



## **Safety at the Magistrates' Court**

**May 2020**

### **The CBA**

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

### **Safety in the Magistrates' Court**

4. The CBA has made safety the priority consideration during the Covid-19 outbreak. Nothing is more important than the health and wellbeing of our members. The CBA has pressed the MoJ, HMCTS and the senior judiciary for answers to our concerns about the crumbling court estate and, fundamentally, how our members will remain safe while attending court for in-person hearings and trials. That process has been difficult at times and we have pushed for transparency in communication on these issues.

5. The CBA took the view that our members ought to be given the opportunity to set out what they expect to happen with the court estate in order for them to feel confident and safe enough to enter the buildings. On 11 May 2020, the CBA published a safety questionnaire to ascertain the profession's view on returning to in-person hearings and jury trials in the Crown Court. The results of that survey can be found [HERE](#). To summarise:

- 84.61% were concerned about the risk to them or others within their household of returning to Court at the current time
- 81.20% felt it essential that any published guidance on returning to court be endorsed by Public Health England/Wales or another medical body
- 83.23% felt it essential that counsel should be able to access the court buildings without queuing or being searched on presenting the Bar Council ID
- 88.45% felt it essential that HMCTS provide hand sanitiser for all workspaces, including court rooms and conference rooms
- 85.20% felt it essential that HMCTS provide surface disinfectant and paper towels for all workspaces, including court rooms and conference rooms
- 86.63% felt it essential that all work areas in the court buildings are deep cleaned before in-person hearings recommence
- 77.42% felt it essential that all work areas in the court buildings are deep cleaned between trials
- 98.35% felt it essential that functioning hot water and soap be provided in all toilets
- 91.96% felt it essential that the judiciary support counsel in feeling comfortable by ensuring compliance with any protocol
- 95.69% were of the view that remote hearings should continue for all hearings where attendance is not necessary

6. The view of the members was very clear and formed the basis for a set of demands put forward by the CBA in discussions with HMCTS and senior

judiciary. On 15 May 2020, [HMCTS published its organisational risk assessment](#). The risk assessment was drafted to “ensure that potential risks are constantly monitored, that swift action can be taken where necessary, and that anything significant that can’t be resolved quickly at local level is promptly escalated.” The CBA welcomed the risk assessment tool as the first step in HMCTS seeking to address some of the concerns of our members, but made it clear that we would continue to push for further improvements.

### **Conditions in the Magistrates’ Court**

7. The questions within the CBA safety questionnaire were largely focused on the resumption of in-person hearings and jury trials in the Crown Court. However, following publication of the survey, concerns were raised with us about the working conditions and safety of our members in the Magistrates’ Court. The point was made, quite correctly, that a significant number of pupils and junior tenants had continued attending the Magistrates’ Court in-person during the Covid-19 lockdown.
8. The CBA immediately requested feedback from members about their experience of current safety procedures and conditions in the Magistrates’ Court. [A report setting out the responses](#) was prepared by Sasha Queffurus (CBA executive committee member) and Nadesh Karu.
9. The CBA is deeply concerned about the content of the responses received, particularly those from pupils and very junior tenants. The point was made in the letter accompanying the responses that those attending the Magistrates’ Court were typically “members of the criminal bar who have the least power amongst our number and who are at the greatest risk of being taken advantage of, whether intentionally or not.”

### **Surfaces**

10. The CBA notes that within the organisational risk assessment, HMCTS acknowledged the potential hazard of contracting Covid-19 through contact with surfaces and set out the steps that were supposed to have already been taken to control that risk. This included, but was not limited to, the following:
  - Employing a new cleaning provider with 150 additional cleaners to be deployed within the court estate
  - Providing extra checks around soap and hand drying facilities

- Ensuring that every court is cleaned at night, along with regular daytime cleaning in public and court administration areas
- Providing hand sanitiser at all sites
- Responding quickly to complaints about poor hygiene or problems that would prevent users from washing their hands

11. The CBA is concerned about the number of examples provided by junior members where the above steps do not appear to have been undertaken. The incidents of failure are set out in the CBA report, but include the absence of regular cleaning / disinfecting of workspaces and the failure to provide basic essentials such as hand sanitiser and cleaning products throughout the buildings. Furthermore, the CBA has continued to receive reports of poor standards in the Magistrates' Court since the publication of the HMCTS organisational risk assessment document. On 16 May 2020, a CBA member raised the following concerns in relation to the cleaning procedures and hygiene standards at Thames Magistrates' Court:

*"There was NO hand sanitiser available – no wipes, no paper towels in the toilets, - we were kept waiting in the central area which was NOT clean – at all...*

