



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE LORD BURNETT OF MALDON, LORD CHIEF JUSTICE

(VIRTUAL) LEGAL WALES CONFERENCE

9TH OCTOBER 2020

1. When in February and early March it became clear that Covid 19 was likely to be a real menace none of us, I suspect, thought that it would continue to be turning life upside down eight months later or that, even now, there would be no end in sight to its disruptive effect. There has been nothing like it in any of our lifetimes, so forgive me if I touch in a few moments on the predicable but important subject of its impact on the administration of justice.
2. I am disappointed not to be in Wales where I have always enjoyed the warm welcome from the whole legal community. As I record this clip, we are at the end of a dismal and disruptive few days of gales and rain which puts me in mind of my visit to Aberystwyth, Llandudno and Bangor two years ago. By the time this is seen on Friday I hope that the gales and rain have abated and the sun is peeking through the clouds.
3. Legal Wales has proved to be a valuable opportunity for collective thinking about the law in Wales. It provides the opportunity for the judiciary of Wales to have its annual gathering and it brings so many people together. Let's look forward to next year when we might be able to meet again in the usual way. In the meantime, I plan to be in Cardiff before Christmas with a Criminal Division of the Court of Appeal. Our challenge, as ever, will be to find sufficient Welsh cases. Our judges in the Crown Court generate very few appeals.



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4. I was sorry too not to be able to welcome hundreds of judges and magistrates from across the world in Cardiff for the 50th anniversary of the Commonwealth Magistrates' and Judges' Association. That should have happened in September. It became impossible, but we are working with the CMJA to bring an annual conference to Wales before too long.
5. At such gatherings, a private meeting of all attending Chief Justices is arranged to enable frank discussion about the problems we face and more generally an exchange of ideas. In place of that Commonwealth conference, we were able to organise a remote meeting of 16 Chief Justices to discuss the singular challenge we all face – sustaining the administration of justice in the face of Covid. We had two hours of structured discussion. One of the fascinating insights was that whether in advanced economies or those developing, a rapid enhancement of the use of technology had been the only way to ensure that the wheels of justice continued to turn; and as judges, practitioners and other court users have become familiar with its use initial doubts are being dispelled. I reflect occasionally on what the position would have been even a handful of years ago when the commercial online video platforms were less widely available, and the ubiquity of internet-enabled devices was a future dream.
6. Wales, like anywhere else in the world, has faced pandemics before. There have been periods during the last 700 years when the population of European countries fell by as much as a quarter or a third, particularly as a result of plague epidemics. There is a PhD topic waiting to be explored of the impact on the courts of those historical pandemics – perhaps such theses already exist – but there will be no shortage of comparative data this time round.



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7. When one looks around the world for a comparison of how various justice systems have coped during this pandemic, there is a widespread sense that our courts and tribunals have been trailblazing when it comes to keeping things going and tackling some of the more difficult problems.
8. Within this jurisdiction, Wales has been in the vanguard.
9. In the civil and family jurisdictions judges, practitioners and staff worked in very difficult circumstances from the outset to make sure that urgent cases continued to be heard, many using the telephone or commercially available online platforms, often in very difficult circumstances. Volumes of work and hearings have steadily grown in both jurisdictions with technology playing an important part, always conscious of the interests of justice. None of us should under-estimate the pressures under which many people worked, often using poor equipment in cramped conditions. The Cloud Video Platform was available in a small number of courts and tribunals at the outset, but it was expanded first into tribunals and then across all jurisdictions in the courts. Its availability has increased the ability of courts and tribunals to conduct remote hearings and hybrid hearings, as they are called, and secured improvements beyond the early ad hoc experiences.
10. Work carried on in all of the Welsh Crown Court centres, but after lockdown on 23 March it was not possible to continue with jury trials. Instead, increased volumes of all other work helped to bring forward pleas and dispose of cases that were waiting in the system. A little over two weeks after lockdown we established a working group under the chairmanship of



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Edis J to plan for the resumption of jury trials. Of the first 12 court centres in England and Wales to hold jury trials, six were in Wales, with Cardiff taking the lead from 18 May for the resumption of jury trials alongside the Old Bailey and Bristol.

11. Across the whole court estate in England and Wales herculean efforts are underway to make physical changes that enable court and tribunal hearings to be conducted safely in accordance with advice from Public Health England and Public Health Wales. That is especially necessary in the Crown Court. By the end of October, we expect that 250 Crown Court rooms in England and Wales will be capable of dealing with jury trials simultaneously. That is being achieved with dull – by which I mean not very newsworthy - but effective reconfiguration of courts. It includes moving fixtures and furniture, the installation of plexiglass divisions, the use of portakabins as extra accommodation and the transmission of some proceedings to a separate room for public and press. It uses video links for some witnesses and even for defendants when their physical attendance is not necessary for the time being. HMCTS, with MoJ financial backing, are working to increase that number; and doing so will be vital if we are to eat through backlogs.
12. So-called Nightingale Courts are making a contribution to increased capacity in all jurisdictions, including the Crown Court, along with limited use of Covid operating hours, which enable a single court room to hear more cases using different judges and lawyers in what amount to shifts.



