



REPORT ON COURT SAFETY JANUARY 2021

PURPOSE & METHOD

Anxiety is growing at the Bar about safety in courts, particularly in light of the new variants of Covid and the increased levels of infection in the population. A recent [response to a parliamentary question](#) confirmed that there were at least 600 cases among judges, staff, lawyers and other court users in a 6 working-week period (although more cases are known to Circuit leaders than are recorded in that response). The virus feels perilously close to us: some Circuiteers have been extremely ill and hospitalised, and many trials have collapsed. In the last week there were covid-related incidents at courts in Truro, Plymouth, Exeter, Taunton, Bristol, Gloucester, Winchester and Portsmouth with many trials being adjourned or aborted.

This paper aims to identify common unsafe practices in the hope that HMCTS might remedy them on the Western Circuit and beyond; to explain why the Bar is so concerned to those who consider courts to be safe zones; and to inform decision-making about what business the courts should be conducting in this stage of the pandemic.

We have put in place a system of Local Bar Coordinators during the pandemic: a named barrister who takes the lead role in corresponding with the Resident Judge in each Crown Court/designated family judges /designated civil judges. Each Local Bar Coordinator sought detailed feedback from barristers working in their respective areas about safety in local courts in the week commencing 11th January 2021. We have received very limited information about magistrates' courts and tribunals but many responses about courts. Repeated concerns have been edited in this document. All concerns about local courts will be passed on to HMCTS using the new [complaint route](#) as well as to the relevant judge for information.

SUMMARY

It is clear from the responses that the overall view is that the judiciary and the court staff are doing their very best in these difficult circumstances. As one respondent reported: *“the communication between the judiciary and the bar has been superb.”* Many court staff have been extremely helpful and supportive to members of the Bar, and we recognise that they too are putting themselves at risk to keep the system going.

Most family and civil practitioners reported feeling relatively safe attending court as footfall is currently very low, although problems were reported with small conference rooms and crowded public areas in some courts.

The position is different at the criminal bar: many criminal practitioners no longer feel safe to attend criminal courts across the Western Circuit. Many are returning trials. Some are calling for all courts to be closed for a time while risks are properly assessed, or for only critical trials to continue. Others consider that trials should continue, noting the delays in listing and the effect on witnesses and defendants, and the lack of any financial support for most of the Bar from government. As one respondent says : *‘We are at the mercy of HMCTS to make our workplace safe’.*

Being in a courtroom was often considered to be the safest part of the court day (save for hearings with many people in the courtroom). Even where court rooms were considered safe, barristers had significant worries about the journey to court, the entry to court, talking to clients etc and moving around the court building.

The most common issues raised are summarised below:

- Ventilation in court rooms does not seem adequate for the number of people in them, especially when breaks are not taken. The lack of any shared risk assessment about new variants and ventilation in courts adds to this concern.
- Information about suspected covid cases at court is not being shared.
- Many custody areas are not safe: custody conference rooms are too small for social distancing.

- Many court conference rooms are not safe. The rooms are too small and in the main only allow two people in them which in most cases is not sufficient. Many do not have opening windows.
- Robing rooms are too small for the numbers that need to use them and there are no alternative facilities for robing, storage and work.
- Although HMCTS asserts that courts are not close contact settings, close contact is inevitable every time a barrister attends court, whether because of the court lay-out or because of others neglecting social distancing.
- Cleaning is inconsistent, and conference rooms and robing rooms are often not cleaned.

RECOMMENDATIONS

- Urgent publication of the basis upon which HMCTS advises that having many participants in a court room (e.g. for a trial) is safe with the new variants, and identification of ventilation measures which are necessary such as regular breaks.
- A change of policy so that information is shared with barristers and others if there are suspected covid cases at court, or if defendants have had contact in custody with prisoners with covid, so that barristers can make their own assessment of the risks posed to them.
- Reassessment of the safety of all cell areas with a barrister's involvement in the assessment so that 'real-life' use of rooms can be considered. This should include consideration of the methods of entry to the cell areas. Closure of conference areas in cells if unsafe and reassessment of what work can be done in person at that court.
- Reassessment of the safety all conference rooms, including ventilation, with a barrister's involvement in the assessment so that 'real-life' use of rooms can be considered. Closure of rooms which are unsafe and reassessment of what work can be done in person at that court.
- Reassessment of the safety of all robing rooms, with a barrister's involvement in the assessment. If they are unsuitable for the number of barristers being required to attend court, provision of lockers and shielded work areas (as is happening in

Bournemouth) or no requirement for counsel to be robed save trials (as is happening in Taunton).

