

The Youth Justice System's Response to the Covid-19 Pandemic

Court Adaptations

Research Paper 6

Dr Samuel Larner
Andrea Nisbet
Professor Hannah Smithson

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About this Research

During and after the Covid-19 pandemic, there will be societal implications for all children. However, for those in the youth justice system the impacts are likely to be particularly detrimental. There is an urgent need to develop a clear understanding of the impact of the pandemic on these children and those who work with them.

This research is funded by UK Research and Innovation. It is led by Professor Hannah Smithson at the Manchester Metropolitan University (MMU) in partnership with the Alliance for Youth Justice (AYJ). The project focuses on each stage of the youth justice system. It will document the impact of the pandemic on adaptations to working practices, barriers and enablers to effective practice, children's experiences and views of these adaptations, and the lessons learned for policy and practice. This research paper presents the initial findings from 14 interviews with legal professionals (including seven Crown prosecutors, three defence advocates and four Legal Advisors) from the Youth Courts across the Greater Manchester (GM) region. The interviews took place between June 2021 and November 2021. The paper focuses on adaptations to practice and service delivery. It is the sixth in a series of papers to be produced over the life of the project.

About the Manchester Centre for Youth Studies (MCYS)

The MCYS is an award-winning interdisciplinary research centre at MMU, specialising in participatory, youth-informed research that positively influences the lives of young people. MCYS believes young people should have the opportunity to participate meaningfully in decisions that affect them and employs participatory approaches to engage with young people across a range of issues. As an interdisciplinary research centre, the MCYS team brings together academics and practitioners from a range of disciplines. In addition to collaborating with young people and their communities, MCYS works with agencies and organisations across the public, private and voluntary sectors, both in the UK and internationally.

About the Alliance for Youth Justice (AYJ)

The AYJ brings together over 70 organisations, advocating for and with children to drive positive change in youth justice in England and Wales. Members range from large national charities and advocacy organisations to numerous smaller grassroots and community organisations. The AYJ advocates for distinct systems, services and support that treat children as children first and foremost - underpinned by social justice, children's rights and a focus on positive long-term outcomes. AYJ aims to promote widespread understanding about the underlying causes of children coming to the attention of the criminal justice system, and champions approaches that enable them to reach their full potential.

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Glossary of Acronyms

- Alliance for Youth Justice (AYJ)
- Crown Prosecution Service (CPS)
- Cloud Video Platform (CVP)
- Greater Manchester (GM)
- Her Majesty's Courts and Tribunals Service (HMCTS)
- Manchester Centre for Youth Studies (MCYS)
- Manchester Metropolitan University (MMU)
- Pre-Sentence Reportt (PSR)

Introduction to the Youth Courts

Harris and Goodfellow (2021)¹ explain the operation of the Youth Court. It is reproduced here to contextualise this report:

When children aged 10-17 are charged with an offence they are brought to court for trial and sentencing. The majority of cases involving a child defendant will be heard in a Youth Court, a form of Magistrates' Court adapted to be more suitable for children². Cases may also be heard in Crown Courts if they are deemed to meet criteria around seriousness, or in adult Magistrates' Courts under some circumstances, such as the child has an adult co-defendant³. Youth Courts follow sentencing guidelines written specifically for those under 18⁴. Youth Courts are generally viewed to be less formal than adult courts. For instance, children are called by their first name. Members of the public are typically not allowed to observe Youth Court hearings. Youth Courts can dispense a range of sentences.

Her Majesty's Courts and Tribunal Service (HMCTS) manages the administration of criminal, civil, and family courts, while the Crown Prosecution Service (CPS) decides which cases should be brought before court for prosecution, prepares cases and presents them at court. Fully functioning courts enabling swift justice are a critical part of a criminal justice system - as the legal maxim goes, 'justice delayed is justice denied.' However, prior to Covid-19, delays in the youth justice system were already a concern, with annual youth justice statistics and research by the Centre for Justice Innovation and the Institute for Crime & Justice Policy Research identifying long delays in children's cases coming to court^{5,6}.

