HOUSE OF COMMONS

Justice Committee

Oral evidence: Covid-19 and the criminal law, HC 1316

Tuesday 20 April 2021

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Watch the meeting

Members present: Sir Robert Neill (Chair); Rob Butler; Janet Daby; James Daly; Maria Eagle; Dr Kieran Mullan; Andy Slaughter.

Questions 1 – 62

Witnesses

I: Sir Jonathan Jones, Senior Consultant, Linklaters, and former Treasury Solicitor and Permanent Secretary of the Government Legal Department, March 2014 to November 2020.

II: Pippa Woodrow, Barrister, Doughty Street Chambers; Joshua Rozenberg QC, Journalist; and Tristan Kirk, Court Reporter, Evening Standard.

Examination of witness

Witness: Sir Jonathan Jones.

Chair: Good afternoon. Welcome to this session of the Justice Committee of the House of Commons. This is the first of our sessions in our inquiry into Covid-19 and the criminal law. I am very grateful to our panels of witnesses who have come to join us today.

We will turn to them in just one moment, but, first of all, as is routine, members of the Committee have to make their declarations of interest. I am a non-practising barrister and formerly a consultant to a law firm. I know Sir Jonathan, who will give evidence shortly, as we are both fellow benchers of the Middle Temple. I know Professor Rozenberg, who will give evidence later on, through my work over the years.

Maria Eagle: I am a non-practising solicitor, Chair.

James Daly: I am a practising solicitor and a partner in a firm of solicitors.

Chair: Dr Mullan, you have nothing, I think.

Dr Mullan: For this session, I have close family members who are serving police officers.

Chair: Yes, thank you. That is relevant for this session.

Rob Butler: Prior to my election, I was a non-executive director of HMPPS and a magistrate member of the Sentencing Council.

Q1 **Chair:** Thank you very much. Sir Jonathan, welcome.

Sir Jonathan Jones: Thank you.

Chair: We are grateful to you for coming to see us, perhaps wearing a different hat from ones when you formerly engaged with parliamentary Committees.

Sir Jonathan Jones: Yes.

Q2 **Chair:** I was interested in a piece that you wrote in *The Guardian* and some other comments that you have made, given your experience as being formerly Treasury Solicitor and head of the Government Legal Department, about the way that the legislative system, if you like, and a legislative approach, has been used in the creation of certain offences, either under the Covid Act itself or under the regulations that were made in consequence. You have been quite critical of a number of those. What in a nutshell would be your key observations on what has happened, where that might depart from the practice that you saw when you were in government advising on these matters and on any areas of concern that raises with you?

Sir Jonathan Jones: Thank you very much, Chair, and thank you for inviting me to appear before the Committee. Perhaps I should say first of all that I was in post as Treasury Solicitor about a year ago at the start of the pandemic. In what I am going to say I do not intend to breach any professional confidences arising from that time; I am going to comment based on my experiences in general, and also from what I have observed since I left towards the end of last year.

I suppose, just to put this in context, almost all of the Government's legislation on Covid has been by way of secondary legislation, as you know, mostly using powers under the Public Health (Control of Disease) Act 1984. Those are powers that Parliament has conferred on Ministers. They are very wide powers. They are powers designed to deal with a public health emergency, and we are in a public health emergency. The Government are using the powers they were conferred, but the way they have used them has given rise to a couple of concerns, and, as you say, I have commented on this elsewhere.

First of all is the tendency to legislate at very short notice. Persistently throughout the pandemic, we have seen regulations being drafted and published sometimes immediately before they are due to come into force, sometimes a matter of hours and sometimes a couple of days, but very often very soon before they are due to come into force. This of course makes life very difficult for those who want to know what the law is going to be, whether that is lawyers advising clients, or businesses who want to know what rules will apply to them, whether they can open or not, and, if so, under what conditions. Those whose job it is to enforce the law need to see the detail, and very often that detail has not been available until very soon before the changes come into force.

The second related concern has been around the procedure that the Government have chosen to adopt for making these regulations. Typically, they have used the emergency procedure under the Public Health Act, which means that the legislation is not laid before Parliament in advance, and it certainly is not debated in advance. The requirement under that procedure is that debates have to happen within a certain period after the legislation is laid and comes into force. In practice, that is 28 days, and even in the case of 28 days you do not count periods during which Parliament is mostly not sitting, so that is quite a long time before there has to be any debate at all. Given the speed with which the situation has been moving, it can mean that no debate happens at all until it is too late, because the situation has moved on and the law has changed again.

Those are the two main concerns: the fact that the legislation very often has only been made available and has only been published with very little notice; and, secondly, that there has been no meaningful parliamentary debate or scrutiny before the law comes into force. That of course has wider implications for the ability of MPs to contribute to debate, and to scrutinise the content of the law, which of course has been extremely

intrusive, and in some cases rather controversial. None of the usual process of debate and scrutiny has occurred in many instances. Those are the two main concerns that I have commented on.

Q3 **Chair:** Thank you. One thing that strikes me is that we have had evidence that raises concerns from a rule of law point of view; the basic Lord Bingham type of principles that the law should be certain, it should be clear and it should be reasonably accessible, so that someone knows, or a lawyer can advise, whether or not a course of action is likely to infringe the law. In your judgment, does the speed with which some of these have been enacted and the changes that have been made to some of them, often one after another, almost seriatim in terms of changes, raise any concerns about meeting the rule of law test of accessibility and intelligibility to the person who may be subject to them and their ability to know whether or not they are committing an offence?

Sir Jonathan Jones: It does raise those concerns, for the reasons I have already set out. Typically, the changes in the law have been foreshadowed by ministerial announcement or a press conference. People will know that the Government are thinking about whether they need to change the law either to tighten controls, or to change them or to relax them. There will normally be some kind of notice that changes are due and some kind of indication of the timescale within which the changes will be made. Typically, if, like me, you are looking at Twitter, you will see people anxiously asking one another on Twitter or on social media, "Has anybody seen the text of the new law that is due to come into force tomorrow?" And these are lawyers who know where to look for the legislation, but it just isn't there.

Q4 **Chair:** This isn't members of the public, is it? This is members of the profession asking.

Sir Jonathan Jones: These are typically members of the profession who are following these important legal changes and want to be in a position to advise their clients, who will be businesses and others with an interest, whose conduct will be affected by changes in the law. It is very common to see people simply not knowing where to find the law or whether it has been published, and sometimes, as I say, when it is, it is a matter of hours before the changes are due to come into force. These are professionals who, as we said, will be best placed to know where to find the new law once it is published.

As I said, the same goes for those whose job it is to enforce the law—the police, normally. They need to see the letter of the law. It is no good them relying purely on a press conference or on some kind of broad-brush description of what the Government have in mind. They need to see the letter of the law. If it is a question of enforcing the criminal law, it is all the more important that the law is certain, and that those enforcing it know exactly what the law says. That has very often not been the case. The law is not available. The detail of the law is not clear and is not accessible a matter of hours—I am repeating myself a bit—before the

changes are due to come into force. That is not good for the rule of law. It is not good for the accessibility, clarity and certainty of the law. It is obvious that it is fundamentally part of the rule of law that you can find out what the law is and what is expected of you.

One of the consequences of that has been in turn that we have seen confusion about what the law actually says. We have seen inconsistency between different statements, and between different pieces of guidance that have been produced on the law and what the actual text of the regulations says. We have seen different police forces, for example, adopt different interpretations and different approaches to enforcement, partly because, as I say, it has been sometimes difficult to know with certainty what the law is actually going to say. None of this, it seems to me, is helpful to confidence in the law and making people understand what is actually required of them and therefore comply with it. I think there are some concerns. Maybe things have got a bit better.

The most recent regulations, which introduced the new steps out of lockdown, were made about a week before they came into force. There was at least some notice. Of course, the point about those regulations is that they give some measure of clarity about what subsequent steps will be, so that people know within reason when future changes will be made and they can prepare for those. People understand that there is not absolute certainty about that because it all depends on the progress of the pandemic and the evidence that continues to be gathered, but at least those regulations give some kind of advance knowledge and clarity about what future changes in the law might be. Maybe things have got a bit better.

Q5 **Chair:** I suppose you will know from your time in government that sometimes it is necessary to respond swiftly to emerging crises and take urgent action. As you say, you were in post at the beginning of the pandemic, but we are a year on now. It might be necessary perhaps in urgent circumstances to use secondary legislation in the way that it has been used. Does there come a time when that becomes less justifiable, as circumstances and the conduct and the progress of a pandemic or other emergency progress? Does that apply here?

Sir Jonathan Jones: I think so. Maybe some of those lessons are beginning to be learned, but the Government are still relying on the emergency procedure routinely, although, as you said, I think that is understandable in the heat of the pandemic, in the heat of the emergency. After all, as I started by saying, the legislation confers those powers, and it provides for an emergency procedure. The question is whether that should become a matter of routine, whether it should become the default, so that, in the course of the whole year, the ability for parliamentary scrutiny, which one would normally expect, has been very substantially eliminated, and that has now become the norm. I would say that is not desirable and it would not, I think, really have been intended, when creating these exceptional powers and these exceptional

procedures, that they should become, as I have said, the default approach.

Q6 **Dr Mullan:** You have touched on some of the implications, and you have also mentioned how you think things have improved. If you were to start from scratch and have a blank slate, so to speak, how would you see things being different?

Sir Jonathan Jones: I would have thought that there ought to be an expectation of a minimum period of time, apart from the most urgent of circumstances, between the making of a new law and its coming into force. I am not going to say whether that should be a week, or whether in some circumstances two or three days would be right, but it should not be a matter of hours. That is a choice by Government as to how quickly they intend the law to change after the making of the legislation.

