

16 June 2020

Max Hill QC  
Director of Public Prosecutions  
Crown Prosecution Service  
102 Petty France  
London SW1H 9EA

Dear Max Hill

## Covid-19 and prosecutions

I welcome the guidance you published on 24 April encouraging a critical response in application of the public interest during the Covid-19 crisis.

As the courts start to return to business, I am writing to ask that you undertake an intensive review as to the appropriateness and necessity of pending prosecutions in line with your guidance published on 24 April 2020.<sup>1</sup> I was particularly pleased to see that the guidance requires prosecutors “should be proactive in discharging their ongoing duty to review the evidential and public interest.”

My concern is that the evidence appears to show that this is not happening routinely in practice and early enough in the process to achieve the best police and other out of court diversion schemes or other restorative approaches.

It would be instructive to discover how many criminal prosecutions have been avoided since it was published and how many pending prosecutions have been diverted. We would also be interested to know how this is being monitored to ensure that the guidance is applied consistently throughout England and Wales. I note that the guidance is interim but has no end date and would be grateful for your assurance that it will continue for the foreseeable future given the on-going impact of the virus within our communities and the criminal justice system.

The rationale behind the guidance is compelling. While the virus appears so far to have been relatively well contained in our prisons, this has only been possible by a combination of additional but limited resources, the extensive and enduring imposition of solitary confinement and a reduction of nearly 4,000 in the prison population since 20 March 2020.<sup>2</sup> . The ongoing solitary confinement of tens of thousands of people in

---

<sup>1</sup> Coronavirus: Interim CPS Case Review Guidance – Application of the Public Interest Covid-19 crisis response, available at <https://www.cps.gov.uk/legal-guidance/coronavirus-interim-cps-case-review-guidance-application-public-interest-covid-19>

<sup>2</sup> Ministry of Justice, *Prison population figures: 2020*, available at: <https://www.gov.uk/government/statistics/prison-population-figures-2020>

prison is untenable, and indeed there are already worrying indications that the suicide and self-injury rate is increasing, The reduction in the number of people in prison will not be maintained now the courts have resumed. In its evidence to the Justice Committee on Covid-19, the Prison Governors' Association (PGA) explained that it had "*significant concerns*" about how prisons will be able to meet the HMPPS guidance on preventing the spread of the virus "*if prisons are full and cells remain doubled*".<sup>3</sup>

Now is the time to ensure that your excellent guidance is strictly adhered to so prosecutions are only brought or continued if they are necessary and appropriate.

I applaud your review of the prosecutions brought under the Coronavirus Act 2020.<sup>4</sup> Unfortunately it does not appear that your guidance was followed in these cases.

We ask you to consider a systematic critical review of the expanding pipeline of cases where decisions to prosecute have been taken. We are worried that there may be many people waiting many months to come to court for incidents that could be diverted and such a review may be able to divert to more appropriate and effective responses. This will be particularly the case with individuals waiting months to go to magistrates courts.

You also will be aware that early evidence shows that over half of all Fixed Penalty Notices (FPNs) issued under the Coronavirus Regulations have been issued to people from ethnic minorities.<sup>5</sup> It is precisely this kind of risk that justifies anxious scrutiny being applied to decisions to prosecute at this time.

In addition, many people facing prosecution will now have suffered unconscionable delay as a result of the virus, and a significant number will have spent a much longer period in custody as a result of the blanket extension of custody time limits at a time when being in prison is far harsher than it usually is and remand prisoners do not enjoy any of the additional rights they are entitled to. I am not aware of any data in the public domain that would suggest that your guidance is being applied to on-going cases.

The situation for children remanded in custody is particularly dire. The uncertainty of awaiting trial in prison impacts on their development and life chances (they are getting no education, no visits and no therapy in prison currently). Delays may result in a child crossing the adult age threshold before they are tried. This makes them liable to receive adult sentences with adult rehabilitation periods purely because of delay.<sup>6</sup> Given that between April 2018 and March 2019, two-thirds of children remanded to youth detention accommodation did not subsequently receive a custodial sentence, I urge you to prioritise reviews of the necessity for prosecution of children remanded in

---

<sup>3</sup> PGA, *Prison Governors' Association (PGA) Evidence to Justice Committee on COVID-19*, 16 April 2020, available at: <https://prison-governors-association.org.uk/prison-governors-association-pga-evidence-to-justice-committee-on-covid-19/>

<sup>4</sup> Dearden, L., *All prosecutions under new Coronavirus Act unlawful, review finds*, 15 May 2020, available at: <https://www.independent.co.uk/news/uk/home-news/coronavirus-act-unlawful-prosecutions-review-uk-a9516566.html>

<sup>5</sup> Gidda, M., *BAME people disproportionately targeted by coronavirus fines*, 26 May 2020, available at: <https://libertyinvestigates.org.uk/articles/bame-people-disproportionately-targeted-by-coronavirus-fines/>

<sup>6</sup> For more information on this issue, please see the Howard League's response to the government Consultation on Police Powers: Pre-charge Bail, available at: <https://howardleague.org/wp-content/uploads/2020/06/Response-to-Consultation-on-Police-Powers-Pre-charge-Bail.pdf>

custody. Again, in the absence of data to the contrary, it would appear that your guidance – which also has an emphasis on young people's cases – has not resulted in prosecutions being brought to an end.

There are many public interest reasons at this time to apply anxious scrutiny to the appropriateness of pending prosecutions in line with your guidance rather than piling resources into dealing with the "expanding pipeline" and working through them as quickly as possible. Diversion may, in many cases, be the best way to protect the public. This would accord with the National Police Chiefs' Council's proposals for reducing the number of pending prosecutions, as reported in *The Times*.<sup>7</sup>

I would be very happy to discuss this with you further and look forward to hearing from you.

Yours sincerely

Frances Crook

**Frances Crook**  
**The Howard League for Penal Reform**

---

<sup>7</sup> Hamilton, F., *Criminals to avoid day in court while legal backlog is cleared*, 19 May 2020, available at: <https://www.thetimes.co.uk/article/criminals-to-avoid-day-in-court-while-legal-backlog-is-cleared-ffc9vbppz>