In March 2020, as the country entered lockdown and social distancing restrictions came into force, criminal courts could not continue hearing cases as usual. Many court buildings closed, business moved online, and cases were put on hold. Decision-makers and practitioners have worked to minimise the impact of Covid-19 on courts since March 2020, but case delays, already in existence and exacerbated by Covid-19, have had significant ramifications for children. This is particularly the case for child defendants who turn 18 before their first hearing and consequently have their cases heard in the adult courts rather than Youth Courts.

Within the Greater Manchester (GM) region, there are three Youth Courts sitting at Manchester, Tameside, and Stockport Magistrates' Court.

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- 1 Children and Young Persons Act 1933:
<https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/part/III/crossheading/youth-courts>
 - 2 Youth Court
<https://yjlc.uk/resources/legal-terms-z/youth-court>
 - 3 Sentencing Children and Young People:
https://www.sentencingcouncil.org.uk/wp-content/uploads/Sentencing-Children-and-young-people-Definitive-Guide_FINAL_WEB.pdf
 - 4 Time to Get it Right: Enhancing problem-solving practice in the Youth Court:
https://justiceinnovation.org/sites/default/files/media/documents/2020-06/time_to_get_it_right_final.pdf
 - 5 Youth Justice Statistics: 2018 to 2019. Annex D:
<https://www.gov.uk/government/statistics/youth-justice-statistics-2018-to-2019>
 - 6 See our earlier paper, Larner et al., March 2022 (in press)

Findings

Remote Working

The introduction of remote working in the courts was perhaps most clearly felt through the use of Cloud Video Platform (CVP)⁷. However, remote working impacted other aspects of court professionals' daily practices. Office conversations were considered by several GM professionals to be very important to carrying out their role, which were severely curtailed by the work from home directive. This was relevant both to the practicality of work (mainly in it not being so easy to ask a quick question of a colleague: resorting to telephone calls felt like more of an imposition), but also to the wellbeing aspects of working in youth crime.

“And I think you don’t realise until you take it away how important that in-office discussion about the cases that you’re doing just really eases that pressure and the impact that the cases have on you. Because, obviously, the stuff that we read on a daily basis is... I mean, it’s hard work to read. And it takes its toll. And the way that you normalise it is by having conversations or you’ve just got that five-minute chat with someone in the office, “Oh, what do you think about this? Oh, this, this is really awful.” And you can have those conversations with someone that’s chosen to be in that work environment.” (Crown Prosecutor)

The Crown Prosecution Service (CPS) had been working for some time on promoting home working in some circumstances—and ensuring that the infrastructure could support this—prior to the pandemic. In this regard, they were largely well-positioned to cope with the dramatic and rapid shift to home working and according to the criminal justice inspectorates, the CPS was able to continue its work throughout the pandemic, with good digital capability limiting the interruption to services^{8,9}. This was very much confirmed by the professionals we interviewed. The increasing reliance on technology throughout the pandemic—particularly as a response to the work from home directive—inevitably led to professionals reflecting on both the positive and negative aspects of using technology. Experiences appeared to differ depending on the role undertaken by the individual.

For prosecutors, the clear positives of IT and technology were that everything was already largely paperless and there was a clear IT infrastructure in place. This clearly facilitated the sudden and unplanned shift towards working from home. Day-to-day practices were therefore largely unchanged. Microsoft Teams was positive for maintaining human interaction (both work-related and social) and quickly became integrated into working practices.