Q7 **Dr Mullan:** It is obviously easier to talk about these things as a concept, but if it is to be a Government policy, it needs to be black or white and, as you have alluded to in your evidence, you cannot have grey. How do you go about defining that in a way that a Government Department would understand, so that it will or will not fit the criteria for super-urgent, and what that period looks like, and so on?

Sir Jonathan Jones: I think it is actually very difficult to define in the abstract, and the legislation itself tries to do that. It sets a criterion, which is that the Minister considers that by reason of urgency, effectively, there isn't time to adopt the normal procedures. But, in the end, it is the judgment of the Minister as to whether that test is met and whether there is indeed an emergency. Whatever test you have, in the end it will be a matter of policy judgment. It will be a matter of judgment for the relevant Minister. It is very difficult to define in advance in the abstract when a particular threshold might be exceeded beyond what is already in the legislation. The challenge, I am afraid, is to Ministers and to those making policy judgments to stand back and ask themselves whether the circumstances really justify changing the law with a matter of hours' notice, or no notice.

I think the risk is that the Government have got into some bad habits, for reasons I understand—we started in an emergency and we needed to act quickly; but that those have become ingrained and become the default is undesirable. We should be standing back and asking whether at the very least we should be allowing a period of days' notice before the law changes and then, as I say, linked to that, what the role of Parliament should be, whether the default should be, as it normally would, that Parliament has adequate time to consider and, if it is an affirmative instrument, to debate the changes in the law before they come into force. All I am really saying is that I have identified some bad habits, and, if we were doing this again, or if we are going to be managing this situation in the future, we should try to reverse those bad habits and allow for more notice and more debate.

Q8 **Dr Mullan:** You mentioned time and debate. Are there any other ways, in terms of the methodologies that have been used, different types of SIs? Are there opportunities to do things differently, in your mind, and better than this time?

Sir Jonathan Jones: I think I am repeating myself a bit. It would be better for debates to happen before the law comes into force. That would be the normal default. You would have to revisit the legislation to achieve this, but you might provide that the debate has to happen sooner than 28 days. Even in an emergency, you might provide that a debate has to happen within a very small number of days. That would involve altering the powers under the Public Health Act, and it might even involve looking more generally at the procedures for secondary legislation under the Statutory Instruments Act.

At the moment, we have ended up with a kind of polarised choice between either primary legislation of course, which carries with it all the stages of debate, or secondary legislation, which gives Ministers the opportunity to eliminate debate in advance altogether. It is worth looking at whether there are options in between those two extremes that, even in an emergency, allow Parliament to have some meaningful say either before the instrument comes into force, or at least very soon afterwards.

Dr Mullan: Thank you.

Chair: Thank you very much. Mr Daly, do you have any questions?

James Daly: At this stage, no. Dr Mullan has covered all the points I wanted to ask about.

Chair: Thank you very much. Mr Butler.

Q9 **Rob Butler:** Thank you very much, Chair. I wonder if we could look half a step removed. When the Government are working at pace on emergency or urgent legislation, how as a point of principle would you say Government lawyers ensure that the criminal sanctions are appropriate and proportionate?

Sir Jonathan Jones: The main constraint on what Government can do, including when it comes to creating criminal offences, will be the powers under the enabling legislation. Under the Public Health Act, there is specific provision about creating criminal offences, which says that the powers cannot be used to create indictable offences or any offence punishable by imprisonment. The first task of the Government lawyer will be to advise on the scope of the powers, and to ensure that what is being done is within the four corners of the powers. That advice, I am sure, is being given and is being heeded.

Within that, there will be other considerations such as whether it is appropriate to create a criminal offence at all and, if so, what the level of fine should be. If there is not a power to create an imprisonable offence, there will still be a judgment as to what the level of fine should be. There

will be good co-ordination, I can confidently say, between Government lawyers with an interest in creating this legislation on these issues. In the end, they are policy choices for the relevant Minister, first of all whether to create a criminal offence at all and whether that is the right type of sanction, and, secondly, if so, what the level of fine should be. My expectation is that lawyers will be consulted on these issues, and will feed into the advice, but in the end the decision is a policy decision within the scope of the powers conferred by the parent Act.

Q10 **Rob Butler:** If we look at some of the fines that were in place, we had, for example, headlines of £10,000 in certain situations. You will know full well that, normally in the court, somebody's ability to pay is a major factor in what they are fined. That was not the case for the £10,000. What would have been the decision-making process behind that from officials and ultimately in terms of a policy decision?

Sir Jonathan Jones: I do not have first-hand knowledge of how all those decisions were taken. There is a link to the earlier line of questioning, which is about the timescales within which this legislation is being put together; normally, there would be a process of consultation, including with the Ministry of Justice, for example, on the creation of criminal offences and on penalties. There is lots of guidance around that. It would have been difficult to comply with some of that, given the speed with which the legislation was being put together. I cannot, hand on heart, say how thorough the consultation would have been. That is the first point.

People will have done their best to assess, to advise on and to analyse what the right level of fines should be. We should also, in fairness, not assume—I am sure you do not—that there is some magic formula for determining what the right level of penalty should be and that, if you feed the relevant information into the formula, you get a figure. That is not how sentencing works. It is not how the criminal law works. None the less, you would expect some comparisons to be made between similar offences, and some sort of judgment, on the basis of those comparisons, as to what the right level of sentence should be. The truth is that I do not know whether that has been happening.

Going back to my earlier point, even where it has, even where that kind of analysis and advice is being given, in the end there is not really a right answer. It is a policy decision for the relevant Minister. We know that sometimes Ministers want to use legislation to send a message about how seriously they view a particular offence. I suspect that has been happening. Normally, it is quite a bad use of legislation to send a message. I understand that sometimes Ministers want to do it. Part of the reason why some of these very high levels of fine have been chosen may have been that Ministers wanted to underline how seriously they view certain types of conduct. Yes, there is a system of consultation. Yes, there is a system of advice, but, in the end, there is also a political and policy dimension to how these decisions are made.

Rob Butler: Thank you.

Q11 **Maria Eagle:** I realise that the Public Health Act that you have been talking about allows it, but is it appropriate for new criminal offences to be created by delegated legislation?

Sir Jonathan Jones: I do not identify a reason of principle why not. I would certainly not say that it is wrong in principle ever for criminal offences to be created by secondary legislation. In a way, that ship has sailed, because there are many instances of enabling Acts that empower Ministers by secondary legislation to create criminal offences. There are already many examples of that. If there ever was a point of principle, it has been decided in that way.

Then you come back to, as I said, the question of what the enabling Act says about the types of offence that can be created and what levels of maximum penalty can be imposed. That is first and foremost a judgment for Parliament when it confers the powers in the first place. This Committee or the Delegated Powers Committee might have a role in analysing whether the powers are too wide, but ultimately that is a judgment for Parliament when it creates the powers.

That is my answer to the question of principle. In principle, there is nothing wrong. There is nothing unconstitutional or objectionable in secondary legislation being used to create criminal offences. The question will then be, what is the scope of that power and what other constraints are there on its width?

Q12 **Maria Eagle:** Do you think that the reliance on fixed penalty notices in the Covid regulations—we have already had some references to the very high levels of fines that have been attached to some of those fixed-term penalty notices—is appropriate in the current emergency, or do you think that it is just something that has come about as a consequence of the fact that they have used the Public Health Act to create the criminal offences?

Sir Jonathan Jones: Again, I do not think there is anything inherently objectionable in using fixed penalties as a means of enforcing the criminal law. The fixed penalties are not free-standing provisions. They are ways of enforcing the offences that are themselves created by the regulations. They are ways of dealing with those offences short of prosecuting them in court. Of course, there is always the option for anybody who is confronted with a fixed penalty not to pay it, and then to take their chances in a criminal prosecution. The regulations do not themselves create the option to appeal against a fixed penalty notice. I think that may be a gap.

It might have been desirable to create a right of appeal against the fixed penalty notice so that cases that really were unmeritorious could be quickly weeded out, rather than somebody having to take the risk that, if they did not pay, they might then be prosecuted. There might have been

scope to approach that in a different way. Otherwise, I can see why, having created these offences, and the policy judgment having been made that there were certain types of conduct that were sufficiently serious in a public health emergency that they needed to be the subject of criminal sanction, having fixed penalty notices as part of the armoury available to the police and those enforcing the law was not itself an unreasonable thing to do.

Q13 **Maria Eagle:** Would primary legislation have been required to impose custodial sentences for breach of the lockdown regulations? I am assuming that it would have been.

Sir Jonathan Jones: It would, so long as one is relying on the Public Health Act, because, as I say, that Act does not allow the creation of offences punishable by imprisonment. Primary legislation would have been needed either to widen those powers or to create free-standing offences.

Q14 **Maria Eagle:** Thank you. There have been a number of judicial review challenges to the legality of Covid regulations. What impact, if any, does judicial review have on the Government's approach to delegated legislation in your experience?

Sir Jonathan Jones: The point about using secondary legislation is that there are limits on the powers that you are exercising, and they are the limits set by Parliament in the enabling legislation. In a way, you are always at risk of being challenged if there is any question of your having exceeded those powers. That of course will be a primary issue, as I said, on which Government lawyers will be advising to make sure that what is being done is within the powers. Where you are using those powers to do very radical, intrusive things that affect the interests of every individual, every citizen and every business, it is not surprising that the use of those powers will be tested in various ways, as they have been in the courts.

My own view is that that is entirely to be expected. It is part of the rule of law. It is the job of the courts to scrutinise the exercise of Executive power, and where you are exercising secondary legislative powers in that very intrusive way, it is to be expected that there will be challenges. I would expect that the Government will be fully alive to that, and certainly Government lawyers will have been advising on it.

