

Update on the Joint Interim Interview Protocol

We appreciate that the protocol and the current position regarding it is one which is very much of concern to our members.

By way of background the protocol was jointly agreed and developed between the CLSA, LCCSA, CPS, NPCC, Home Office and Law Society, and included guidance which is intended to assist investigators and prosecutors in deciding whether suspects should be interviewed as part of a police investigation during the coronavirus pandemic.

It was first published on 1 April 2020 and is reviewed monthly. It is intended for use only during the coronavirus crisis. There is a great deal of concern by some groups that the protocol denies detainees their rights as set out in PACE and their rights under the Human Rights Act¹, but without the protocol it is clear the wheels of justice would have come to a standstill during the pandemic and access to any form of advice would have been severely curtailed.

The [protocol](#) allows for remote advice to be provided to suspects with their consent. From 17 May 2021 (in line with stage 3 of the government's [roadmap for reducing COVID-19 restrictions](#)), the protocol will no longer apply in cases involving suspects who are children or vulnerable adults requiring an appropriate adult. That change was decided upon before the current data on the Indian variant was available. Although we were involved in the discussions concerning this change, it is important to note that the content of PACE and the Codes of Practice have not changed and so absent agreement from all parties under the protocol, remote attendances are not provided for. There are some who believe the protocol is unlawful or restricts access to legal advice, and there is a concern that some will seek to exclude interviews from court proceedings based on the apparent non-compliance with PACE which it is argued by some the protocol represents. Although we consider it essential to allow the wheels of justice to continue to turn during the pandemic, we maintain of the view that remote interviews should not become the new standard operating procedure post pandemic.

We have continued to review the need for the protocol with the current parties to it as we approach stage 4 of the roadmap on 21 June.

The CLSA are mindful of the fact that withdrawing the protocol can only be achieved and maintained while prevailing COVID conditions remain safe to do so and we have continued to have dialogue with members of the original protocol.

We are particularly concerned about the growth of the Indian variant, and the paucity of evidence on its infectiousness, or the level of protection given by the vaccines. The most recent data appears to suggest just 33% protection from a single dose of the vaccine, and 60% after two doses for the AstraZeneca vaccine, and 88% from Pfizer, but this data is changing as the picture becomes clearer.

Nationally, it appears now the levels of infection are the highest they have been since the beginning of April, and the 'R' rate with which we have all become familiar, is above 1 and growth of the virus appears to be back to exponential growth, at least in some areas. Fortunately, the data on hospital admissions, at least thus far, has not grown at the same rate.

¹ See for example <https://www.transformjustice.org.uk/wp-content/uploads/2021/02/Not-Remotely-Fair-Report-Feb2021.pdf>

We are also concerned at the high levels of infection in at least [8 areas nationally](#) and it does appear this variant has already spread to many other parts of the country including London. In those areas government advice is set out at <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do> and is as follows :

- meet outside rather than inside where possible
- keep 2 metres apart from people that you don't live with (unless you have formed a support bubble with them), this includes friends and family you don't live with
- minimise travel in and out of affected areas

You should also:

- Get tested twice a week for free and isolate if you are positive
- Continue to work from home if you can
- [Get vaccinated](#) when you are offered it, and encourage others to do so as well
- Refer to local health advice for your area

We would understand entirely why those in these areas might feel concerned about the recent v3² of the protocol removing the option of remote interviews for juveniles or vulnerable adults given the ever changing position concerning the spread of the virus. We share those concerns. In areas where there is currently a high level of infection, the age group 10-19 is one which represents the largest, or one of the largest, groups of asymptomatic carriers. We will continue to argue for the safety of our members and the wider public, and we recognise that the prohibition on remote attendances in v3 of the protocol in those areas puts members at increased risk, although the situation is not (at least not yet) where it was during the early stages of the pandemic when the protocol was first developed. We would urge members (both employers and employees) to have regard to their own safety, and consider whether, in their own personal situation and circumstances, they are able to provide in-person representation in custody suites, especially in areas where there are outbreaks. This will be an individual decision. In the meantime the protocol remains under review and may be the subject of further change as the data changes and in the event all signatories to the protocol agree.

Although [v3](#) of the protocol, available [here](#), remains in force, it is too uncertain at the moment to consider any further relaxation of the protocol and the position may become clearer closer to the 21st June 2021, the final stage of the government's route out of lockdown roadmap. It is possible if not likely post 21st June that even if there are further easing or withdrawals of restrictions, they may be guidance to take certain steps to avoid infection. Until those changes are known we do not believe the protocol can be relaxed any further.

The Legal Aid Agency have given assurances that they will continue to fund remote attendance under the protocol until the protocol ends.

² The latest version of the protocol is available here : https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Interview-Protocol-between-NPCC-CPS-TLS-CLSA-and-LCCSA-updated-May-2021.pdf