- Re-emphasis of the importance of social distancing to court staff and security staff, particularly where concerns have been raised about that court.
- Strict adherence to the Lord Chief Justice's requirement for [remote to be default](#) to reduce footfall, and the Western Circuit [protocol](#) in Crown courts which puts that into effect.
- Some concerns relate to barristers not wearing masks, or not following signs which limit the number of people in a room. All instructions must be followed strictly by all court users. If that means that barristers are unable to prepare for a court hearing properly (for example because there is nowhere to have a private conversation with their client or opponent at a safe distance), then the judge should be informed of that and the hearing adjourned if that is necessary.
- Cleaning contracts should include the cleaning of conference rooms and robing rooms.

VENTILATION

A repeated concern was that it seemed risky to have a large number of people in a court room for a lengthy period, with constant talking at high volume. Circuiteers are particularly concerned that they have not been shown any risk assessment which takes account of the new variants, and which sets out how many people can safely be in a room together for a time, and what breaks are required. Even with press and public in a separate courtroom, criminal trials involve many participants. Trials with 3 defendants involve a minimum of about 25 people (12 jurors, 3 defendants, 2 dock officers, judge, 4 advocates, clerk, usher, officer).

- *"I am not convinced court rooms are safe as we sit for hours in same room with air conditioning on which surely negate use of screens. I am not confident that there has been proper reassessment in light of the new variant. We are told that the new variant is more transmissible. I am currently in a three handed trial with three barristers from London and two police officers and myself in the well of the court;*

three defendants in the dock; three individuals in public gallery as well as court staff, Judge, custody staff and jury. I do not feel safe."

- *"I am at Salisbury CC at the moment. The problems I have identified are. Counsel have 3 jurors sitting 3 feet behind them. There are screens but they have a big hole in them, 2 feet long at the bottom. When Counsel stand up the screens are not high enough to protect the jurors nor Counsel. I XX the D yesterday. There was no protection between him and me. I was probably 12 feet away. There is air con circulating the germs around court. This virus does not travel in straight horizontal lines however!"*
- *"My allocated position as defence advocate was within 2 meters of 2 jurors with low Perspex screens between us, over which I of course towered on standing. All other court users except HHJ, [my opponent], myself and each witness was masked. Whilst this did provide some reassurance we had 26 people in an enclosed space for each court day. No additional breaks were taken. There was no mention or attempt to 'ventilate the court'."*
- *"Again, although there was spacing in the court you inevitably have to help your client with paperwork and break social distance, there were no open windows and I was in a courtroom for 2 full days with 8 people with no ventilation. I'm afraid I wouldn't want to repeat that experience at the moment when remote hearings seem to work perfectly well."*
- *"In my view with the new strain having 12 jurors, 2 ushers, a defendant, clerk, judge, 2 counsel, 2 police officers, 3 members of the public and one witness in one court room cannot be safe. The virus is airborne and if that many people are breathing in the same air for 1 ½ hours at a stretch there must be a risk to all."*
- *"What worries me about trials at Taunton or indeed any Crown Court at the moment is the thought of upwards of 18 people being sat in one room for extended periods of time as is necessary to conduct a trial. HMCTs have provided nothing, as far as I am aware, to confirm that the risk assessments concluded to date have fully taken into account these 2 new strains and the more transmissible nature of them."*
- *"The court was big enough but from all the research that may mean nothing where again there was no ventilation and we were all in one room together all day."*

- *“what steps have been taken to reassess safety in the light of the new variant(s) of Covid– the Perspex screens being too small; and no (or almost no) judges taking regular breaks to allow improved ventilation to circulate”*

INFORMATION SHARING

Circuiteers reported concerns that they were being kept in the dark about suspected Covid cases. HMCTS has confirmed that where there is a suspected covid case at court (i.e. not a positive test, but symptomatic), that the court is not closed, there is cleaning of the area where that person was, and the work continues without court users being informed. Court users are reliant on HMCTS to share information: track and trace does not work because mobile phones are often switched off at court, or not brought into the courtroom, and defendants and custody staff do not have mobile phones.