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13. With great industry from HMCTS staff at all levels and in collaboration with the officers and staff of the City Council, a 'Nightingale Court' opened successfully in Swansea's Civic Centre and there are plans for it to take large multi-handed custody cases. Those are proving to be a particular problem.
14. All this, I think is good news, but I do not underestimate the difficulties in all jurisdictions in returning to pre-Covid levels of disposals and then to eroding backlogs built up during Covid and before.
15. The same good news applies to the Magistrates' Courts in Wales where there has been no backlog in the smaller court centres for several months and I am assured that the pre-Covid position will be retrieved within a few more months.
16. Speaking broadly, the response from Wales has been remarkable, and the picture better than many places elsewhere in the system.
17. So, what of the future? A future where at least in the short and medium term we will be living with Covid, social distancing and with variations in local regulations. In that immediate future continued work will be undertaken by HMCTS, with critical input from the judiciary, the legal profession and others with interests and expertise in how the system works, to utilise the resources we have and to enhance capacity through appropriate use of technology. In all courts and tribunals, judges will work to minimise unnecessary hearings and to encourage earlier resolution of cases.



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18. But in the longer term, it is clear that there will be no going back to February 2020.
19. Two years ago, in Aberystwyth, I spoke of a radical programme of modernisation, making good the deficiencies of decades of under-investment, moving us to on-line digital systems of the sort we use in every other activity in our lives. It has been clear that those courts with digital filing have been able to weather the storm much better than those without. It is absolutely critical that the plans to digitise the county court and the family court are seen through and neither delayed, or worse, abandoned through short-sighted fiscal constraints.
20. On technology, it is quite something to reflect that in March most judges were not even equipped with telephones capable of handling conference calls. That was remedied in weeks. Staff were provided with laptops to support judges and parties working remotely. The widespread use of video platforms was achieved in weeks, when I suspect it would have taken many years normally. The swift roll-out of the Cloud Video Platform would have been unimaginable other than as a response to Covid. A better system has been under development for two or more years and had been piloted before Covid. Its deployment must be accelerated. In April and May thought was given to whether it should be rolled out immediately; but the strong advice I received was that it would contribute to technology fatigue at a time when judges and others were getting used to Skype, Teams, Zoom and the like and that it needed further road testing. Too often, however, the quality of the hearing is dictated by the broadband of the weakest link.



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21. I have spoken before of having taken three steps forward, because we had to, but that we will take one step back. Technology is not the panacea for all the difficulties in the courts but it will provide powerful assistance in resolving some. In every jurisdiction judges, practitioners and other regular court users now have a fairly good idea of where the use of technology aids the dispatch of business without compromising the interests of justices and equally some aspects of what we do where it is unlikely to help.
22. The judiciary is keen to ensure that temporary adjustments are properly evaluated to enable those which are beneficial to be baked into the system and equally to identify those that are not. The interests of justice must be the watchwords, but I am conscious that the interests of justice are not the same as the interests of judges or lawyers. Evaluation must be swift and not used as an excuse for procrastination. It must also take into account that the technology available now is not as good as that planned even for the relatively near future and that for months before that we all laboured with ad hoc arrangements with which few were familiar.
23. The world over justice has been sustained during these dreadful months by the increased use of technology. It was quite something to hear from the Chief Justices of developing countries in the Commonwealth of the astonishing transformation many had achieved since March. I am not one for predictions but would put a small wager on the fact that the big tech companies have noticed that there is a new large worldwide market for systems to enable justice to be delivered in novel ways. There will be rapid developments.



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24. To keep going through Covid and to recover from its effects will require sustained effort to use the physical space we have to the fullest extent possible, to deploy judges including fee-paid judges to deal with the cases that can be heard in that space, to increase the headcount of HMCTS staff to support more throughput and to use technology to the greatest extent possible consistent with the interests of justice.
25. However, these are not the only factors that affect the volume of work that can be done in our courts. HMCTS needs financial support from the Ministry of Justice. I acknowledge publicly the success of the Lord Chancellor in securing from the Treasury two tranches of extra money this year to support rapid change to deal with Covid. It has also resulted in our being able to agree that sitting days are no longer a constraint in this financial year in the crime, family or civil jurisdictions.
26. Funding for the future is also under discussion.
27. The government is committed to improving the criminal justice system generally and is conscious that cases ready to be heard should be tried if there are courts and judges available to hear them. As is well known, the reduction of sitting days in crime, particularly in the two previous financial years, resulted in backlogs that could have been avoided. A well-functioning justice system in all its aspects is vital to the well-being of the nation and society as a whole. It underpins business and commerce and is a driver of foreign investment in the United Kingdom. It needs to be properly resourced.



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28. In determining funding for the future, the starting point must be a realistic projection of anticipated work, including to recover the consequences of Covid together with an understanding of accumulated neglect, for example, of the estate. It must take account of the impact of our new relationship with the European Union and the need to ensure that our justice system keeps pace with developments occurring elsewhere in the world.
29. The digitisation of the courts and tribunals is long overdue. We have not kept pace with comparable jurisdictions and must do so, not least to maintain our pre-eminence in international dispute resolution. Digitisation will enhance access to justice and enable cases to be dealt with more quickly and efficiently. Those are crucial aims of the modernisation programme, launched by my predecessor Lord Thomas of Cwmgiedd, which must be seen to its conclusion, and swiftly.
30. The pandemic has shown how crucial technology is to modernisation, and how modernisation is necessary *now* for the continued effective administration of justice. Wales has shown us what can be achieved on the hoof with tremendous effort, local innovation and a good deal of Plexiglass but the reform programme must be continued and completed. Indeed, we must seek to go further if we are to offer a justice system of which we can be proud and deliver a service that meets the expectations and holds the confidence of users here and across the world.
31. Thank you.