*Any side room in the courthouse was as unclean as the court – I have forwarded you the photographs of the cleaning / anti-bacterial wipes which I used on the desk in front of me so that I could put my computer down.*

*I have returned home to completely undress and shower for the second time today – the most unpleasant experience. It has seriously brought it home to me just how unclean and uncared for are our everyday environments. I am considered in the vulnerable category in society – I have cardio vascular disease – I am not prepared to venture out again in a hurry to a courthouse. I will not believe anything that is published about the cleaning of courthouses anymore."*

12. Below is the photograph that was sent to us by that CBA member.



13. The conditions described by CBA members above and in the report are not acceptable and fall well below the standards set out by HMCTS in its own risk assessment document. It is clear that, despite guidance having been provided to all Court staff, some Magistrates' Courts are failing to undertake the steps needed to limit the risk of our members contracting Covid-19 through contact with workspace surfaces.

#### Contact with others

14. In its organisational risk assessment, HMCTS also acknowledged the potential hazard of contracting Covid-19 through contact with other people, both in public areas and in the custody suites, and set out the steps already taken to control that risk.

15. In relation to public areas, this included, but was not limited to, the following:

- Putting a system in place to manage the flow of people and maintain a 2 metre distance e.g. using numerical labelling of seats, floor markings and tape
- Advising those entering or leaving court rooms to avoid cross-traffic in the doors and restricting the number of people in court in the public galleries

- Removing furniture or cordoning off to enable individuals to be at a physical distance of 2 metres from each other wherever possible
  - In courtrooms marking seats as 'not for use', taping them off and leaving some rows empty
  - Marshalling by staff in the court room to ensure people are directed to take the correct seat and maintain their social distance
  - Introducing a 'hands off' bag check. If an item needs to be touched the security officer will use protective gloves and sanitiser to maintain hygiene in accordance with PHE guidance
  - Promoting personal responsibilities for social distancing through posters and other means
16. In relation to custody suites, this included but was not limited to the following:
- Prisoner escort and custody services will ensure that visits are conducted safely and practically
  - Where possible, facilities to allow legal defence professionals to communicate remotely (by phone) with prisoners from within the custody suite for a conference
17. The CBA received a number of examples from junior members where the above steps had clearly not been taken in order to limit contact between people in both public and the custody suite areas.
18. In relation to public areas within the court building, members reported repeated occasions of court staff not maintaining 2 metre distancing both inside and outside the courtroom, security staff failing to undertake hands off searches, security staff failing to use gloves appropriately when searching bags and insufficient markings/posters within the building to remind users to maintain 2 metre distancing. The CBA was particularly concerned about comments made by Court staff and security that suggested that they had not been provided with sufficient training/guidance by HMCTS and that they were "*expected to get on with it.*" This was further exemplified by the description of the district judge who decided to attend herself upon defendants in the cells despite multiple defence advocates having refused to do so because the defendants were exhibiting symptoms of Covid-19.

19. In relation to the custody suites, members reported that cell staff were consistently failing to maintain 2 metre distancing and were not adopting a sensible approach to the issue e.g. cell staff were observed chatting in groups of 8 to 10 people, hugging and jokingly bumping into each other. The CBA was very concerned about the experience of a pupil who was not told about a defendant's Covid-19 symptoms because the cell staff thought the pupil would make a fuss about the legal consultation.
20. The situations described by CBA members above and in the report are extremely worrying. There appears to have been a significant failure in the communication of essential guidance and training to staff at a number of Magistrates' Courts. The CBA is concerned that, as with the essential cleaning of surfaces, the staff based at some Magistrates' Courts are failing to take the steps needed to limit the risk of our members contracting Covid-19 through contact with other individuals while at Court.

## **Conclusion**

21. The CBA has made it clear since the start of the Covid-19 crisis that a 'business as usual' approach will not be accepted within any part of the court estate. We have repeatedly demanded that specific steps are undertaken by HMCTS in order to provide, as much as is possible during the current crisis, safe and clean workspaces for our members. Despite assurances to the contrary, it appears as though a number of those essential steps have not been undertaken in some Magistrates' Courts.
22. The CBA has forwarded the serious concerns raised by our most junior members to both HMCTS and the senior judiciary. We have been told that the serious issues raised in relation to the Magistrates' Courts will be immediately addressed. That is a start, but we know there is much more to be done. The CBA has demanded and been given a seat on the professional working group overseeing the workings of the Magistrates' Court. We will push for improvements and safety measures similar to those being considered for the Crown Court. The health and wellbeing of all our members will remain our primary consideration moving forward.