There is a wider debate going on about judicial review, as you know. There is no doubt that there is a burden on Departments—you can describe it as a burden—in having to ensure that their actions, including secondary legislation, are compliant with the law and are, as far as possible, proof against judicial review. But that is part of exercising Executive power; you have to take care to ensure that what you are doing is lawful.

There is then of course a burden in having to fight the cases when they come along. But, again, that is part and parcel of being accountable to

the courts and being subject to the rule of law. All of that has been played out in relation to the Covid legislation and I find that completely unsurprising. As far as I am aware, mostly the challenges have failed. That reflects well on those who are taking these decisions and those who are advising on them. It is right and proper that the courts have the opportunity to scrutinise the exercise of these powers, but by and large, with very few exceptions, including one I can think of in Scotland, the challenges have failed. You could say that is the system working as it should, and the Government having been held to account. Ultimately, it is a matter of law having been found to have acted properly within the scope of their powers.

Maria Eagle: Thank you, Chair.

Q15 **Andy Slaughter:** Apologies for being late for the statement. I should say that I am a non-practising barrister for the record.

Sir Jonathan, I am aware you have set out some views on the current view of judicial review because I read Joshua Rozenberg's blog, which is one of my main sources of legal education these days, along with Adam Wagner's tweets, which I think you also alluded to earlier.

On the judicial review issue, we have a situation where the Faulks review has reported and made some recommendations that had some logic to them, whether you agree with them or not. Now, we have another review on the back of that. Do you find that process surprising, and do you have any concerns about the matters that now appear to be in issue, either the issue of prospective only remedies or suspension of remedies?

Sir Jonathan Jones: On the process, I do not have any particular difficulty with the Government—any Government—from time to time examining how the system of judicial review is working. I think the independent review itself said that this was a perfectly proper exercise. It is an issue that any Government are entitled to examine from time to time.

The conclusions of the independent review, as you said, were relatively modest. You might then ask, is it surprising that the Government have decided that they want to explore more radical changes than the Faulks review recommended? I do not know whether that is surprising or not. I think the Government are entitled to take their own view. I am glad they are consulting on those further changes, so that there is at least an opportunity for people like me, or any of us, to comment on further proposals that go beyond what the Faulks review recommended.

In fact, as you may have seen elsewhere, I have expressed some concerns about those further proposals on prospective remedies. It is not absolutely clear to me what the motivation is for that and what the detail of the change might be. If the truth is that, in the end, it will be up to a court to decide what the appropriate remedy should be, that of course is already the position now. When the Government lose a judicial review, there is a discussion about what the appropriate remedy is, and it will be

for the court to decide. It is not clear to me that creating some kind of default or presumption that remedies would be prospective will make much difference to that, because either way there will still be a discussion with the court as to what the just outcome is in any individual case.

Q16 **Chair:** It is a fascinating topic, Sir Jonathan, but we need to make sure it is shaped in terms, by both you and Mr Slaughter, of the evidence we are taking in relation to the Covid-19 offences rather than more generally.

Sir Jonathan Jones: Okay. The concerns I have mentioned may be related; we will have to see what comes of the consultation. If the idea is to restrict the type of remedy that a court can award, whether it is for the Covid regulations or anything else, I would be sceptical about that. A lot will depend on the detail. Should we leave it there?

Q17 **Andy Slaughter:** Could I focus it by reading a quote from Professor Mark Elliott, who as you probably know has opined on the subject? What he said on the issue of retrospection is that a "critical component of the rule of law is the requirement of Government under law—and that that fundamental principle would be placed in serious jeopardy by preventing or improperly limiting retrospective invalidation of unlawful administrative Acts." Would you agree with that? Is that a fair comment?

Sir Jonathan Jones: Yes, I agree with it.

Q18 **Andy Slaughter:** Finally, do you see this as quite a narrow point, which is perhaps applicable to what we are talking about today, or do you see it as part of a continuum in terms of constitutional review, including what is happening with the Human Rights Act?

Sir Jonathan Jones: We will have to wait and see what Government decide on this. All I would say is that the direction of travel, if I can put it that way, of all of these proposals is to reduce scrutiny and accountability, whether it is to Parliament or, in this case, to the courts, rather than increase it. We should be at least sceptical about that.

Andy Slaughter: Thank you very much.

Q19 **Chair:** Thanks, Mr Slaughter. Do any other colleagues want to raise anything? I have a couple of questions for Sir Jonathan. Thinking generally, Sir Jonathan, you mentioned the level of penalties and the creation of criminal offences by secondary legislation. It does happen, but it is not perhaps something that should happen too readily, for reasons that you have set out. You indicated that you expected the Ministry of Justice would be consulted. Would you expect, for example, the Law Officers to be consulted on that, or would it be normal, from your experience, for there to be any involvement with the Law Officers Department on the creation of new offences or the way by which they were created, the nature of the SI or whether by SI at all or not?

Sir Jonathan Jones: I am talking in general terms rather than on specifics, which I am now not sighted on. You will know that there is a convention against disclosing Law Officers' advice.

Chair: Just in general terms.

Sir Jonathan Jones: In general terms, I would expect that the Attorney General's office would be keeping a close eye on this body of legislation. That said, I would not expect the Attorney to be personally commenting on the detail of the legislation, and even on the creating of criminal offences, unless perhaps there were a particular area of dispute, or if the CPS, for example, had raised concerns. I would think not routinely. The only other circumstance would be if there were to be a role for the Attorney, him or herself, in consenting to prosecutions. As you know, there is that category, but I do not think that has arisen in this case.

Q20 **Chair:** No. They are not issues that are likely to arise here.

Thank you very much, Sir Jonathan, for your time with us. Maybe there will be other topics upon which we have the opportunity to hear from you in the future.

Sir Jonathan Jones: I will look forward to that.

Chair: We are grateful for your time and your evidence today. Thank you.

Examination of witnesses

Witnesses: Pippa Woodrow, Joshua Rozenberg and Tristan Kirk.

Q21 **Chair:** I turn to our second panel of witnesses and ask our three witnesses to introduce themselves very briefly for the record, for those who are either glued to us on the television, or for the transcript thereafter.

Pippa Woodrow: Thank you very much for inviting me to be a part of this session today. My name is Pippa Woodrow. I am a barrister at Doughty Street Chambers. I have a mixed practice that includes crime and public law relating to criminal justice, as well as other human rights related fields, including immigration asylum work.

Q22 **Chair:** Thank you very much. You have dealt with a number of cases in this field, I understand.

Pippa Woodrow: I have indeed. I am one of the Twitter lawyers asking, as you have been mentioning, what the law is going to be. Yes, I have been doing quite a lot of work in this area throughout lockdown.

Joshua Rozenberg: I am Joshua Rozenberg. I am a self-employed legal commentator and a non-practising solicitor and various other things, but I have no academic qualifications whatsoever.

Chair: Just the odd blog and other things.

Joshua Rozenberg: Exactly.

Tristan Kirk: Good afternoon, everyone. My name is Tristan Kirk. I am the courts correspondent for the London *Evening Standard* newspaper. I have been with the newspaper for the last five years or so, and a journalist for about 14 years. I have taken a keen interest in the Covid-19 laws and regulations and how they have been applied.

Q23 **Chair:** You are a bit of a rarity, Tristan, to be a dedicated court reporter nowadays.

Tristan Kirk: Absolutely. There are still a group of us, less than there really should be. I am very privileged to have a position doing the courts day in, day out and really focusing on that work.

Chair: Thank you all for joining us this afternoon. We will start off with Janet Daby.

Janet Daby: Perhaps I could start by directing a question to Pippa Woodrow. Could you set out the most significant criminal offences in the Covid-19 regulations made under the Public Health Act 1984?

Pippa Woodrow: Yes, certainly. As you know, by way of general overview, there are the regulations you have referred to and there is the Coronavirus Act. Most but certainly not all of the most controversial offences have been under the health protection regulations, of which I think there have now been 26 versions. There have been 71 versions of secondary legislation in one form or another, but of the primary health protection regulations with which I have been concerned I think there have been 26 versions. The main offences are ones with which in general terms we are all fairly familiar now. They create offences concerned with freedom of movement: restrictions on leaving your home or being outside your home, or at various times staying away from your home overnight, without a reasonable excuse. That is the first broad set of offences.

Secondly, there are restrictions on the ability to gather in various numbers and for various different reasons. It has been an offence to gather without a reasonable excuse under those regulations. The details have varied, but in essence that is what it concerns. More recently in relation to gatherings, from October, there have been specific offences in relation to organising gatherings. It has been made an offence to hold or be involved in the holding of large gatherings of 30 people or more in certain circumstances without a reasonable excuse. There are other offences relating to non-compliance with enforcement efforts and the like, and offences relating to business closures, but those are the core offences that people like me who have been doing this work have been concerned with and with which the courts have routinely been dealing.

Q24 **Janet Daby:** Could you say a bit about how those offences have been structured and if there is anything unusual about it?

Pippa Woodrow: Yes, certainly. On the face of it, structurally they do not appear unusual per se, save perhaps in their scope and the extent to which they affect such a broad range of people and are so intrusive into everyday life.

