



# HM Courts & Tribunals Service

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***sent by email***

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Dear Kate

Thank you for sharing the report you have put together about the concerns raised by the those on the Western Circuit. I'm sorry that some of your circuiteers have been very ill due to COVID-19, I wish them a quick recovery if they haven't already.

We all, collectively, work to ensure the justice system remains the critical and ever-present safeguard to civilised society, the health and safety of all those using our courts and tribunals is paramount. We are confident that all our buildings and rooms, through regular risk assessments, meet the COVID-secure guidelines set by public health experts. Even so, we welcome your engagement and we are, of course, keen to help you address and allay concerns from your circuiteers. I'm very keen that our local offices arrange meetings with their local users to work together on addressing some of the issues raised and we will continue to hold webinars to provide opportunities for questions to be raised by legal professionals. The webinar on court safety yesterday was intended to help legal professionals understand the work we have done, and the reasons why we have confidence in our standards and their effective application. Public Health England also joined us for that session and explained the work they have done to validate our conclusions. The recording of the webinar will be published soon as well as answers to the questions which we did not have time to respond to last night. There is clearly more engagement to be done here, but we are utterly committed to that engagement. Rest assured, conversations will continue. The more that dialogue can be as constructive and specific as your feedback to us has been, the better we will be able to react and respond to any concerns where they are arising.

You specifically mentioned a recent answer to a parliamentary question about positive COVID cases. The answer also explains that there should be no assumption that a positive case indicates that there has transmission within a court or tribunal building. The positive incidence rate for HM Courts and Tribunal Service (HMCTS) staff has generally tracked the English national average during the pandemic. With the exception of a very small number of locations, our current assessment which reflects our frequent engagement with Public Health colleagues is that transmission within the estate is limited.

## **Feedback from professions**

We absolutely recognise the need to remedy shortcomings, and we are acting on the feedback we receive. To that end, we are really very grateful to the effort being made by the professions to provide ever-more detailed, location-specific and structured feedback. That effort helps us enormously – and is added to the evidence we have been accumulating (and continue to accumulate) through our proactive audit frameworks. You have provided

examples of concerns and we have and will continue to look into them. Actions already in hand include (but are far from limited to):

- our work with PECS to reinforce needs to adhere to clear standards (taking rooms out of service where they are unable to facilitate sufficient social distancing);
- our work with OCS to reinforce standards across the security search on entry protocols by front-line guards (where mask-wearing and bag searches are a commonly expressed cause for concern, albeit actually in a minority of our sites);
- our tightening of guidance on capacity management as well as focus on listing arrangements under the general overview of judicial direction (providing ever more effective tools to front line staff and local sites to regulate and reduce footfall); and
- our increased usage of COVID marshals to reinforce social distancing requirements (providing both more visibility to reassure, as well as improving enforcement).

I feel it's important to explain our overall framework, and the reasons why we are assured as to levels of embeddedness and effectiveness, generally. You have our commitment that we will act if standards are found wanting. Our recently announced escalation process is part of that commitment. But what follows hopefully gives a summary of our framework and its effectiveness.

### **Risk assessments**

Risk, in the health and safety context, is always subject to dynamic and ongoing assessment. That has never been more so than during the pandemic public health crisis. Our approach to risk assessment is set out in our Organisational Risk Assessment (ORA). It is implemented on the ground by site-specific assessments carried out and kept under regular and frequent – at least weekly, and sometimes more – review. The ORA, and template that guides our site-specific assessments, the guidance against which those assessments are undertaken, and the policies, practices and procedures which form our operating come together to form our framework. That framework (and all the parts that make it up) are kept under constant review. We work closely with Public Health officials – in England and across the rest of GB – to ensure our approach is entirely in line with prevailing standards and best practice. We have assurance that they are. And we have assurance that we are implementing those standards effectively on the ground.

Our work with Public Health England (PHE) (and with equivalents in Wales and Scotland) is also iterative and dynamic. There are no single, set piece submissions we send off, or consolidated responses we receive. Most interactions are between qualified H&S or technical specialists in HMCTS and appropriate leads in PHE/W/S, often in meetings.