7 CPS Response to COVID-19: Dealing with backlogs – The impact of COVID-19 on the CPS to 31 December 2020: <https://www.justiceinspectorates.gov.uk/hmcp/psi/wp-content/uploads/sites/3/2021/04/2021-03-05-COVID-pressures-accessible.pdf>

8 Impact of the Pandemic on the Criminal Justice System: A joint view of the Criminal Justice Chief Inspectors on the Criminal Justice System’s Response to Covid-19: <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf>

9 Impact of the Pandemic on the Criminal Justice System: A joint view of the Criminal Justice Chief Inspectors on the Criminal Justice System’s Response to Covid-19: <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf>

*“And now everything is via Microsoft Teams and it works wonderfully surprisingly.... We did okay.”
(Crown Prosecutor)*

*“I think everybody’s got used to it, and I think that happened quite quickly really.”
(Crown Prosecutor)*

Indeed, for some professionals, the rapid immersion into new IT-based working practices was a positive.

“I mean, one thing this pandemic has taught me is computers. But I now know my way around the computer as opposed to before. I’m very old school. I like a pen and a piece of paper to do my work with, not a computer and all the rest of it. But, you know, you’ve got to shift with the times, haven’t you?” (Crown Prosecutor)

Microsoft Teams was highlighted as a powerful tool for maintaining contact between colleagues although several professionals highlighted that it was a steep learning curve and that they very quickly had to become more adept with technology, and rapidly build their confidence. Nonetheless, at the point of interview, nobody reported not feeling comfortable with their skills in technology. The issue then was less to do with technology and more to do with the physical set-up of working at home. It was important for legal professionals to be able to maintain confidentiality whilst ensuring they could fully concentrate on matters at hand.

*“We were living in a one-bedroom apartment, we had a table which quickly became the working table. We were sat two feet away from each other, laptop heads touching on the thing. He’d be on the phone call, I’d be on the phone call, didn’t work. So, I’d go in another room to prosecute but we’d only had a one bed, so you’re working in your bedroom, on a stool and a desk, I didn’t have space to put my papers. So, not ideal but you kind of just get on with it and do it.”
(Crown Prosecutor)*

Professionals were also aware that they were more contactable (which was viewed positively). The nature of court business means that lawyers are often moving around court and are not necessarily able to deal with, and resolve, cases as quickly as they would if they were in the office. Once colleagues were working at home, they would (typically) have full access to internet and e-mails and could answer the telephone between hearings, so there was more opportunity for the effective resolution of cases.

Childcare and caring responsibilities were raised as the biggest challenge with working at home.

Lawyers generally felt very strongly that they should be physically present in courts, largely because the content of their meetings/hearings was not suitable for the home environment.

“Trying to do the work that I do, that we do, and have children and make sure that they don’t see any of the stuff that we unfortunately see, was very, very difficult. So, that was a difficulty for the CPS because, obviously, we’re a quite private organisation. There’s lots of security and sensitive material.” (Crown Prosecutor)

“But on the whole, you know, you’re very conscious that you’re talking about very sensitive issues and it’s very private to the client. So, it has to be, you know, as far away from everyone. So, I wouldn’t be sat here having a conference with the kids sat next to me or anything like that. I’d take myself away from them.” (Defence Solicitor)

Several legal professionals with children noted that they had to work unsociable hours (ie when children had gone to bed) in order to be able to work on sensitive material without risking exposing their children to it or compromising confidentiality.

“I had a home-schooler and a two-year-old. But she didn’t accept that mummy wasn’t there to look after her and play with her. And she obviously, wasn’t at an age where she would do anything on her own. So, it was just, I had my computer on and emails and things for urgent things. And I might be able to do a few emails if I, you know, put the TV on or something, give her some food. But it mainly just meant working in the evenings, which was really very difficult. But I think that’s what a lot of people have to do.” (Crown Prosecutor)

During the work-from-home period, most legal professionals were keen to get back into the office, largely so that they could see colleagues and gain support with the difficult work they do.

“And also, you’re bringing the work and the terrible things that we read into your home or currently in my son’s bedroom. So, that’s not nice. So, I think it would be nice to get into the office and have that kind of support, I think, your colleagues support a couple of days a week. And I think no one really appreciated that until we didn’t have it anymore.” (Crown Prosecutor)

The CPS and firms of defence solicitors largely maintained the option for staff to work from their offices if necessary throughout the pandemic, which was essential for those colleagues who were unable to work from home.

