

COURT SYSTEM RESPONSES TO CORONAVIRUS

BACKGROUND

Since 7th April, the Centre for Justice Innovation has been monitoring the coronavirus response of eight common law jurisdictions across the world.¹ We have investigated and recorded the actions they have taken in the fields of adult criminal, youth and public family law during the pandemic in our Covid-19 tracker, publishing weekly summaries.²

COURTS DURING THE PANDEMIC

Findings

We have looked at the response of the criminal courts (both youth and adult) and of public family cases. Of the eight jurisdictions tracked, we found:

- **All jurisdictions have restricted access to court buildings.** Four jurisdictions are consolidating all court operations into a specific number of court buildings, and closing others. New Zealand remains an outlier, having kept most of its courthouses open. All have placed restrictions on the number of people who can attend court and the conditions under which those attending court can participate, for example, social distancing.
- **All jurisdictions have restricted the types of cases they are hearing.** In criminal matters, these restrictions tend to revolve around cases involving custody, including sentencing hearings, urgent bail and custody time limit applications and child detention cases. All the jurisdictions have delayed new jury trials. In public family law matters, there is also commonality across the jurisdictions, with essential matters largely confined to emergency cases and family violence matters, including orders of protection.
- **All jurisdictions have facilitated most, if not all hearings, via remote (video and audio) hearings.** There is strong evidence that all the court systems in question have rapidly escalated their use of video and audio hearings, well beyond their usual use. Inevitably, from press reports and social media, we have observed that every jurisdiction has had to grapple with technical issues in arranging and holding hearings and there continues to be issues around IT compatibility between justice agencies, lawyers and litigants.
- **All jurisdictions have prioritised domestic abuse cases within the courts.** Courts have reduced operations to only essential services and capacity for phone and audio hearings have been increased significantly, with the UK establishing a Remote Access Family Court to allow cases to go forward remotely. In all jurisdictions, child protection and family violence proceedings, such as orders of protection, are considered priority cases. For example, Australia has enacted a national directive, known as the 'COVID-19 List'. This allows courts to fast-track urgent applications which are considered to have arisen directly as a result of Covid-19 that relate to child abuse, family violence, or risk of family violence.

¹ Victoria, Australia; Ontario, Canada; England and Wales; New York State, USA; New Zealand; Northern Ireland; Republic of Ireland; Scotland.

² You can access the covid-19 justice tracker at: <https://justiceinnovation.org/covid19>

- **Most jurisdictions have postponed hearing new jury trials.** Court systems in New Zealand, Ontario, and the Republic of Ireland have all suspended hearing new jury trials until specific dates in the future, while New York State and Victoria, Australia have suspended them until further notice. England and Wales has re-started a limited number of new jury trials as of 18th May.
- **The impact of remote hearings on court users is mixed.** Across the jurisdictions, there is mixed evidence about the impact the necessary move to remote hearings is having. There is some anecdotal evidence that professional users have been able to shift into using these hearings and are appreciating the convenience it offers, although this tends to be from areas of law beyond crime and public family law.³ However, in England and Wales, there have also been studies that suggest that court users themselves have had mixed experiences of these hearings⁴, which call into question the use of remote hearings in certain cases and circumstances.
- **All jurisdictions are accruing a significant backlog of court cases across all matters.** There is evidence suggesting that all the jurisdictions have put in place processes to adjourn most non-urgent matters and there are likely to be large backlogs across all jurisdictions.

Conclusions and recommendations

From our comparative analysis to date, the response of the court systems of the UK has been consistent with other jurisdictions we have examined. There was no significant difference in the measures UK court systems have instituted to cope with the pandemic when compared to five other similar common law systems. It is too early to tell however what the comparative impact of court system lockdown measures have been on the quality and quantity of court cases each jurisdiction has been able to process during the covid-19 pandemic.

There remain significant issues, however, which require action:

- In the short to medium term, UK court institutions and the wider justice systems they operate in will have to **develop measures to assist them to work through the court case backlog**. It is unlikely the use of remote hearings will be a sufficient answer to this. Indeed, it remains unclear whether remote hearings save significant amounts of court time overall. Consideration may need to be given to the greater use of summary and diversionary measures to resolve a large proportion of the less serious matters that have accrued quickly;
- The UK Government and the devolved administrations in Scotland and Northern Ireland need to **consult on legislation and guidance for the use of virtual court hearings in future**, which needs to consider:
 - (i) whether defendants/litigants/witnesses have the right to choose virtual or physical access to their hearing;

³ See: <https://remotecourts.org/>

⁴ Nuffield Family Justice Observatory (2020). Rapid consultation: the use of remote hearings in the family justice system', 2020 and Fielding et al (2020). Video Enabled Justice Evaluation: FINAL REPORT VERSION University of Surrey

- (ii) whether there should be restrictions on which hearings are not suitable for virtual hearings;
- (iii) whether the default for virtual hearings should involve every participant appearing virtually; and
- (iv) how virtual court hearings can facilitate the informal and formal consultation between court users and their legal representatives and advice and support providers that are already found in physical hearings.