place.

The work of the Business and Property Courts (B&PCs) continues to underpin the position of English law as the global business law of choice with decisions having a wide impact in financial, business, commodities, insurance, shipping and other markets. In 2019 82% of the work of the Patents Court had an international element as did 62% of the competition list. 75% of the work in the Commercial Court is international with around 50% having no UK based parties.

During lockdown 85% of the work of the B&PCs moved to be heard remotely and to their original timetable, and consideration is being given to the longer-term potential for increased efficiencies in some aspects of B&PCs work. Judicial training was held in the provisions of Corporate Insolvency and Governance Act 2020, which was moved through its parliamentary stages at speed during the Spring of 2020.

Work continues to ensure English law remains the law of choice for agreements involving the new technologies, after the publication of the Legal Statement on Smart Contracts and Cryptoassets at the end of November 2019 under the auspices of the UK Jurisdiction Taskforce, chaired by the Chancellor of the High Court.

In the same month, the Witness Evidence Working Group published a series of recommendations on how to ensure processes for the giving of factual witness evidence in the B&PCs is as efficient and economic as possible.

During the year, the small claims track of the Intellectual Property Enterprise Court continued to attract work across the B&PC centres, enabling small local businesses to pursue remedies for passing off, trademark and copyright claims more easily and quickly.

The Commercial Court is recognised as one of the world's leading centres for international business dispute resolution and has attracted a large number of significant and high value claims. The Court has been promoting its 125th anniversary to increase understanding of the role of the Court and its international business profile. Though original anniversary plans were affected by the pandemic, a revised programme included the Court's first ever virtual seminar in September (in partnership with London International Disputes Week).

Business in the Technology and Construction Court (TCC) has continued to grow with a 6% increase in new cases in the first six months of 2020 compared to the same period in 2019.

## County Court

Before the COVID-19 pandemic the pressures on local civil justice were significant and acute. Time taken for a claim to reach a hearing increased in October to December 2019 and again in January to March 2020. Challenges recruiting salaried judiciary continued to exacerbate pressures on civil judiciary. In particular the recruitment campaign for district judges did not recruit the required number of judges to meet demand. Despite these pressures judges continued to take forward work to improve the civil justice system, including chairing Civil Justice Council (CJC) working groups which have published reports on protecting vulnerable witnesses and anti-social behaviour injunctions.

During the pandemic, the judiciary in the County Court focused on enabling the business of the court to continue remotely. Two existing issues within the civil justice system increased the challenges of operating remotely, as highlighted in the CJC report on the impact of COVID-19 on the civil justice system: a continued reliance on paper-based systems and insufficient and limited data, or management information. During this time, most work to improve local civil justice was paused to focus on mitigating the impact of the pandemic on the courts.

Keeping civil justice functioning during the pandemic has further reinforced the value of reform. The ability for the civil justice system to continue remotely during the pandemic was restricted as most civil work remains paper-based. To reduce the need to work on paper HMCTS were able to expand online services for a small proportion of civil claims by extending functionality in the Online Civil Money Claims Service to additional courts and increase the number of firms able to issue unspecified money claims online but more work could have been done and more efficiently with further digitisation.

In response to the restricted ability to conduct civil business remotely senior civil leadership judges released guidance on priority cases to ensure best use of judicial time and court resources. Local civil leadership judges have also shown significant resolve and creativity throughout the pandemic to reduce the need to adjourn civil cases. The CJC also conducted a review of the impact of COVID-19 measures on the civil justice system gathering over 1,000 responses.

One significant and well covered issue in civil justice has been the effect early in the pandemic response of a stay on possession proceedings. Ahead of the lifting of the stay the Master of the Rolls convened a judicially led, cross-sector working group to seek to ensure that the impact of the pandemic on parties was considered and to help manage any change in demand on the courts.

## 9. Family Justice

In family justice, the judiciary continued to hear as many cases as possible during the pandemic. During the crisis the number of applications to the Family Court rose and included an increased number of domestic abuse claims. The volume of hearings has been sustained at high levels and in September 2020 exceeded pre-COVID levels, although the use of remote hearings has had an impact with a lower disposal rate than prior to the crisis (particularly in 'private' children cases).

Given pre-existing concerns about delay in the family justice system, the pandemic reinforced the need to progress recommendations made by the public and private family law working groups, established prior to the crisis.

The Court of Protection has a heavy reliance on paper and so found remote working more challenging.