“We made provision throughout for certain people to go into our office to work. The guidance was always work from home unless you can’t. In the same way that some of our prosecutors went into court, some of our lawyers who were working on the computers who didn’t have either the internet capacity or distractions at home, that meant they couldn’t, we had a minimal number of people going into the office... Obviously we had to comply and adhere to the Covid restrictions but some went into the office to work from the office and use their internet connections. That facility was there throughout the whole pandemic, it was always open and it was always staffed throughout the pandemic.” (Crown Prosecutor)

Partnership Working

Legal professionals were specifically asked about the extent to which working with various partners (eg police, Youth Offending Services) had been maintained throughout the pandemic. There was a general sense of positivity that partnership working had been maintained and optimism that new levels of inter-agency collegiality would continue post-pandemic.

“I’ve not always got on with court staff sometimes but I think throughout the pandemic there has been a coming together of all partner agencies, the HMCTS, us and the police particularly and there have been, I think started something that I would hope would continue post pandemic in terms of liaison.” (Crown Prosecutor)

“I think it’s opened our eyes to a more collaborative way of working, to be honest Partnership working has improved as a result of the pandemic.” (Crown Prosecutor)

Defence solicitors acknowledged a closer working relationship with HMCTS and particularly duty legal advisors.

“In some ways, there was a little bit of an extra line of communication between defence practitioners and the court in that you knew that you would be able to get in touch with a duty legal advisor and that they would respond in most cases.” (Defence Solicitor)

Strong links were highlighted between the CPS and HMCTS, with daily e-mail communications outlining what cases could be moved or listed. Indeed, for CPS prosecutors, their physical presence in court throughout the pandemic (where possible) was important to ensure they could remain in communication with their partners.

Legal Advisors explained that communication with the CPS and defence solicitors actually increased as a result of working from home, leading to more effective case management.

“We had more communication with the likes of CPS and defence solicitors because one of our roles at home as a legal adviser was when we started dealing with trials again, we then started on case progression which we don’t do that when we’re in the court building but we were contacting CPS, we were contacting solicitors either on Skype, Teams, telephone, just to check everybody was ready for the trial because we were trying to allocate cases and make sure that they were effective. We didn’t want ineffective cases because that’s just a waste of a slot. So we would have very meaningful conversations. If the solicitors were still waiting for a piece of evidence, we would ring the CPS and ask them why they’ve not served it and pushing them along really so that the case was effective when it was listed in trial.” (Legal Advisor)

Interviewees hoped that this approach would be maintained post-pandemic because it was far more efficient way of ensuring trials were effective.

The police were acknowledged as being instrumental in bringing out-of-court disposals and their benefits to the forefront of people’s minds, assisted by their dedicated out-of-court disposal unit. The CPS worked closely with the police by training officers on how cases are considered, so that police officers could divert cases out of the system sooner than in pre-pandemic times.

Interviewees noted that pre-sentence reports (PSRs) were taking a lot longer to complete, largely due to the need for remote video conferences with defendants, rather than face-to-face meetings. CPS prosecutors highlighted that their case management system started to talk to the Youth Offending Services’ systems which was advantageous for maintaining an effective working relationship.

Communication was well-maintained between defence solicitors and CPS prosecutors, to the extent that there was no appreciable effect from Covid.

“So few cases were being listed, there wasn’t really much for us to liaise with the CPS about. I mean, in terms of cases, custody cases and getting papers and things like that, it was all absolutely fine that. You know, there was no issue with it. And you just contact them as normal for the papers and in court, you would speak to them whether it’s over the link or in person.” (Defence Solicitor)

Support and Guidance

When asked about the level of support and guidance that staff received, colleagues in the CPS had access to a daily reporting system. This allowed them to report anything they observed in courts that they were not comfortable with (eg low standards of cleanliness, missing PPE, contravention of social distancing measures). These reports were escalated to the District Court Prosecutors who then communicated with the court in order to raise the issue.