We are very happy to share what we have in terms of expertise and assurance. The best I can point to for the purposes of this reply, at least in the context of the challenges arising from the new variant, is the below paragraph endorsed by PHE at the outset of this new year:

“Our policies on mitigations, under continual review but approved by Public Health experts, are (and remain) suitable and sufficient for dealing with the challenges provided by the new variant of the virus. Current available evidence on the new variant shows it is spreading faster than other SARS-CoV-2 strains currently circulating in the UK. Therefore, the existing mitigation measures (social distancing, hand hygiene, ventilation and mask usage) must be rigorously adhered to and everyone must unflinchingly follow the hands-face-space-guidance”.

## **Concerns**

I'm pleased that all concerns have been raised locally as this is generally the most speedy and effective way to resolve issues but I've obtained and detailed below some specific information on the concerns raised.

### **Custody suites**

- The nature and configuration of custody suites can make it difficult to hold conferences, especially where an interpreter or other support is required. The Delivery Director will work with PECS and the local Bar/Law Society to improve the arrangements.
- Some custody suites do have pinch points in corridors, however, the introduction of mandatory PPE for cell staff has eased the situation. Larger cells can be made available upon request (e.g. Southampton) if not in use. The region is also looking to set out in robing rooms the facilities available in the custody suite, to assist those who are not regular visitors to the courts.
- Where cell staff are found not to be wearing PPE, this should be reported to the Senior Person on Site (SPOS) immediately.

### **Conference/interview rooms**

- All rooms have been measured for 2 metre distancing and there are notices on the doors to say how many people can use the room. Where a room can only safely hold one person, we continue to keep them open to allow space for a solicitor or barrister to work e.g. Portsmouth. It has to be for the users of those rooms to ensure the measures set out for the rooms are adhered to e.g. furniture to remain in their fixed position to maintain social distancing. As stated in the report all instructions should be followed at all times. Posters are on display to remind users. The report cites examples where advocates have exceeded the room occupancy maximum. If additional space is required this should be brought to the attention of the senior person on site, or the judge.
- Parties may well need to file in separately in order to enter and exit safely.
- If there is no mechanical ventilation in the room, the doors will be left open when the room is not in use. The area outside of these rooms are well ventilated. The site-based risk assessments have taken account of the safety of the conference rooms.
- In some of our multi-jurisdictional buildings, such as Plymouth Combined Court, consultation rooms are shared between crime and family and a split has been agreed with the Resident Judge and Designated Family Judge. Rooms are reserved for use by family parties, for attended or hybrid hearings, or where a party to the case uses the Local Authority laptop to join a hearing remotely. We do not save areas for anyone not using the building.
- In response to the report, the Presiding Judges of the Western Circuit have asked Resident Judges to remind court users to maintain social distancing, to wear face coverings when they are not speaking and to allow regular breaks to wash hands and allow the room to be further ventilated.
- There are also face covering posters on display in the main waiting areas.

- Tannoy messages are relayed where facilities are available, as well as poster reminders, and ushers and marshal (where available) also provide reminders.

### **Robing rooms**

- Specific concern has been raised about the size and configuration of robing rooms. It is right that to enable social distancing in some of our courts, such as Taunton, the room can only accommodate advocates taking part in active trials. Although the Resident Judge at Taunton has permitted those appearing to deal with short work to appear unrobed to help mitigate the impact.
- The report provides examples where maximum occupancy have been breached. It is essential that safe occupancy levels are adhered to by advocates and masks are worn. Following the report, where robing rooms are small, judges are now being encouraged to allow robing in the courtroom in longer trials. Additional lockers have been purchased (e.g. Bournemouth), and additional rooms made available (e.g. Swindon) where concerns have been raised. The Delivery Director is keen to discuss concerns with local users to address the issues identified at Bournemouth and Plymouth.