- GLOUCESTER: *“In mid December I was defending in Gloucester for most of the day and when I went to see defendant in cells for 2nd time at 4pm I was told by staff that one of the staff had been sent away that morning. They thought I should know. I was disappointed they didn’t tell me at 12 noon when I first attended.”*
- PORTSMOUTH: *“A defendant was brought to court and allowed to have a conference with his barrister and solicitor. Later on that day the cell staff told the barrister that the defendant had been exposed to someone in a holding cell at the prison before being brought to court and that other prisoner had now tested positive for covid. Why are prisoners being taken to court (and allowed to integrate with other defendants) whilst awaiting tests?”*
- EXETER: *“The trial in court 2 was abandoned yesterday on day 6 as 4 jurors had covid symptoms. I heard from my instructing solicitor today that an usher and court clerk also had symptoms. We as trial counsel were told nothing of this by the court itself, but kept in the dark. I understand the court manager had informed local solicitors.”*

CELLS

Cells in some courts are not safe areas, applying HMCTS’s own standards. A recent release from HMCTS [here](#) asserts that ‘any consultation rooms that do not meet safety requirements

(i.e. 2m social distancing or mitigating factors such as screens) have been taken out of use' but that is not correct. This is a particular concern given the levels of covid in some prisons, and given the poor information-sharing from prisons on occasions about covid symptoms/test results in prisoners.

- SOUTHAMPTON: *"Yesterday it was proposed that I have a conference in a two-metre squared cell, with no ventilation, with the Defendant, my solicitor and an interpreter. How could that be safe? It has to be said I raised my concern with the resident Judge and he said a large cell could be made available in the custody block. This was not a facility that I was hitherto aware of, neither were any of the unmasked regulars in the robing room."*
- BRISTOL: All but one cell is too small. Our Bar coordinator reports: *"since 10th November we have been asking for Perspex in the cells at Bristol. I have had various responses about who is going to do something about this and haven't got anywhere with it at all despite pressing on a number of occasions. We have been very patient but it is unfair to expect us to visit people in the cells with this virulent strain doing the rounds and we will begin to refuse to go to the cells which will mean trials of defendants in custody cannot happen. We have been offered the use of the phone to speak to defendants in custody but there is a recognition that that is not an acceptable alternative."*
- TAUNTON : *"Staff in the cells do not wear masks. I have never noticed them cleaning the conference rooms there."*
- BOURNEMOUTH *"I've since been into the cells and as they have a glass screen behind which you can see your client, I am content about safety to that extent."*
- WINCHESTER: *"with regards specifically to Winchester CC, by far the greatest concern is about the court cells. Almost all aspects of the cells are intrinsically Covid insecure: a narrow corridor, with the interview rooms at its end; very small interview rooms; no windows or other ventilation; chairs bolted to the floor; cell staff either not wearing masks, or wearing them below the nose. There is a single 'common room' type area on the Cat A side of the custody suite, which provides a little more space, but social distancing remains difficult if not impossible there, and it is often unavailable." XXXXXXXXXXXX "I was at Winchester twice before Xmas defending*

clients in custody. To my mind the cells area is a death trap. A narrow corridor to get to the interview rooms at the far end. Half the cells staff were not wearing masks. The interview rooms are tiny. To have a lengthy con with a client is onerous whilst fully masked. Both my clients were housed in Winchester prison where they claimed that Covid was rife."

CONFERENCE ROOMS

Many conference rooms are not ventilated and/or very small. Given that barristers are having meetings in these rooms with their clients for an hour or longer this is causing great concern.