There is something in the structure of them and the drafting of them that is notable. It is to do with the framing of prohibiting something without a reasonable excuse. Normally, in the criminal law, not always but normally, that tends to denote a reverse burden of proof. Very often, where you see the language of reasonable excuse most commonly—we are familiar, for example, with possession of weapon offences or possession of knives—it is presumed, effectively, to be unlawful unless the person concerned can demonstrate that they have a good reason or a reasonable excuse for having engaged in that behaviour. It has not been made explicit under the regulations how that is to be applied in this case and how the burden of proof sits. It has been the consensus broadly among lawyers, and certainly discussions in court in the various cases that I have been involved in have all agreed, that there is no reverse burden of proof, and that it is for the prosecution to prove all elements of the offence, including the absence of a reasonable excuse.

That language has led, in some cases, to confusion and to examples of over-policing at first instance. What should be happening is that the police, or others tasked with enforcing these regulations, should be refraining and exercising restraint unless there is reason to think that somebody does not have a reasonable excuse. In reality, what has been happening is that the police, once somebody is out of their home, feel that they have the power and the right, at that stage, to engage with people unless they are, effectively, visibly manifesting their reasonable excuse. That has created problems, particularly in areas like protest and other activities that engage fundamental rights. That structural issue has been an interesting difficulty.

Q25 **Janet Daby:** Thank you. Would the other two witnesses like to comment?

Joshua Rozenberg: No, not specifically on that.

Q26 **Janet Daby:** That is fine. Tristan?

Tristan Kirk: No, that's fine.

Q27 **Janet Daby:** Okay, lovely. If I could direct the next question to you again, Pippa Woodrow, have all the criminal offences created to deal with the virus been sufficiently clear, and to what extent have the public understood what conduct is prohibited by the regulations?

Pippa Woodrow: The short answer to that question is no. They have not been sufficiently clear, and the public have in large part been in difficulty—the public and those tasked with enforcement, including the police and at times the courts themselves. The Chair has already made reference to there being principles of rule of law here. It is a basic

common law requirement, as well as a feature of human rights protections, that criminal prohibitions in particular must be accessible, and they must be sufficiently certain for people to regulate their conduct and know in advance whether what they plan to do is or is not an offence, and what the consequences are likely to be. Unfortunately, we have seen many, many examples throughout lockdown that would tend to suggest that the regulations have in fact not satisfied that test.

By way of evidencing that assertion, you are aware, I am sure, that the CPS has been reviewing coronavirus prosecutions since March last year—it has been a monthly rolling review—triggered by the very concerning reports of people being convicted for offences that did not exist, or were in the wrong jurisdiction and the like. Under the Coronavirus Act to date, 100% of the people who have been charged were wrongly charged. About 250 people have been wrongly prosecuted; 100% is clearly a number of some concern. Even under the regulations, there has been a concerning level of error and confusion.

The figures for the latest lockdown period from December to February—the most recent figures we have are for February—show that roughly 25% of people charged under the health protection regulations were charged wrongly, and of those 25%, roughly 20% went on to be convicted. The figures across the pandemic as a whole, between March last year and February this year, are that about 15% of people who were charged were wrongly charged. Those figures tend to suggest that people are having difficulty understanding and applying these laws correctly. Of course, that number does not take into account fixed penalty notices, where the proportion that are wrong is likely to be significantly higher because there are fewer safeguards.

Confusion arises, in very general terms, in three major problem areas. There are difficulties with the intricacies of specific offences, but dealing with it in general terms, there are three major problem areas. The first relates to the offences under schedule 21 of the Coronavirus Act. Those are offences specifically directed at and only applied to people who come within the definition of being potentially infectious. It seems that there has been a systemic failure to understand that. We have seen the Coronavirus Act frequently being used in cases where there is no evidence of somebody being potentially infectious. That has been a semi-systemic problem. I do not know quite why there has been a failure repeatedly not to recognise that aspect, but it seems that it continues to be a problem.

The second difficulty is one that you have already touched on with Sir Jonathan in the last panel, and arises in part from the way in which these regulations have been published at very short notice. It has been a consistent feature of almost every case that I have dealt with where there have been legal errors that the police issuing fines or authorising charges have to some extent been confusing guidance with law. That has been a real problem, and one that has come up time and time again. As I

say, partly it is because the law has been published, in many cases, with hours to go, so those who have been seeking to understand the law, including those enforcing it, have had to depend on, effectively, ministerial foreshadowing of what the law is going to be. What we have seen, almost inevitably, is that, when the law is published, it turns out to be quite different in fact from whatever the content of the ministerial announcement was.

By way of example, the very first press conference talked about five essential reasons for being out. I have had cases where people were arrested for not having a reason that came within the five essential reasons referred to by the Prime Minister. But in fact, of course, the regulations themselves provided, at that stage, 13 reasons that would amount to a reasonable excuse, and that was a non-exhaustive list. That is a single example of where guidance and the law have been mixed up. Another reason for that has been the language that has been used by Ministers. They have spoken very much in terms of the rules, while failing to distinguish between what are legal rules and what are in fact rules or requests contained in guidance.

Other examples have been widespread confusion about whether there is any restriction on how far one can travel. There have been very public examples of enforcement of people for travelling when in fact they have done nothing unlawful. Is social distancing a legal requirement or is it guidance? Police have been making that mistake. The reality is that it is guidance, and there are no legal enforcement powers connected to social distancing. The amount of time people can exercise has been another very common misunderstanding. That has been a real problem. That is the second thing.

The third area relates to the failure of the regulations and the way they have been drafted. It comes where the regulations appear to conflict with fundamental rights protections. The regulations do not deal in terms with human rights or activities that are protected by human rights provisions. In some cases, they appear, on their face, to conflict with rights. The starkest example are rights to freedom of expression and freedom of assembly, which include the right to gather for the purpose of protest.

There are others: religious freedoms, freedoms connected to political campaigning and political activity. There is now a very clear body of evidence, including recent findings from the police watchdog in their inquiry into the Sarah Everard vigil, that the police, and indeed the public, have not been able to understand the law as it relates to protest and other fundamental rights. That has led to widespread suppression and chilling of rights far beyond what the law actually requires or permits. I do not know whether it will be helpful to walk you through what the law is and why there has been confusion, but in essence the root cause, in my view, has been that the regulations have not been sufficiently clear, and it has required police on the ground to be aware of detailed case law,

which in a pandemic is perhaps unrealistic as an ask of officers. That is the third difficulty.

Q28 **Janet Daby:** Thank you for that very comprehensive response. I see that Joshua would like to come in.

Joshua Rozenberg: Yes, I would. If I could enlarge on what Pippa said, the place that you would go to try to find out what the law is, assuming that you are a member of the public and you do not have access to legal advice, is of course the gov.uk website. If you go to the main page that is headed "Coronavirus restrictions: what you can and cannot do", which comes from the Cabinet Office, and was last updated four days ago on 16 April, and if you were to take the example that Pippa gave and that she knows a great deal about, much more than I do—the example of demonstrations—there is no subheading for protests or demonstrations. You look at the starting point and it says, "Gatherings above the limit of six people or two households can take place only if they are permitted by an exemption." The exemptions are listed. You look down for other circumstances and it says, "You may gather for the purpose of Covid-secure protests or picketing where the organiser has taken the required precautions." You, as a member of the public, would not know whether the organiser has completed a risk assessment. You would not know whether the organiser has taken the required precautions.

The point that Pippa makes about the human rights convention, article 10, freedom of expression, and article 11, freedom of assembly, is not mentioned at all in the Government's guidance, yet it is well established—Pippa was in one of the cases that established it—that these regulations have to be read subject to the human rights convention. That is why one is entitled to say that surely the notes published by the Government for people should indicate the circumstances, broadly speaking, in which it is possible to go on a demonstration, and at least allow people the option of researching it further in order to find out what the law permits.

Janet Daby: Pippa, would you like to come back?

Q29 **Chair:** I suppose the same thing, Joshua, is that the police officer policing the demonstration needs to know as well, doesn't he?

Joshua Rozenberg: Absolutely. There was an inquiry by the inspectorate of constabulary, reported on 30 March. It found that an open letter on the Met police website could have spelt out the position on protests more fully by referring to the existence of the reasonable excuse defence, and how this requires the police to consider whether people are exercising their human rights under articles 10 and 11. As far as I can see, that letter has not been updated three weeks later.

The inspectorate found the extent to which the Metropolitan police had thought its hands were tied by the all-tiers regulations, and that that position risked failing to provide enough protection for human rights. The inspectorate found documents from the Metropolitan police that showed

there was a degree of confusion as to the correct legal position, and so on and so forth. The inspectorate found a log that was in the gold commander's log that tried to understand how you tie in articles 10 and 11 rights with the tier 4 restrictions and said that it was an incorrect interpretation of the regulations.

To be fair to the police, as the inspectorate said, senior police officers are required to demonstrate an advanced understanding of human rights law, and where police officers are faced with making finely balanced decisions in difficult circumstances, it is essential that the law is clear. That to some extent is saying that unless Parliament makes the law clear, unless the Government make the law clear, it is a bit much to expect police officers on the ground to understand the interplay between these regulations and the human rights convention.

Q30 **Janet Daby:** I have information from the chair of the Police Federation that a recent survey showed that nine out of 10 officers thought the regulation was not clear. That fits into that. Pippa, I think you want to come back in, and then I will hand back to you, Chair.

Pippa Woodrow: I absolutely agree with everything Joshua said. I was in the case that was concerned with the Clapham Common vigil. It might help to set out what has happened and why it was so unclear at that stage. Joshua has referred to what is currently on the website, which refers to protests, for example, where there has been a risk assessment and how the public are to know about that.

During the tier 4 lockdown, there was no mention at all in any guidance or any police strategy documents, including internal guidance, that suggested that any protest could be lawful. All that those documents said was that protest was not exempt. There were four tiers, as we all know. In tiers 1 to 3, there was an exemption that referred to protest; it is the one that we have now, which refers, effectively, to there being a risk assessment and the organisers having certain identity. But at least protest is mentioned.