### **Close contact**

- HMCTS is not considered a close contact setting – this is a term of art in [Government guidance](#) describes such services such as hairdressers, barbers, beauticians, etc. The report draws attention to behaviours that bring individuals into close contact with one another. In order to address these issues effectively, they should be raised at the time.
- Security guards are instructed to be 2m away unless they have to wand an individual and where this is necessary specific protocols are in place to minimise the risk.
- Additional signage has been put in place at Exeter and security have been briefed again to ensure compliance.
- The cleaning contractor will be asked to remind staff to move away whilst they clean an area.

### **Cleaning**

- A great deal of effort has been put into improving cleaning across the South West. Robing rooms and conference rooms are cleaned daily, including the touchpoint cleaning of digilocks etc. Where issues have been raised, e.g. Portsmouth, they have been dealt with swiftly.
- Generally, touchpoint cleaning, which is precautionary cleaning of regular touchpoints in line with Government guidance, takes place at regular intervals throughout the court operating hours. This includes the wiping down of regular touchpoints such as handrails and lift buttons etc.
- If there is a confirmed or suspected case of COVID-19, the area is isolated for 72 hours. Where this is not possible a section 16 clean, which is a specialist clean, is carried out to ensure that there is no disruption to the court business.

- People should always still be maintaining their own proper hand hygiene, both inside and out of the court building.

### **Information sharing**

- The standard approach to [information sharing](#) is to send out a communication updating, staff, court users, judges and agencies, of any situation where we have two or more positive incidents at a site within a 14-day period. Where anxiety levels have been high, communications have been issued at some sites when there is a single positive incident, to make sure people are kept informed.
- There have been some issues where a prisoner has been brought to court while awaiting the outcome of a COVID test, only to learn while at court that the result was positive. While symptomatic prisoners are considered not fit for travel the prisons have an extensive asymptomatic testing regime. This is why positive test results can sometimes appear after a prisoner has been moved to court. From 21 January, all court appearances from HMP Bristol will be offered an LFD test as an additional measure.
- The example given about Exeter is not quite right, as none of the four jurors had COVID symptoms but were advised by NHS test and trace to self-isolate (we do not know why, as they all had different dates). Our communications were sent to our full local distribution list, which include all local solicitors and Chambers. Trial Counsel was from local Chambers, so it is not clear why the information was not received.
- There were concerns around the size of screens and their suitability in the court environment. Screen sizes are determined on a site by site basis to follow guidance endorsed by PH. If there are specific concerns regarding screen sizes in particular courts, please speak to the operations staff on site, who can arrange a visit with Facilities Management to reassess and determine suitability/adequacy.

### **Ventilation**

We make sure our buildings are well ventilated through natural or mechanical ventilation at all times. Windows will be opened frequently wherever possible. Our air handling units and air conditioning units will also be used in line with PHE and Public Health Wales advice – they have confirmed the risk of transmission through ventilation systems is low. We have arranged for the settings on our ventilation systems to be adjusted to increase the regularity of fresh air coming into our buildings.

It is important to remember that ventilation, while significant, is one of a range of control measures developed and implemented so far by HMCTS. The clear and consistent message from public health experts is hands-face-space, and ventilation when indoors. The additional measures we have introduced to reinforce hands-face-space are:

- Hand washing.
- Hand sanitiser stations in key locations.
- Social distancing.
- Wearing of face coverings.
- Security checks on entrance.
- Signage displayed within each building.
- 1-way systems.
- Maximum occupancy levels of rooms.

- Positioning of furniture.
- Perspex screens.
- Enhanced cleaning regimes.
- Protocols for staff developing symptoms.

## Hearings

In relation to remote hearings, I'm sure you appreciate that listing is a judicial function. Therefore, the decision as to how a hearing is conducted is a matter for the judiciary and they will determine how best to uphold the interests of justice. When deciding on the suitability of holding a hearing remotely by video/audio, judges will consider issues such as the nature of the matters at stake and any problems the use of video/audio technology may present for participants in the hearing.

Breaks can be asked for during a hearing at any point. Please ask a member of staff who will let the judge know about the request.

My thanks again for sharing the report and I hope you find the detailed responses helpful. I am, of course, happy for you to share this letter with your colleagues. I thank you and them for all your efforts in supporting the delivery of justice in these difficult times and for raising these concerns with us.

Yours sincerely



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