- BRISTOL : *'Very few of the conference rooms at Bristol have any ventilation at all. There are not private places to speak to people without going into one of those rooms...many of our lay clients are not particularly careful about or respectful of social distancing because other matters press more heavily on their minds when they are speaking to us.'* XXXXXXXXXXXX *"if conference rooms have been assessed as safe for distancing then in many cases that is just not taking into account the fact that people move and lean forward and don't sit bolt upright at exactly opposite ends of a table- it's not realistic"*
- PORTSMOUTH : *'most conference rooms there are too small to be used'*
- SOUTHAMPTON MAGISTRATES COURT : *'Most of the consultation rooms are just not adequate for proper distancing'*
- BOURNEMOUTH: *'Last Monday, 4th January, I had a lengthy conference with a client on bail and his mother, in one of the small airless conference rooms outside court 3 (the only one available along the corridor). There is barely 2m across the length of the table. 3 people is 2 more than you would want. The client kept allowing his mask to slip beneath his nose - which he snorted continuously and loudly. Mum told me proudly that they'd partied at Christmas and New Year as usual, singing Karaoke and having loads of fun.*
- BRISTOL CIVIL: *"Some conference rooms airy and properly distanced, some small and no windows."* XXXXXXXXXXXX *"When I attended the CJC in October for a 3 day trial it was difficult to get a con room large enough as most were limited to 3 people, and I*

needed room for 4. We ended up having to bodge things a bit, but certainly wasn't ideal, and I doubt it's unusual to need that much space." XXXXXXXXXXXXX In Bristol the conference room was definitely not big enough for the 3 it was suggested it was big enough for- there were 2 of us and I still felt it was impossible to be 2m apart and there was no open window or ventilation."

- EXETER : *"as a defence practitioner who needs to use small windowless rooms in order to have conferences with clients, I am afraid I find the suggestion that the court is not a "close contact setting" to border on the disingenuous."*
- GLOUCESTER: *"Conference rooms and the like are too small, have no ventilation at all"*
- PLYMOUTH: *"conference rooms are simply too small and lack adequate ventilation to be safely used and there are no adequate and safe facilities for the taking of instructions" XXXXXXXXXXXXX The fact that there is an area which occupies a third(?) of the available space on the first floor of the building and which is out of bounds to those using the court has to stop and has to stop now. It would be much safer for the users of the building if we were allowed to use that area. That would encourage distancing. The area can and should be cleaned. To 'save' the area for practitioners who are not currently using the building is wrong."*
- SOUTHAMPTON FAMILY COURT: *"The meeting rooms that are still open are still relatively small spaces with no ventilation inside, and, when using the meeting rooms, they often involve breaching of the 2m rule upon entering or exiting the rooms."*
- SWINDON: *"there are no conference rooms I would be happy to go into with another person - they are just too small. There was a lack of distancing from my opponent in particular and weirdly the cleaners who kept coming into a space we were trying to use to speak and wiping things and thereby getting far too close!!"*
- TAUNTON: *The [conference] rooms are tiny (with zero ventilation). I was concerned that I spent almost an hour with a client in the one last week" XXXXXXXXXXXXX "The conference rooms need Perspex screens, which are a simple and expedient fix. The cells have a screened conference area which works well."*

ROBING ROOMS

Barristers need an appropriately-sized room in which to change into their robes, to leave personal belongings, to work between cases, to work during trials, to discuss cases in private, to eat lunch. In some courts the robing room is too small, or not configured in a way which permits social distancing.

- BOURNEMOUTH : *‘The Bournemouth CC robing room is unsafe. It is tiny. I walked in there the other day and I counted 12 barristers there, some unmasked, some trying to work at the desk in close proximity. I walked out. It is easy to say that there should be no more than 4 people in there, but, as we all know that is where we meet to communicate with each other. There is a lack of alternative robing facilities.’*
XXXXXXXXXXXX *“Court is ordering lockers and small screened work stations so that advocates do not need to use the small robing room.”*
- GLOUCESTER: *“the position of the new robing room to the entrance, is, itself a dangerous area of congregation. It’s too small, cramped, not ventilated. Counsels toilets arrangements forces them to walk the entire length of a corridor where everybody lingers”*
- PLYMOUTH: *“The robing room does not feel safe because of its shape and the volume of traffic generated by the cases listed.”*
- SWINDON: *“The same comments come up again and again about the robing room being far too small and not properly ventilated. When this was raised some months ago the court staff immediately said that the adjoining room could be used for overflow but it’s been locked whenever I’ve been there since.”* XXXXXXXXXXXX *“I was in Swindon shortly before Christmas and it was packed. Really busy public waiting area and robing room full. I went and sat in a conference room and ate my lunch. Someone else did the same in the room next to me. There were still about 5 or 6 people in the tiny robing room”.*
- TAUNTON: *“The robing room is abysmal. We have to share the room with an adjoining room occupied by County Court staff who come in and out. This needs urgent attention. We really have nowhere to work at court, whilst mid-trial, or between cases”.*