Throughout the crisis the family judiciary, in addition to conducting hearings, led initiatives to ensure continued access to justice in all areas of the jurisdiction. Judges across the country have chaired multi-agency meetings to find ways to increase the number of hearings, whether through the use of technology, finding new and imaginative ways to list hearings on a temporary basis, or identifying the requirements for new temporary estate. All cases are subject to a triage process to ensure that they are managed and dealt with appropriately.

### Private Law

There was a further increase in private law cases in the family courts, with 54,933 cases started in 2019, a 6.3% increase from 2018. Quarter 2 of 2020 saw 12,566 cases started, a 6.5% reduction on the same quarter in 2019. Average timeliness has increased from 27.8 weeks in the quarter to June 2019 to 28.9 weeks in the quarter to June 2020.

In mid-March 2020 the second report of the President's Private Law Working Group (PrLWG) was published. The PrLWG made further recommendations designed to improve the efficiency of the family justice system in private law, and improve the experience of and outcomes for those who use the courts. During the pandemic a private law 'initiatives' document was produced by the PrLWG, adapting many of the recommendations, designed for immediate implementation, to ease the pressures on the courts.

The judiciary supported, and actively participated in, the Ministry of Justice Expert Panel work assessing the risk of harm to children and parents in private law children cases; this culminated in the publication of the Harm Report and Implementation Plan in June 2020.

## Public Law

There continues to be significant pressure within the system. 18,393 cases were started in 2019, a 3.4% reduction on 2018 when 19,035 cases were started. In Quarter 2 of 2020 4,452 cases were started, a 3.9% reduction from Quarter 2 of 2019 when 4,635 were started. Average timeliness in Quarter 2 of 2020 was 32 weeks, an increase from 29.6 weeks from the same quarter in 2019. 34% of cases were completed within 26 weeks in Quarter 2 of 2020, a reduction from 41% in the same Quarter in 2019. Average timeliness in Quarter 1 of 2020 was 35 weeks, an increase of two weeks from the same Quarter in 2019. 36% of cases were concluded within 26 weeks, a reduction from 43% in the same quarter in 2019.

In June 2020 the President's Public Law Working Group published Best Practice Guidance for Special Guardianship Orders. The second report, which features Best Practice Guidance on (i) Local Authority Decision Making and Pre-proceedings, (ii) Case Management, and (iii) s.20/s.76 Accommodation is anticipated to be published soon, with a view to implementing changes as soon as possible thereafter.

## Financial Remedies

The judicially led Financial Remedies Courts (FRC) project is now in place in 18 zones across England & Wales, each with a selected specialist Lead Judge. Improvements include an allocation scheme to ensure cases are managed and heard by a suitably experienced FRC judge. A bespoke digital platform for approval of consent orders is being developed for contested cases. FRCs have a policy of promoting out of court dispute resolution (i.e. arbitration & Private FDRs).

## Court of Protection

In March 2020 the Vice President of the Court of Protection set up a "Hive" group of key stakeholders (including Official Solicitor, Office of Public Guardian, Ministry of Justice and the legal profession) to anticipate and coordinate an effective response to the consequences of COVID-19. This resulted in liaison by the Vice President with the Association of Directors of Adult Social Services to secure provision of remote capacity assessments to protect the rights of those in care homes who lost decision making capacity. Judiciary and staff worked collaboratively to ensure no backlogs of work accrued during COVID-19. An annual Expressions of Interest across civil, family and tribunals to increase Court of Protection judicial resources produced over 300 salaried and fee-paid applicants for 86 judicial roles.

## 10. Coroners

COVID-19 has been a significant focus for coroners. Coroners across England & Wales are part of the wider death management system and were therefore involved in significant amounts of emergency operational planning and activity with local partners over and above their normal judicial work at the outset of the pandemic and throughout.

The Chief Coroner has engaged, on behalf of coroners, with central government on the COVID response.

The pandemic has meant that backlogs of cases have inevitably developed, particularly with those Inquests that are complex, with many participants, including where a jury is required. The Chief Coroner is monitoring the situation carefully.

There have been a number of important guidance notes for coroners published, including several on COVID-19, in order to develop consistency across the coroner jurisdiction and to make coroners aware of changes introduced by the Coronavirus Act 2020.

Coroner training, albeit disrupted by the pandemic, has focused on the inquest, prioritisation of cases and the vulnerable.

The Lord Chancellor publishes the Chief Coroner's annual report.

## 11. Wales

In October 2019 the Commission on Justice in Wales published its report on "Justice in Wales for the People of Wales". A Legal Wales conference was held in Autumn 2019.

