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Justice Committee

Court Capacity

Sixth Report of Session 2021–22

Report, together with formal minutes relating to the report

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Justice Committee

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Summary

The courts of England and Wales are at an important crossroads. The recovery from the pandemic provides an opportunity to build a sustainable long-term approach to growing the capacity of the courts over the next decade. In relation to every element of court capacity, including the estate, data, technology, staff and the judiciary, the Government needs to show the long-term ambition required to ensure that the number of outstanding cases will be kept under control and delays will be reduced. Without it there is a risk that in the future the courts will be too fragile to cope with any unexpected surges in demand. The pandemic has shown that it is both expensive and difficult to expand court capacity in the short-term and as a consequence future governments should learn the lesson that reductions in capacity may lead to more costs further down the line.

The capacity of the Crown Court, the Family Court and the County Court need particular attention from the Government. Delays in the Crown Court have reached a point where they are causing significant injustice. The Government is taking steps in the right direction but more needs to be done to improve every element of the capacity of the Crown Court. In the Family Court, the growing number of private family law cases is not sustainable. Diverting cases away from the courts is part of the answer, but a more wide-ranging package of measures is needed to address the capacity problem. The County Court plays a crucial role in providing access to justice to the public and yet does not receive the attention it deserves. The modernisation of the County Court should be accelerated in order to reduce delays.

The transparency of the administration of the courts needs to be improved to which end we recommend the establishment of a courts' inspectorate.

1 Introduction

1. Ensuring that the courts of England and Wales have sufficient capacity is one of the core functions of the Lord Chancellor and the Ministry of Justice. Upon taking office, the Lord Chancellor must take an oath "to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible".[1] Justice and the rule of law depend on the ability of the courts to hear cases in a timely manner, so that rights can be vindicated and the law enforced. At present, some of the courts of England and Wales that deal with the most serious and pressing legal issues are struggling to keep up with the demands placed upon them. The courts of England and Wales are now operating at full physical capacity but the backlog of cases within the system is still too high, standing at 58,818 in the Crown Court and 83,645 outstanding private family law cases in the Family Court.[2] The result is that cases are not progressing as they should, meaning that too many people are waiting too long for justice to be done.

2. We launched this inquiry on 30 July 2020, four months into the covid-19 pandemic. However, we made the decision to examine court capacity in response to growing concerns over the capacity of the courts rather than as a reaction to the pandemic itself. Nothing of what we say is intended to denigrate those who have worked, before and since the pandemic began, to keep the system going. Indeed, we are grateful to all who have ensured that our courts remain open, that access to justice continues and that the people who use the courts are supported. Many parts of the system have worked closely together, have innovated and adapted to tackle problems and offer solutions to capacity challenges.

3. The combination of the covid-19 pandemic and the court reform programme has led to major changes to the way that the courts operate. At the time of writing, the Police, Crime, Sentencing and Courts Bill and the Judicial Review and Courts Bill were both being considered by Parliament. The Police, Crime, Sentencing and Courts Bill will provide the legal basis for video and audio court hearings in criminal courts and the broadcast and recording of video and audio proceedings in civil courts and tribunals. Since March 2020, the legal basis for such hearings has been provided by the Coronavirus Act 2020. The Judicial Review and Courts Bill will make changes to criminal procedure in order to increase the capacity of the courts, in particular by enabling certain procedures to take place "in writing", which in practice will take place through the Common Platform, the online case management system. The Bill will also provide the legal basis for certain civil, family and tribunal proceedings to be conducted online and for the establishment of an Online Procedure Rules Committee. The legislative changes in these two Bills will result in significant long-term changes to the way that the courts operate in England and Wales. The Committee will keep the effect of these changes under review.