In tier 4, there was simply no mention of it. The exception was omitted. The police interpretation of that, you may think on one view logically, was to assume that, if it had been left out of tier 4, that must mean that the intention of the drafters was that protest cannot be allowed. It cannot be lawful. It cannot be a reasonable excuse. That is in direct conflict with the authority of the Court of Appeal because, in order to provide for human rights protections, to which the regulations must always be subject, there has to be the possibility that protest can be a reasonable excuse, and there can be no blanket ban. The police were left, effectively, in rank confusion, as were those who wished to protest but believed themselves to be under threat of criminal sanction. There has been nationwide chilling of the rights to protest, and indeed other rights, which is of real concern. That is what has happened.

Q31 **Chair:** Thank you very much. Tristan?

Tristan Kirk: Might I add to those points? As has been voiced there, the wrong laws are being used, and I observed that quite a lot in the early stages of the pandemic. The wrong offences have been applied. What is perhaps of a bit more concern is that the wrong offences are still being applied in new charges coming into the courts. The Coronavirus Act is still being used to prosecute people, and those cases are not resolved. There was one earlier this month in one of the London courts. It is obviously a concern that the police are perhaps misunderstanding the law.

What may be of more concern is that the courts, the magistrates, the judges and perhaps even the lawyers, are still not spotting those cases and pulling them out. It is perhaps a concern on the other side that people are not only being wrongly prosecuted but may be wrongly cleared. I have certainly seen a couple of cases where people have been cleared after offering very little evidence that they were not breaking the law. There is misunderstanding on both sides.

Chair: That is very helpful. Injustice goes various ways.

Q32 **Andy Slaughter:** You have given us a very graphic example of what happens when things go wrong, either confusing guidance on the law or simply imposing it and making decisions ultra vires.

Can we go back a step and look at fixed penalty notices themselves, and whether you think they are an appropriate way of dealing with these types of offences? What are the pros and cons of that? Long before Covid, we, as a Committee, often discussed the problems of out-of-court disposals and penalties where there is no judicial intervention. Do you think that is a problem here? How can it be resolved?

Joshua Rozenberg: As a matter of principle, a fixed penalty notice is perfectly acceptable. It is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty. They have been part of road traffic law for more than 30 years. Where a motorist knows that he or she has committed an offence, it is an opportunity to pay a penalty and avoid a conviction. As Sir Jonathan Jones pointed out to you earlier, unlike the Road Traffic Offenders Act 1988, which gives the opportunity to the motorist, the person who receives the fixed penalty notice, to request a hearing, there is no such provision here. Picking up the points about the fixed penalty of £10,000, a penalty of that size might be appropriate in some circumstances. If you were to organise a mass rally where people broke regulations and put others at risk, a court might decide that a penalty of that size was appropriate.

The problem with a fixed penalty notice of course is that it does not come before a court as such. You either pay it or you do not. In some circumstances, it may be the right penalty. In some circumstances, it may not. If it comes before a court, you would expect time to pay. You do not have that opportunity here. You have to take the risk of not paying it and hoping you will not be prosecuted. I believe there is a six-

month time limit for summary offences. You cannot be prosecuted for a summary offence more than six months after the event. Nevertheless, you do not know for six months whether you will be prosecuted and convicted, and ultimately sentenced to a heavier penalty than the fixed penalty you turned down.

I would go further than Sir Jonathan Jones and say that it is certainly an oversight. There certainly should be a way in which you can challenge a fixed penalty notice and indicate that it is not appropriate. It is interesting that, according to evidence given by Kirsty Brimelow QC to your colleagues on the Joint Committee on Human Rights, there is a practice of defence lawyers approaching the police and saying, "Come off it, this isn't appropriate." The police may well decide in those circumstances to withdraw it. That is a pretty unsatisfactory situation. One needs a formal process.

Q33 **Andy Slaughter:** Pippa?

Pippa Woodrow: In some cases with Kirsty, and in other cases alone or with others, I have been involved in trying to develop that informal procedure. Where it is very clear that a fixed penalty notice has been issued unlawfully, we have made representations to police forces inviting them to withdraw the fixed penalty notice. Some forces have been prepared to engage with that process, and where mistakes have very obviously been made they have been prepared to withdraw the fines, or in some cases to withdraw those fines and reissue fines for a more appropriate offence, for example.

Other forces have been very resistant to any invitation to review fixed penalty notices, even in cases where they can offer absolutely no substantive justification for having issued a fixed penalty notice and where it is absolutely clear that a mistake has been made. The position effectively has been, "Well, the notice has been issued. If you want to avoid paying it, that's entirely up to you. You have an opportunity. You have a remedy because you can simply go to the magistrates court and plead your case there."

As a matter of principle, that is enormously problematic, I would suggest, for quite a few reasons. First, as has been alluded to, as a matter of principle, it is wholly unreasonable to expect, when somebody has already been subject to unlawful police interference, particularly where fundamental rights are concerned, or in any case, that that person should be required to undergo a criminal prosecution in which they are in the dock as a criminal defendant, with all the anxiety, distress, potential reputational risk and potential consequences for their work, and all sorts of potential consequences. That somebody should have to elect to undergo that process simply in order to avoid paying something that should never have been given to them in the first place is, I would suggest, problematic.

A fixed penalty notice is an offer to avoid criminal proceedings, but it is in many cases a coercive one. I have had very many cases where people who have acted perfectly lawfully felt compelled to pay the fine notwithstanding the fact that they had done nothing wrong, because they simply could not take the risk of having to go through court proceedings, enduring the stress and indeed risking conviction. I have already indicated some of the statistics that indicate that 25% of people who were wrongly charged under the regulations in the last lockdown were in fact convicted. Having done nothing wrong is not necessarily always a guarantee that there will not be mistakes.

It is also a complete fallacy, I would suggest, that electing prosecution in the magistrates court is a way of avoiding a financial consequence, because if you want to be represented in the magistrates court you may very often have to pay. You pay for that representation yourself. If you are acquitted, you cannot necessarily recover the costs of legal representation, certainly not at private rates. Legal aid may very well not be available. You may have to pay to defend yourself anyway.

Q34 **Andy Slaughter:** Are people represented?

Pippa Woodrow: Yes, people are. This is something that you are likely to raise later. There are two parallel processes. There is a single justice procedure that people can elect, and that usually does not involve any representation because it is dealt with in the party's absence. In other cases, where somebody actually wants to contest matters, they are very likely to want representation, and they can be, and are entitled to be, represented. In those circumstances, they have to find a way to fund that representation or rely on pro bono services, which I have provided in some cases.

Chair: We have to keep these answers and questions a bit snappier if you do not mind, everybody, because we have quite a lot of ground to get through yet.

Pippa Woodrow: The only other point that is important to raise is that there is no mechanism to provide accountability or oversight for the police having given these fixed penalty notices. The magistrates court cannot do that. When a mistake has been made, there is simply no consequence for the police.

Q35 **Andy Slaughter:** Tristan, we talked about a £10,000 fine in some cases. I think several hundred of those have been issued. That is far above the level that the magistrates or even the Crown court would levy in fines for most purposes. Have you heard any cases of that kind?

Tristan Kirk: I have come across a couple of those cases being prosecuted through the magistrates court. When they come to the courts, they tend to stick to the £10,000 level when administrating a fine.

I agree that that is a huge amount of money for these offences. In my personal opinion, offences that are deemed appropriate to be considered

for a £10,000 fine, which can be a life-changing amount of money for a person, should not be dealt with by way of a simple fixed penalty notice for two reasons. If it is considered to be such a serious offence that that kind of penalty is to be considered, it needs to be treated a little bit more seriously, perhaps with a court hearing. Also, given the confused way these offences have been dealt with over the months, it is perhaps appropriate to have a court hearing so that some of those problems can potentially be ironed out before any kind of penalty is administered.

New figures that I obtained this week show that, in London, over the first year of the pandemic, about £3.6 million-worth of fixed penalty notices were handed out, but only somewhere around £500,000-worth of those notices have actually been paid over the year. That is roughly 15%, and raises a serious question as to whether the system is working at all.

Q36 **Andy Slaughter:** Pippa, you might want to come in on my last question. What should we be doing? It sounds like you are saying that this should be dealt with by someone going to court throughout. Is that practical? How would you like to see things change?

Pippa Woodrow: I do not have a difficulty with a fixed penalty notice regime, provided there is a mechanism to ensure that those notices can be challenged other than by electing criminal prosecution. I do not disagree with what Tristan says about the cases where £10,000 fines have been issued. In those cases, there is a good argument for a different mechanism. In general terms, fixed penalty notices are fine as long as there is oversight and accountability.

Q37 **Andy Slaughter:** Any other comments?

Tristan Kirk: The fixed penalty scheme for smaller amounts seems appropriate and obviously then to court if they do not pay.

Q38 **James Daly:** Can I ask some factual questions if that is okay, to have an understanding of when you say prosecution? I have figures that say that, since the start of the pandemic to 14 March this year, 94,368 fixed penalty notices have been issued, and there have been 1,345 prosecutions brought under the regulations. To get an understanding of actual charging rather than electing, out of that 1,345, are the majority of those people who have not paid the fines who end up in court or elected to go to court? What is the percentage where the police are actually charging people with something and ending up in court in those circumstances?

Tristan Kirk: I can only comment on the London courts. There may well be a variety around the country. We had a first wave—excuse the expression—of prosecutions right at the start of the pandemic where, within days of the laws actually coming into effect, we had cases coming before the court. That was clearly a case of people who were accused of not following the lockdown being sent straight to court rather than being offered any kind of fixed penalty notice. After that period, which lasted for six to eight weeks, of prosecutions within a timely fashion, we then

moved to a phase where there were some cases being charged by police forces, but it was a very limited number and they often tended to be around protests, demonstrations and gatherings.