The conference of the Commonwealth Magistrates' and Judges' Association (CMJA) was scheduled to take place in Cardiff but was cancelled due to the pandemic. A smaller, virtual meeting with Commonwealth Chief Justices was held in its place.

In February 2020 the Lord Chief Justice sat in the Court of Appeal in Mold. Whilst in Wales he enjoyed a lively and constructive visit with pupils at the Alun School to discuss and raise awareness of the justice system.

Work on Welsh language provision continues including most recently for the Equal Treatment Bench Book.

The President of Welsh Tribunals published his second annual report in April 2020 and gave evidence to the Senedd's Legislation, Justice and Constitution Committee as part of its Making Justice Work in Wales inquiry.

The initial response to the COVID-19 pandemic in Wales by judges at all levels, particularly at District Judge level, was swift. Work carried on as normal with judges working from home. The position in the Crown Court differed in that hearings resumed primarily with judges working from home but with other judges attending court on a rota basis. After significant work was carried out by the local judges and staff, jury trials were able to resume at Cardiff Crown Court in the first wave of resumed jury trials. Thereafter jury trials started to take place in all court centres in Wales. As a result of this and active case management, by July the Crown Court jury trial backlog was very much reduced and there was almost no backlog of work in the Magistrates' Courts. Wales has provided an exemplar of coordinated and collaborative effort at a local level.

## 12. EU Exit

The judiciary continue to work closely with government to understand and manage the likely impact of the end of the transition period on the courts and tribunals such as through the design and delivery of Judicial College training on new areas of law. Judicial capacity has been increased where possible in jurisdictions expected to see an increase in case volumes and/or complexity. Training on new legislative provisions has been delivered in various jurisdictions, including via the on-line materials on the Judicial Learning Management system and face-to-face training on the EU Settlement Scheme (Upper Tribunal IAC).

## 13. International

In 2019 and 2020 the judiciary's international work improved the capacity of courts, expanded the understanding of the Common Law and supported the effective functioning of international and national justice systems. The benefits to the domestic justice system are clear.

In Europe judges supported inter-institutional relationships with supranational courts, European partners and within multilateral European organisations building clear routes of communication to resolve cross-border jurisdictional questions. While the nature of engagement in European institutions changed at the end of March 2020, judges maintained relationships consistent with the UK's withdrawal from the EU with multilateral groups for example, the European Network of the Councils for the Judiciary and the European Judicial Training Network. As an 'Observer' organisation, judges have continued to contribute to building capacity including on issues of independence and accountability and delivering training on judgecraft and other areas. Judges participated in training on issues such as EU Asylum Law, Cultural Diversity in the Courtroom, Managing Courts in a Pandemic and Law in a Digital Age.

Engagement with the Commonwealth was boosted and was the most important region for capacity building. Activities with Ghana, Kenya, Nigeria, Rwanda, Tanzania, Uganda and Zambia supported judicial decision-making in the treatment of vulnerable witnesses, improved the timeliness of trials through case-management and the assessment of evidence in criminal trials. Judicial work aligned with Sustainable Development Goals and was delivered in partnership government departments and NGOs.

England & Wales judges engaged actively in UN and other multilateral networks supporting the development of international standards and norms. In international family law judges worked through the International Hague Network of Judges and bilaterally to develop best practice in the application of international family law instruments.

Technology was at the heart of international work. Technological innovations were discussed with international judges, legal practitioners and business stakeholders from US, Japan, Brazil, and France, facilitating a mutually beneficial exchange of views.

England & Wales continued to steward the global forum of commercial courts the Standing International Forum of Commercial Courts (SIFoCC). Projects collated and shared developments on case management and the use of technology in response to COVID-19 promoting best practice amongst commercial courts thereby improving the ease of doing business globally.

Incoming visits were an opportunity to introduce the England & Wales justice system to international jurisdictions. Visitors from Argentina, Ethiopia, Jordan, Japan, Peru, South Korea and Sri Lanka visited regional circuits, Tribunals, Crown Courts, the Court of Appeal and the Supreme Court with each visited tailored to the interests and if appropriate reform requirements of the international jurisdiction.

COVID-19 had a dramatic impact. International engagements were either postponed or cancelled. The response in international work matched the nimble and innovative domestic response. Online meetings reached a wider range of participants, facilitated new multilateral groupings and delivered interactive online training. The digital tools developed in the response to COVID-19 have the potential to change the reach and scale of future judicial international relations.