CLOSE CONTACT

Whenever there is a covid related incident at court, HMCTS uses a template letter which repeats the mantra that courts are not considered to be close-contact settings. As a result, it is considered that no other court users are at risk of infection. Dozens of barristers told us differently. The problems identified above with the cells, conference rooms and robing rooms lead to close contact. There is also repeated breach of social distancing from many different people at court- sometimes because of the layout of the court building, or footfall, and sometimes because of carelessness.

- BRISTOL *'I tell the court from time to time that ushers are not respecting social distancing. On some occasions, the Court responds by telling me they will reinforce the message but also tell me that members of the Bar aren't great at keeping 2m away either! I'm sure that that is right and that we are quick to criticise behaviour in others that we too commit from time to time! The point is this; it's all very well for HMCTS to say that their buildings are not close contact settings but that is total nonsense as anyone there on a daily basis realises.'* XXXXXXXXXXXX *As you enter security are very rigorously asking each and every person whether they've had symptoms or tested positive which is obviously great, but undermined by the fact that they get quite close to you when they do so and I find myself backed up against the wall trying not to breathe in as I answer them'* XXXXXXXXXXXX *"Corridors, in particular the court 10 corridor, have at times been very busy with people stood around far too close to each other. Staggered hearing times can be incredibly helpful but very often (in fact most of the time), for reasons beyond anyone's control (and very often related to covid-19/technology/prison bus or videolink) they simply cannot be adhered to. As a result the corridors can get pretty full. Most people try to socially distance but often the footfall and the size of the corridors simply make it impossible. Even last week post-lockdown-announcement, due to a last minute change of court participants in a hearing (one of which was a four-hander) ended up milling about in the same corridor, which meant about 8 of us barristers/defendants/family members/paralegals (socially distanced as best we could) stood outside court for waiting to be let in for a case which had been called*

on." XXXXXXXXXXXXX "Defendants don't abide by proper mask-wearing or social distancing because they simply have other more pressing things on their mind"

- BRISTOL CIVIL: " it's difficult to remain socially distanced when taking instructions at court or assisting clients with using bundles/electrical devices".
- YEOVIL: "Public spaces too small for 2m gap when moving around the building."
- GENERAL : "in reality, it is very difficult to remain socially distanced from ones client when one is spending prolonged periods of time with them and they need help with navigating a bundle in a court hearing." XXXXXXXXXXXXX "My personal view is that the police are the worst at maintaining distance... I was backing away to maintain 2 metres..." XXXXXXXXXXXXX "In a recent trial police officers kept getting far too close to me and others, on one occasion even touching my arm. It made me feel really unsafe".
- EXETER COMBINED: "For my part I do not feel safe at all going to Exeter. The robing room is overcrowded with people not wearing masks. The layout of the building means that people are loitering either side of the stairs." XXXXXXXXXXXXX "Since the magistrates court moved into the same building as the crown court the footfall has of course increased. Despite the current lockdown Exeter continues to have 3 crown courts sitting as well as, usually, 2 magistrates courts. Even with counsel's attendance via CVP this is a large number of people walking through the doors daily. When I was there one day last week the main foyer was full and it was impossible to social distance. Despite that we are told not to loiter in the robing room. Not that that is a much better option bearing in mind its small size and lack of air but there are few/no other options." XXXXXXXXXXXXX "The vast majority of one's time, once in the building, is in a close contact situation due to a combination of building design and people's behaviour." XXXXXXXXXXXXX The public gallery on emptying stood right outside the court exit door, impeding exit and were not moved on by court staff." XXXXXXXXXXXXX "The one way traffic system on the ground floor which operated at the start of lockdown is no longer in operation at Exeter, meaning effective social distancing is not possible as people walk around the stair way area in opposing directions."