Then there were batches of cases under the single justice procedure. Large numbers of cases that were brought from September through to December actually related to the start of the pandemic, and appeared to be people who had not paid their fixed penalty notices and were then subsequently prosecuted. What you can draw from the pattern of prosecutions is that 94,000-odd fixed penalty notices issued and only 1,300 prosecutions means that there are probably an enormous number of prosecutions still to be brought of people who have not paid fixed penalty notices. I do not know the numbers on that. Given the figures I mentioned before of millions of pounds-worth of fixed penalty notices unpaid, I think we can expect another significant number of rounds of single justice procedure prosecutions of people who have not paid up.

Q39 **James Daly:** Joshua?

Joshua Rozenberg: Following what Tristan said, the single justice procedure means that nobody is there; it is simply the magistrate and a lawyer in a room going through case files on a computer. The single justice procedure is fine if you are dealing with well-understood offences and minor offences—failure to pay for your transport ticket or something of that nature—where there is no doubt that you have committed the offence and you simply wish to deal with it and get over it and plead guilty. You know what you are pleading guilty to and that is all fine.

It is not suitable for an entirely new area of law where there is doubt as to whether an offence has been committed at all. That is what we are talking about here. Anybody who simply allows this to go before a single justice assuming that the case will be considered in detail, or anybody who pays a fixed penalty while thinking that they did not commit an offence and hoping that that is a way of sweeping it under the carpet, may well regret what they have done. I suspect that, if such a large backlog of cases is due to come before the Crown Prosecution Service in the future, the CPS may well decide to drop some of those cases simply because of the difficulties of proving them to the requirement that the law imposes. In those circumstances, there may be no penalty at all.

Q40 **James Daly:** Joshua, forgive me for my ignorance. In terms of the single justice procedure, it is not somebody who has received a fixed penalty. That is somebody who has been charged with a criminal offence as such. Is that correct? The difference in the two means a prosecution.

Joshua Rozenberg: Yes, that is right in the sense that you may have been offered a fixed penalty. You have declined to pay, so the prosecution process starts and you may be told, "Well, this will be dealt with by a magistrate unless you wish to plead not guilty, in which case it will be decided before a court." In those circumstances, you need to think very carefully about whether you are happy to plead guilty and allow the

magistrate to deal with it. I am not suggesting for a moment that the magistrate would not deal with it properly and in accordance with the rules and the law, but if you have any sort of defence, you do not have the opportunity to put it in the single justice procedure.

Q41 **James Daly:** I have two very brief questions. The point is that the means of disposal, as we have been talking about, is the fixed penalty. Whichever way that is dealt with, that leads to the court. Is the process like any other criminal legislation, or any other legislation on the statute book, that you are charged following advice from the Crown Prosecution Service?

Joshua Rozenberg: I defer to Pippa because she knows much more about it than I do, but my understanding is that the police issue a fixed penalty notice because they think you have committed an offence. You choose to pay it. In that case, it does not go anywhere near the Crown Prosecution Service. If you do not pay it, ultimately the CPS has to decide whether to bring charges in the normal way.

Pippa Woodrow: I can shed some light, I hope. Subject to what Tristan has already said about cases that have been fast-tracked to court and avoided the FPN process altogether, the journey of a case is this. The police will decide that they reasonably suspect an offence has been committed and will issue a fixed penalty notice. A letter will arrive for that person and will say to them, "You have 28 days to pay. If you pay, that will be the end of the matter. If you don't pay, whether you notify us of that or not, you will be liable to be charged." If you do not pay, the police then have the power to charge you. That does not require consultation with the CPS. The police can charge you and initiate the prosecution process.

Interestingly, in the CPS review statistics, they perhaps understandably make particular emphasis of the fact that overwhelmingly the cases that have wrongly been charged have been charged by police, rather than being subject to CPS review and charging decisions. Most of the areas are emanating from that process rather than a CPS review and charging decision process. One of my recommendations, therefore, would be that, given the difficulties we have had with these types of offences, the CPS should be making the charging decisions, rather than having to review and fix things at the end when they have gone wrong.

James Daly: Thank you. That has been very helpful. Thank you to all the witnesses and thank you, Chair.

Q42 **Maria Eagle:** To follow on from a couple of things about the fixed-term penalty notice and the way of proceeding to deal with those accused of doing something wrong, in your experience, Pippa, how many of the fixed-term penalty notices are withdrawn after they are challenged or do not result in a prosecution after the expiry of the 28-day window? Is it more routine that they end up in court, or is it more routine that they do not end up in court? Do you have any sense of that from your

experience?

Pippa Woodrow: I can tell you what my experience is, although it is necessarily anecdotal. Tristan may have a more global overview of the figures. My experience has been that where the police have been unwilling either to review and withdraw or to review at all, in the case of forces that have been resistant to that, charges have followed. I have not generally had cases where they have refused to withdraw and then not followed it up. There is often a delay, but charging decisions have followed.

I have no real insight into why so many fines are unpaid and yet at present remain unprosecuted. One possibility is that, as part of the decision whether or not to charge, an FPN having been unpaid, at that stage it is possible that there may have been a review of whether or not the case merits charging. It may be that the discrepancy in those numbers in fact reflects a very large proportion of FPNs that should never have been issued in the first place. That is certainly a possibility.

Q43 **Maria Eagle:** Tristan, do you have anything to add in that respect?

Tristan Kirk: Given the way that cases have, and strikingly have not, ended up in courts so far, I strongly suspect that there is a large number of cases that are simply in a queue. Because of the way that appears to have been the approach to prosecuting them, through the single justice procedure rather than perhaps through the full court process, they are in an extraordinarily large queue, with traffic offences, fare dodging and all that kind of stuff. It may well be that it has all backed up and is due to be loaded on to a court system that could do without it right now. It is just to be processed at some point, which is an enormous concern because of the single justice procedure and the way that it is administered.

It should be a matter of public concern that there are hundreds, potentially thousands, of cases of people being accused of these offences going through a system where they do not get the kind of scrutiny that you would expect from a full court hearing. They potentially are not being administered properly, and there is no real opportunity for the media or the public to see what is happening, which causes a problem of things potentially going wrong. It also raises the question of whether the system is sending the public message that you actually want it to send. This is a public health crisis, and you have a chance with the courts to send a message that, if people do not follow the rules that you want them to follow, they will face a penalty, punishment and a criminal conviction. What we are talking about is massive numbers potentially of cases that simply have gone nowhere so far. By the time they reach a court, that message will no longer be any use.

Q44 **Maria Eagle:** It is also a bit Kafkaesque. The individuals who have not paid the fines do not know whether they are going to end up in court or not, which is not a healthy place to be. I suppose they are summary offences, so there is the backstop of the six-month time limit. We have to

be thankful for small mercies. I suppose at some point in the not too distant future we will be able to see what has happened to all of these cases. Is there anything anybody else would like to add on that point?

Joshua Rozenberg: I had not realised until Pippa put me right that the cases we are talking about do not go to the Crown Prosecution Service. If I were the Director of Public Prosecutions, I would be making inquiries about this backlog now, first of all to see how many of the cases will be dealt with in the six-month time limit, assuming that that applies as a matter of law, and, secondly, getting some idea of whether these are cases that should be prosecuted at all, or whether they should be dropped, given the pressures on the criminal courts at the moment for reasons that we all know about. It may be appropriate for the CPS to take proactive action now to look at this backlog and decide what to do with it without it being dumped on a court, as Tristan says it may well be.

Maria Eagle: Thank you very much.

Q45 **Dr Mullan:** There are a couple of points I want to pick up on. Pippa, you mentioned earlier in evidence that you thought that the right to protest had been chilled, and you were very concerned by that. I struggle to reconcile that with the fact that over the last year I must have seen at least half a dozen examples of protests going on regularly. There might be, at the end of a protest, offences being committed and police action going on for several hours. Multiple protests have been taking place for the last 12 months. Would you agree with me?

Pippa Woodrow: I would certainly agree that protests have taken place. What I mean by protests being chilled is that I have had very many cases of people who have not gone out to protest who would have wanted to, and whose actions are likely to have been perfectly lawful and who have felt unable to do so. There are many examples of that.

A really good example arose in the Sarah Everard vigil case. There, a group of women who had formed the group Reclaim These Streets, acting as responsibly as it is possible to do, reached out to the police, sought the assistance of lawyers, and went to court, all to try to find out what the law was and what could be permitted, and at the end of that process were left none the wiser as to what the consequences of organising that event would be and felt unable therefore not only to organise something, but even to go to the Common. Despite the fact that some people did, that is no answer, in my view, to the fact that many other people were prevented from doing so when you look at positive duties under articles 10 and 11 to uphold the right to protest.

Q46 **Dr Mullan:** The other point you made is that, if you go down a route with the police and they acted incorrectly, there is absolutely no oversight of that. Obviously, people are entitled—*[Inaudible]*—treatment by the police that is incorrect. Would that also be accurate?

Pippa Woodrow: Sorry, the connection cut out at the crucial moment. Could you repeat your question?

Q47 **Dr Mullan:** You were saying that there is no route available to anybody who has been treated incorrectly by the police. Would you agree that everybody has the right to complain to the independent body that oversees the police?

Pippa Woodrow: They certainly have a right to complain. It is a broader issue than that though. What we have seen are very many examples of mistakes being made. We would all agree that, where there are lessons to be learned, that is something that should be encouraged and facilitated.