In terms of CPS guidance, prosecutors received detailed instructions over e-mail explaining how to work with various pieces of technology (particularly if CVP might not work in a particular way). They also reported having sufficient time to digest all the new information. Daily e-mails regarding court business and updates to regulations, safety protocols and practices in light of Covid were received. As the pandemic progressed and stabilised, e-mail communications decreased and the early heavy e-mail traffic reflected the rapidly changing and largely uncertain state of affairs. At the start of the pandemic, the CPS held weekly meetings to discuss court business and fortnightly meetings to discuss the CPS's position in relation to the pandemic. CPS prosecutors commented on the fact that regular meetings such as these were something that previously were unlikely to have occurred. Increased communication was viewed positively.

*"I would say there has been an improvement which I would like to see continue."
(Crown Prosecutor)*

Despite the increased communication of information, some did not find it especially helpful and commented that it was too vague and insufficiently clear.

"It was really unclear all of the time. It was like, what are we doing on a daily basis, to be quite honest. What are we allowed to do? Who's getting turned away at the door, basically, of the courtroom? But, yeah, I do remember it being very unclear." (Crown Prosecutor)

There was general agreement that guidance provided by HMCTS was clear, both from defence solicitors' and legal advisors' perspectives, although, given the rapidly changing nature of the pandemic (certainly in the early days), several professionals commented that it could have been provided in a timelier manner.

"I'm trying to think about whether they the advice would... I mean sometimes you think whether they were timely enough for advice, you'd be waiting for the advice and you get it very last minute, so then you've got to react very quickly to that and it's then managing people's expectations and trying to get messages out." (Legal Advisor)

It was noted by legal advisors that information came from both HMCTS and the Senior Judiciary. However, they appreciated that managers would distil the multifarious information that was available so that legal advisors were provided with only the key information most pertinent to them.

Conclusions and Considerations

This briefing paper makes an extensive contribution to understanding the impact of remote working on the court system during the pandemic. Whilst the national literature indicates that the CPS was well-positioned to cope with working from home, this briefing paper highlights the more problematic nature of remote working which affected all legal professionals. In particular, the national literature is silent on the wider impacts of remote working including maintaining mental wellbeing and the difficulty of dealing with youth crime matters in the home environment (especially when legal professionals had children/caring responsibilities). This briefing additionally highlights the ways in which partnership working has been maintained and improved, and the extent to which support and guidance provided to legal professionals in the early stages of the pandemic was beneficial. The national literature is largely silent on all of these aspects. This evidence should therefore inform youth justice policy and practice in a post-pandemic environment.

Based on the findings described in this paper we consider the following areas to be central for planning how the Youth Courts can evolve and adapt to deliver a service that recognises and addresses the impact of adaptations to court experienced during the pandemic:

- The option to work from the office was crucial for some (ie those with poor internet connections and those with children) given the significance and confidentiality of the work to be carried out in the Youth Courts. Home working is therefore not straightforward for this group of professionals.
- Working in the Youth Courts, in whatever role, can be emotionally demanding and professionals rely on their colleagues for emotional support. It is important, moving forward, to consider the mental health of the professionals who work in the Youth Courts, particularly in relation to working from home.
- There is potentially an opportunity to capitalise on increased confidence with IT capability in moving court work forward with further moves towards digital and remote ways of working.
- There is an opportunity to capitalise on the improved communications to emerge from the pandemic eg having a responsive duty Legal Advisor contactable by both prosecution and defence, and having Legal Advisors acting as proactive intermediaries between CPS and defence solicitors on case management/progression. Effective communication strategies such as these are likely to contribute to reducing the backlog by ensuring slots are allocated to trials which are ultimately effective.

For further information about the project, please contact,
Professor Hannah Smithson h.i.smithson@mmu.ac.uk