- GLOUCESTER: *“the security staff continue to ignore obvious safety rules. there is recognition of the fact that there have been real improvements by the Court staff (as opposed to the security staff)”*
- TAUNTON: *“The jury sit within an arm stretch of [...] prosecuting counsel. Defence counsel sits in the row behind and quite frankly the ability to properly socially distance is zero. That’s without comment on the robing or conference rooms in which no one can properly socially distance. I am waiting to see if trials will be halted this week, if not I will be returning the trial, even though it is a retrial. I need to make a living but am not prepared to sacrifice my health for HMCTS.”* XXXXXXXXXXXX *“Some staff (I will not name him here) do not have much idea about social distancing/personal space.”* XXXXXXXXXXXX *“The Court ushers, charming though they are, have no idea of social distancing.”* XXXXXXXXXXXX *“The entrance to the Court involves an unacceptable congregation. There is no check (whatsoever) upon those who come into the building.”* XXXXXXXXXXXX *“I would say I’ve noticed small lapses in almost every in-person hearing I’ve done.”*

CLEANING

We received very varied reports about cleaning. Some court cleaning was reported to be excellent, others less so. In many courts conference rooms were not cleaned between use, and robing rooms were infrequently cleaned.

- GENERAL: *“Court rooms and communal court areas are being very well cleaned between hearings, but robing rooms are being neglected. Robing rooms need to be cleaned as regularly as the court rooms, and that should include thorough wipe downs of the coded device on the front doors and the booking-in keypads for cases.”*
- GLOUCESTER: *“Commendable efforts by Gloucester to keep areas clean and safe”*
- TAUNTON: *“I have had to ask that the Court bench is cleaned several times lately; last week I [sat in a space where another barrister had been] and no effort had been made to clean where she had been sitting all of the morning until I asked for that to happen.”*
- PORTSMOUTH COMBINED: *“One barrister attended for 3 days last week and they had to inform the clerk on day 3 that the same court room as the day before had not*

been cleaned. A very quick clean of the bench was then done.. It did not give them much faith” XXXXXXXXXXXX “There was no cleaning after [a member of court staff] left a room to allow the barrister, client and intermediary use it.”

- BOURNEMOUTH COMBINED: *“Although obviously apprehensive generally, I am happy to appear in Bournemouth. There are cleaners roaming the building all day cleaning the doors and other touch points. They come into Court between hearings to make sure the desks and chairs are cleaned. There is a fresh air ventilation system in the courtrooms.” XXXXXXXXXXXX “The court rooms, benches and chairs, etc., are kept clean between hearings by the endlessly cheerful and efficient M... Perspex screens and hand sanitiser abound. Water is provided.”*
- BRISTOL: *“Positive feedback is that the usher and court staff do a brilliant job of wiping down surfaces in the courtroom – they don’t always stick to 2 m from you when speaking, again partly to do with corridors.”*
- BRISTOL CIVIL : *“Cleaners not wearing masks” .*
- SWINDON COMBINED: *“Whatever may be said about regular and appropriate cleaning, I was deeply unimpressed to find loos which still did not have hot water and soap and disposable paper towels provided! This was unacceptable previously but is now frankly scary. I raised my concerns but they were met with a shrug and “we’ll pass on your comments.” XXXXXXXXXXXX “a conference room that wasn’t cleaned between me having to leave and another conference starting.”*
- BOURNEMOUTH (FAMILY): *“ felt safe there with good cleaning practices and social distancing. There is a cleaner walking around cleaning the conference rooms after they were used” .*

KATE BRUNNER QC, LEADER OF THE WESTERN CIRCUIT

PIERS NORSWORTHY, CRIMINAL REPRESENTATIVE, WESTERN CIRCUIT COMMITTEE

17 JANUARY 2021