

# COVID-19: a legal pandemic?

Allison Summers QC

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“Forget not, after all these years,  
The Charter Signed at Runnymede.”  
Rudyard Kipling – ‘The Reeds at Runnymede’ (1912)

Engraved on the glass doors leading to the judicial library of the Supreme Court of the United Kingdom is a facsimile of the 1225 Charter with its most famous guarantee: “to no-one will we sell, to no-one will we deny or delay right or justice.”

Over the last few months I have witnessed first-hand how justice has been further denied and delayed due to the effects of Covid-19 on an already under-resourced and over stretched criminal justice system and how this may ultimately lead to changes to our jury system.

Since March, trials in England and Wales have been routinely adjourned with custody time limits (the maximum amount of time a defendant awaiting trial should spend on remand) for many defendants simply extended. Whilst a limited number of socially distanced trials have recently resumed, current estimates show that, to ensure social distancing, courts will be unable to operate at more than a quarter to a third capacity. With a current backlog of over 500,000 cases including about 40,500 serious cases awaiting trial by jury in the Crown Court, one or two trials in a few Crown Court centres is not going to provide the answer.

It is no surprise therefore that various options have been floated as potential solutions: the use of large multi-seater venues (‘pop-up’ or ‘Nightingale’ courts), remote jury trials, seven-member juries and judge-only trials. I have no doubt that judge-only trials would not only result in an efficient reduction in the backlog but would also be quicker and cheaper (in the short term at least) than jury trials. Whether they would be as fair as jury trials, however, is not as clear cut. It is of course true that many countries have fair trials without juries but their criminal justice systems are set up differently and whilst there are good arguments for both systems, any change to ours should not be made on the back of a knee-jerk reaction to a public health

pandemic or from acts of political opportunism by the Treasury. Of course, fairness is not the only issue. In societies riven by culture wars, a criminal justice system also requires broad acceptance, absent which it risks becoming just another political battleground. The curtailment of the right to jury trial may well be understood, or misunderstood, as opening up a new front. Like many within my profession, I have over the last five months adapted my working life. I have taken part in several remote hearings during the pandemic. I have linked to several court centres and prisons around the country. I have waited (watched my life pass by) in virtual waiting rooms for hours, and have inadvertently joined the wrong hearing or conference. I have watched judges give decisions whilst on mute only to become visibly irritated when asked to repeat their ruling once everyone can hear. Leaving aside nationwide inconsistency due to courts having adopted different technology and different working practices, the quality of the technology has varied enormously. In some cases it has been adequate, particularly for short, straightforward, non-contentious hearings. However, those cases involving multiple defendants or which require, for example, an interpreter or intermediary, have not been so well served.

Whilst remote facilities may be suitable for some types of hearings, they are not appropriate for jury trials. For hearings which do lend themselves to a virtual court, the technology still needs to be improved to ensure open access. Moreover, we do not yet know the impact of virtual hearings on case outcomes and until we do, we should not allow our advocacy and the principles of openness to be compromised in the name of pragmatism.

There is no doubt that the Coronavirus pandemic has brought real challenges for the criminal justice system, but we must not make the mistake of thinking that the virus has caused the breakdown of the system. The criminal justice system was broken long before Coronavirus. As a result of court closures and reduced sitting days, the delay between arrest and conclusion of criminal proceedings had spiralled well before Covid-19. Indeed, we entered 2020 with a backlog of over 37,000 Crown Court cases. The pandemic must not be used to undermine the system further with the introduction of ill-conceived and opportunistic changes to our Crown Court trials when what is really needed is long-term, proper investment.

*Allison Summers QC is a London-based barrister specialising in English criminal law. She is a St Andrews History graduate.*