We are all dealing with unprecedented times, unprecedented measures and new offences. I have in fact great sympathy for the police trying to deal with 71 sets of new regulations being handed down hours before. I have all sympathy for that. Where things have gone wrong, we should be working together to make sure that they do not go wrong in the future. The problem has been a refusal to review and withdraw fixed penalty notices. Yes, you can complain to the Independent Office for Police Conduct, but it does not do anything about your FPN. It does not stop the FPN being issued next week, this year, whenever it is going to be. I am afraid it does not fix the problem.

Q48 **Dr Mullan:** It is important to note that it is not that they are not unaccountable. It is just that the route through which you receive accountability would not be appropriate, in your view.

Listening to your criticisms of FPNs and how they have been used, would it be fair to say that they apply to all FPNs? That is the manner in which FPNs are issued. They are issued to you. You can accept them. If you do not want to accept them, there are potential consequences in terms of court costs and other things that might disincentivise you from challenging them.

Pippa Woodrow: No. Here is the reason. In almost all other cases, there is a right of appeal. In driving cases, you can appeal the FPN. If you lose your appeal, generally speaking it will be because your case merits the FPN having been given, and if you still want to challenge it, fair enough, there are other ways that you can seek to plead your case.

What I am talking about are cases where mistakes have very clearly been made, so much so that public law errors, for example, have been made in the giving of FPNs. There is nothing you can do about that except submit yourself to a process of criminal prosecution. The reality is that, if I, as a barrister, were given an FPN for doing absolutely nothing, and it was totally unjustified, I would still feel compelled to pay it because the risk to me of appearing as a criminal defendant would be professionally unthinkable. Effectively, I have been coerced into paying a fine that was unlawfully given. Very many people are vulnerable and are in that position.

Q49 **Dr Mullan:** You very helpfully articulated those positions. I just want to get the detail of what I am asking. Is there in the legislation that was

used to create these offences a specific choice to not allow appeal that is ordinarily available to people?

Pippa Woodrow: I do not know whether it was an oversight or a choice. What I can say is that from very early in the pandemic there have been calls from Members of Parliament, lawyers and others asking for a right of appeal to be introduced. I think there have been reports from the Joint Committee on Human Rights, for example, recommending that. Those pleas have not been heeded. I suppose that makes it more likely that it is a choice, but I do not know.

Q50 **Dr Mullan:** Just so I understand it, you can ordinarily appeal to the police for them to review it? Is that in legislation or is that just how the police tend to operationalise it.

Pippa Woodrow: Normally, there is a legislative scheme that allows for a right of appeal against fixed penalty notices. That appeal is usually, I think, conducted by the authority who has given them, in very many cases councils and the like. When you get a parking fine—I don't know if you have ever had one; I've had a few—you can appeal it. Your appeal may be rejected or not. You can submit evidence. You can ask for it to be looked at. There is simply not that mechanism here, which is really concerning given the confusion in the offences themselves.

Q51 **Dr Mullan:** I understand that. Finally, this is more of a subjective question. If we are to look at the fact that three quarters of the charges brought under the regulations were found to be correct, in a global pandemic, with a whole new level of law being introduced, and the challenges of explaining that to everybody, what would good look like? What is an *[Inaudible.]* whether 84% is not good enough. That is actually pretty good considering the circumstances. Would you agree these are all quite subjective conclusions to draw on the figures?

Pippa Woodrow: I suppose it depends on your perspective, and what you think is a good system and one that is working well. Personally, I would have difficulties accepting that a one in four chance of being convicted of a criminal offence that I had not committed was an acceptable system that was working well, notwithstanding of course that there are difficulties. There have been missed opportunities to fix some of the problems that have arisen in the making of legislation, the way systems are enforced and in the way we give oversight. I do not think, in the circumstances, that in a liberal democracy that level of error is something we want to accept. I think we should be striving to do better.

Tristan Kirk: Can I chip in on that? The system that has been employed—this might be something to look back and consider—is basically to adopt the same kind of process for enforcing the laws and prosecuting people as you would for a speeding offence. With that, you have left it almost entirely in the hands of police officers to enforce the law and then to go on and prosecute. I think that some of the errors that have crept in have been, as we mentioned before, the complete lack of

CPS involvement, especially with the more serious offences. If you are introducing a brand-new set of laws, especially in the somewhat confusing way in which these have been done, is it not a quite sizeable mistake to not bring in legal experts to administer those laws?

The second point I would make—this is only my personal view—is that, before the pandemic really struck us in late March, when these laws came into effect, it does not strike me as unreasonable for there to have been some thought put into a potential legal framework that might be needed where there might be a chance that you have to tell people, a mass populace, to stay at home and not do certain things. It seems to me that you could have set about drawing up a legal framework and creating a basic set of laws, so that police officers, and potentially lawyers and so on and so forth, could understand them and start to grapple with some of the potential drawbacks and loopholes before you actually had to bring them into effect. I think they came in on 26 March. People were being prosecuted on 27 March. There was no time for understanding that.

Q52 **Dr Mullan:** That is a good point. As a Committee, we have heard about considerable challenges and strain on the legal system at the moment, including the CPS. You could argue that it is the lesser of two evils that we have a whole load of fixed penalty notices, the vast majority of which may have been properly issued for a wide range of minor offences—we do not know—when the CPS is at a point where it is facing considerable delays on making decisions on very serious offences. Is it the time to add to their workload 100,000 fixed penalty appeals, getting them to review everything the police have said about them, and so on? I think that is the challenge, isn't it?

Chair: It is a fair point, isn't it, Pippa? It is unreasonable to overload the CPS when they have so much more.

Pippa Woodrow: There are two points. The first is that, when we are talking about CPS resourcing, we have to recognise that it has already been deemed necessary and appropriate for the CPS to review all the prosecutions after they happened because so many mistakes have been made. Why not put the resources earlier on to prevent the mistakes being made, rather than having the resources deployed later if those resources are necessarily appropriate?

Q53 **Dr Mullan:** I guess that people do not expect that necessarily at the outset when planning. You hope that people understand the laws and implement them correctly. But it is a valid point.

Pippa Woodrow: Absolutely. At the point at which it became clear that the CPS was having to review them afterwards, it might have been advisable to ask should the CPS have been involved at an earlier stage so that any issues could have been remedied.

The other point on volume is that—I am sorry if I am repeating it—the prospect of an internal appeal would, I think, weed out the vast majority of cases that are obviously unmeritorious. If you take the 15%, which is

across the whole pandemic the rate at which wrong charges have been brought either by the CPS or the police, and transfer that figure to FPNs, which is likely to be very much an underestimate, we are talking about over 10,000 wrongly issued FPNs. If those were weeded out in an appeals process, which would take no resources for the CPS, we might be able to get the CPS involved in respect of the lesser number of cases where their expertise was really needed.

Q54 **Dr Mullan:** I think the uncertainty in these of types of scenarios cuts both ways, doesn't it? If you have a population who are operating under a whole new set of rules about which there is uncertainty and you send out a clear message, "Give it a go, we're not really sure. Appeal," that has consequences, too. We should not, as legislators, fail to recognise the real-world consequences of things like that. Obviously, we would always want people to feel they could appeal when they legitimately felt they had a right to. That does not mean we can ignore the possibility that, in a scenario where everything was very uncertain and everybody could appeal, it would encourage people to try their luck. That would be my concern.

Pippa Woodrow: I think, if there are going to be chancers, they are people who will simply not pay, and you have to deal with them in court. I think probably it is a slightly false economy to suggest that giving an appeal would reduce workload. In the end, it is likely to have saved workload. There is also, I think—

Dr Mullan: Can I just—

Chair: We are in danger of getting into a very lengthy debate on both sides, frankly.

Dr Mullan: I think 40,000 people appealing FPNs would be tricky.

Q55 **Chair:** Can I put a general point to the panel? You have been critical for a lot of reasons. A lot of us are lawyers. Is there not an argument that we are being a bit purist about this and that, in reality, there is an overriding public good that sometimes means you have to move at speed, and lessons, as you have all observed, may need to be learned, but it would be surprising if there were not elements of frailty in the system? Isn't that the reality that we have to grasp? What is the response to that?

Joshua Rozenberg: Yes, that is right, but, on the other hand, the system should be able to deal with those frailties. In fact, despite the efforts of Pippa and her colleagues, the courts, at least in England and Wales, have not really caused any problems for the Government at all in terms of these regulations.

Chair: Fair point.

Joshua Rozenberg: There have been very few successful applications for judicial review. There was one in Scotland that Sir Jonathan Jones referred to, which was about the fact that you were not allowed to

assemble in a church. The court found against the Scottish Government, but even that was not a problem because by the time the judgment came out the regulations had changed, actually on the day. The courts have been very accommodating and so have the population, but that does not mean that it is not possible to manage a system and find ways of dealing with the ways in which it has gone wrong and putting them right. That is the responsibility of the police. It is the responsibility of the Crown Prosecution Service, and it is ultimately the responsibility of Parliament.

Q56 **Chair:** Fair enough. There seems to be nodding about that. I think we've covered it.

Tristan Kirk: If I could chip in with an extra point, as a court reporter I did not set out to find fault with the system and to find problems with it. When the laws were brought in, I saw it as certainly an interesting opportunity to see how a new set of laws would be applied and how the courts would fare with them. One of the issues, certainly in these circumstances, is that if you are trying to enforce a law, trying to bring in new regulations and trying to encourage millions of people to actually stick to the law and to follow the guidance they are being given, the issue is that the frailties, when they start popping up so regularly, start to undermine the message that you are trying to get across.

As a court reporter, you go into it thinking that there might be various interesting stories of lockdown breakers and what people have been doing wrong, and then all you find is things that are going sightly awry. That tends to undermine the CPS.

Q57 **Chair:** You do not want to undermine the credibility of the system.

Pippa Woodrow: The other people who I think have suffered are the police. They require the confidence and the trust of their communities in order to do their job. They have been making errors that were avoidable, if the systems had been in place so that the problems were not so acute and they were not put into the positions they were put into. Those errors have consequences for trust and confidence, alongside the examples of powerful people being able to avoid compliance in a way that other people have not. All of these examples of problems, as Tristan said, undermine.

The final point I think it is important to make is about media scrutiny and openness. It should be emphasised that from the very beginning these issues only really came to light because of Tristan and his colleagues shining a light on these things. It is only with their assistance that any of this has come out, and we have been able to have these conversations, learn lessons, and make improvements. The CPS review is a welcome light being shone on some of these issues, and it has provided an opportunity for learning. My disappointment is that there have been very many opportunities to fix things as we have gone along, recognising the frailties, They were perfectly possible and we have not always taken those opportunities, and we could have done.

Q58 **Chair:** There are two very short topics that I want to wrap up with. One is provision in the Police, Crime, Sentencing and Courts Bill, which flows from some of the pressures of the pandemic on the Crown courts. That has been the issue with jury trials and how you manage social distancing and so on. Joshua, I think you picked up in your blog the fact that there is provision in the Bill that is currently going through Parliament to enable virtual or remote juries. That could be in consequence of the pressures of the pandemic. The legislation could be more open-ended than that. Do you see any particular consequences or concerns that arise from that? We may all have a number, but I would be interested in your thoughts quickly on that.

Joshua Rozenberg: The first point to make is that remote juries are operating in Scotland very successfully. They sit in cinemas in Glasgow and Edinburgh, and the proceedings are piped in. They have 15 people on their juries in Scotland, and it has been difficult to arrange for social distancing. It works, but the Government think it is quite expensive, and of course it is.

What I cannot immediately understand is how remote juries would help reduce the backlog of cases awaiting trial. The Government, in their impact assessment, say that allowing hearings to be heard in smaller courtrooms will reduce pressure on the criminal courts estate, and that will lead to more efficiency, and that video hearings will provide increased flexibility. But I cannot quite see why we should need remote juries if social distancing is no longer required.

Given that this Bill will take a year to go through Parliament and to be brought into effect, we hope that the need for social distancing will not be there. It is perfectly reasonable to have it as a contingency, should a pandemic return. I do not see why having the jury in one place and the trial in another, requiring you to have two courtrooms, will help bring down the backlog, as I say, once that is the case. There are other concerns about some of the Government's proposals on that, but perhaps you do not need to go into that now.

Chair: Fair enough. Unless there are any other questions on that, we will give the last question to Rob Butler.

Q59 **Rob Butler:** Thank you very much indeed. Mr Rozenberg won't remember this, but many years ago when I was a trainee BBC reporter I sat next to him in a courtroom and learned from the master how to do court reporting. I went on to do other things. He has probably stayed on the right side.

I want to finish off today with a question to Joshua and Tristan about the reporting of cases and open justice. We know that the new Police, Crime, Sentencing and Courts Bill contains provisions to enable remote observation of criminal cases after the end of the pandemic. How do you each think that will affect open justice, reporting and public awareness of what goes on in our courts? Out of respect for a former colleague, maybe

I can start with Joshua.

Joshua Rozenberg: The system has worked quite favourably over the past year in the sense that you do not have to go to court to report a case. That is very convenient. You can sit at your desk anywhere in the world and follow what is going on in court. You can live-tweet, you can report and so on. You do not have the advantages that you get in court by going up to the parties and asking for copies of skeleton arguments, and by talking to the parties concerned, to the extent that you can, although the Press Association has managed to make arrangements whereby the pleadings in some civil cases are distributed to journalists, wherever they may be, by email, and that has worked very well. It is possible for the system to work effectively, but it depends on those concerned understanding the needs of journalists.

I think the courts have worked extremely hard—I am talking mainly about the civil courts, but to some extent the criminal courts as well—to enable the media to cover cases. It is absolutely essential, if cases are to be heard remotely, that they are open not just to the press but to the public. There was a particular case where a judge said, "Right, this is going to be open to the public," but if the public had known that it was open to the public, it would have overwhelmed the system, so we went to some lengths not to make that too obvious. It is a work in progress, but it is very important, as you say, that open justice must be ensured whatever way justice is done.

Q60 **Rob Butler:** Is that almost a backdoor route to having televised trials?

Joshua Rozenberg: Personally, I am against televising criminal trials because I think that the pressure on witnesses would be difficult. I am very much in favour of the proposals, which I think the Government have accepted but not yet brought into force, whereby sentencing remarks are broadcast. The arrangements for civil cases should be extended to the divisional court, which is, for example, where Gina Miller's two cases were heard. There is no doubt that the Supreme Court cases were much better understood because they were televised. The divisional court is not televised. The Court of Appeal is. This was in effect the High Court and the Court of Appeal rolled into one. I would extend televising of the courts to big judicial review cases that do not go to the Court of Appeal. They leapfrog the Court of Appeal.

I would extend televising the courts, and if it was possible to have all appeal courts online, which is something that the Court of Appeal civil division has been trying to do, that would be great. You would not need all the arrangements for the press. There are limits, I think, to the extent to which you want to televise criminal trials.

Q61 **Rob Butler:** I guess what I am getting at is that, if you are allowing remote observation of criminal cases by the public, as well as by journalists or commentators such as yourself, and if, for example, you are still not allowing the public into a public gallery, isn't that by default

becoming a televised trial?

Joshua Rozenberg: It is. That works, but only with a limited number of cases. There are only two courtrooms in the Royal Courts of Justice that are available for livestreaming. The others require a chap with a trolley with a computer on it to wander round from court to court and switch on the cameras and put them up on ladders at the back of the court and so on. That sort of technology is not available, and there are restrictions.

Judges are rightly concerned about the recording of proceedings. It is against the law. It is contempt of court. They are very worried that it would damage the proceedings. It is not quite as simple as saying that every case should be open, but, on the other hand, if there were more resources to enable every courtroom, at least in the Court of Appeal civil division, to be viewed by the public, that would be a very good step and it would save us a lot of bother. It would certainly lead to greater understanding of how the courts operate, and more open justice.

Q62 **Rob Butler:** Thank you. Mr Kirk, what are your thoughts about provisions to enable remote observation, and the impact on open justice post Covid?

Tristan Kirk: Thank you for the question. Joshua is right that there are some journalists who will be dead against remote observation of cases. There is clearly benefit in being in court. For me, there is a huge opportunity that this pandemic has thrown up to embrace the idea of remote observation of courts and digitising of the system, so that journalists and potentially the public as well can follow more cases, have more engagement in the law and in how the courts are working.

We have been forced into using technology to keep the system working, to ensure that there is a degree of openness. What we need to do now is not fumble that opportunity, but to say, "This worked rather well," whereas before the pandemic judges would have probably turned round and said, "No, thanks, we are a little too cautious for that. Let's have a bit of a think about it." But we were forced into it, and it turned out that there was actually quite a lot of benefit to the system. That is not to the detriment of turning up to court for the big cases, for the trials. What I am talking about are the smaller hearings, the plea hearings, the first appearance in the magistrates court, potentially even the sentencing hearing.

You asked about televised trials. I am very keen not to get the two issues mixed together and for it to become one big idea, so that anybody looking at the idea of remote observation would think of the idea of televising a trial; they would be drawn into the American court system, and suddenly you would get the idea that maybe we should just stick to what we had before. There are enormous benefits to using remote observation technology for smaller hearings, for the administrative process and for the magistrates court, for you to dip in and out, so that you can cover more of the courts system and potentially open it up to the

public. They could perhaps see a sentencing hearing or a first appearance in a case. I think we are quite far away from allowing mass public observation of a criminal trial. I do not think that is really what is on the cards at the moment.

We need to look at what has gone right and hold on to it, and that will enable more journalists to become court reporters. As we said right at the beginning, there are fewer and fewer people like me. Perhaps a newsroom that is a bit overstretched could say to one of its journalists, "Why don't you dial into the local magistrates court this morning and have a go at that?" Whereas they might not have made a long journey to the court, they would get court experience through remote observation.

There are huge benefits, and I am willing to bang the drum as long and as loud as I can for this, because what I fear is that the judges and the courts, when this pandemic is finally thankfully over, might find themselves falling backwards into their old routines, where they say everyone must come along and everyone must be in the room. You have to ask yourself why. Why do they have to do that if there is this opportunity? You can use cameras to expand the courtroom.

Where there is a high-profile case, a high-profile hearing in the High Court that lots of people are interested in, you could potentially have hundreds of people watching a judicial review that affects, say, an environmental cause. Hundreds—potentially thousands—of people would be interested in what is going on in that court, but they would not in a million years be able to fit into a courtroom. There are big opportunities, and I hope that, through the provisions that have been set down in the law, the Government will take the opportunity to have discussions with the courts and the judiciary and to make sure that it is a fundamental part of the system going forward.

It is the 21st century. We should be using the technology that we have. Look at the meeting we are having now. This is something you could potentially embrace in the future as well. The courts should not be different from every other part of society in that they say, "We have the digital technology. We have the cameras. Let's use it."

Rob Butler: Thank you very much indeed. You have been banging the drum loudly between the two of you. Thank you both.

Chair: Thank you very much for that consensual and positive note. Thank you very much, all three of our witnesses on this panel and Sir Jonathan in the previous panel. I am grateful for your time and evidence. The session is concluded.