4. Since we launched this inquiry there have been a number of reports published examining different aspects of court capacity. The National Audit Office's report, *Reducing the backlog in criminal courts*, provides vital detailed analysis of the Government's approach to increasing court capacity.[3] Crest Advisory and the Institute for Government have both produced their own analysis of the capacity challenges facing the criminal

1 Section 17 of the Constitutional Reform Act 2005

2 Ministry of Justice, Criminal court statistics quarterly, England and Wales, October to December 2021, 31 March 2022; HMCTS, HMCTS Management Information - December 2021, table 2

3 National Audit Office, Reducing the backlog in criminal courts, October 2021

courts.[4] Her Majesty's Court and Tribunal Service (HMCTS) published an evaluation framework for the court reform programme.[5] HMCTS has also produced an evaluation of remote hearings during the Covid-19 pandemic and an update report on *Data in the Courts and Tribunals System*.[6] The Public Accounts Committee also published its report on *Reducing the backlog in the criminal courts* in March 2022.[7]

5. We are grateful to all who gave written and oral evidence to us, or participated in private round-table events. We would particularly like to thank the courts that hosted our visits. We visited Liverpool Crown Court and Newcastle Family Court "virtually", and we conducted physical visits to Manchester Crown Square, Monument Nightingale Court and East London Family Court. We would like to thank the Judicial Office for facilitating these visits. The judiciary have made it clear that they value regular engagement with Members of Parliament and have encouraged all Members to visit the courts in their constituency. We welcome this approach. Our annual evidence sessions with the Lord Chief Justice, Lord Burnett of Maldon, have also been of great assistance in informing this inquiry.

6. Our Sixth Report in 2019–20, *Coronavirus (COVID-19): The impact on courts*, published in July 2020, examined the immediate effect of the pandemic on the courts and the Government's response.[8] This Report goes beyond covid-19 and examines the capacity of the courts in England and Wales. The aim of this inquiry was to examine the current predicament and to focus on how capacity can be improved in the longer term. This builds on earlier work by our predecessor Committee, which examined the Government's court reform programme, and raised concerns about the digital, physical and staffing capacity of the courts.

7. The legal professions are also a significant part of the capacity of the courts. In our Report, *The Future of Legal Aid*, we set out how criminal and civil legal aid could be structured to enhance the capacity of the courts.[9] The Independent Review of Criminal Legal Aid, chaired by Sir Christopher Bellamy, shared our analysis and recommended a focus on the "front end of the system", in part in order to reduce the pressure on the courts.[10]

8. This Report is structured as follows: Chapter 2 addresses a number of cross-cutting capacity issues relating to the elements addressed above; Chapter 3 examines the criminal courts; and Chapter 4 looks at the civil and family courts.

4 Crest Advisory, Survive. Recover. Rebuild. Justice post Covid-19, January 2021; The Institute for Government, Performance Tracker 2021, 19 October 2021

5 Ministry of Justice, HMCTS Reform Evaluation Framework, 7 May 2021

6 HM Courts and Tribunals Service, Evaluation of remote hearings during the COVID 19 pandemic, December 2021

7 House of Commons Committee of Public Accounts, Reducing the backlog in criminal courts, Forty-Third Report of Session 2021–22, 9 March 2022

8 Justice Committee, Coronavirus (COVID-19): The impact on courts, Sixth Report of Session 2019–21, 30 July 2020

9 Justice Committee, The Future of Legal Aid, Third Report of the Session 2021–22, 27 July 2021

10 The Independent Review of Criminal Legal Aid, (2021) para 1.35

2 Enhancing court capacity

9. The capacity of the courts is affected by a number of factors. The number of cases in the criminal and civil courts is not something that the courts can themselves control. As the Institute for Government and Crest Advisory highlighted in their evidence, the increase in the number of police officers is likely to lead to more receipts in the criminal courts and increased pressure on capacity.[11] Thomas Pope, Senior Economist at the Institute for Government, told us that a 15% increase in court capacity would be needed by 2023.[12] In the Family Court, there are a number of societal and policy factors that can lead, directly or indirectly, to changes in the number of cases brought. In that sense the courts and the Ministry of Justice are "downstream" in terms of government policy.[13] As Thomas Pope explained "if you are putting more resources upstream into the police and the CPS, it is clearly going to have implications downstream".[14] Beyond these externalities, the capacity of the courts themselves can be broken down into various elements, including:

- The physical capacity of the court estate;
- The digital capacity of the courts;
- The number of judges (often referred to as judicial capacity); and
- The staff capacity of Her Majesty's Court and Tribunal Service.

This chapter examines each of these elements. It also looks at the accountability and transparency of the courts.

Physical capacity

10. In an effort to increase capacity during the pandemic, the Government introduced Nightingale Courts.[15] Nightingale Courts were a key part of the Government's recovery plan for both the criminal and civil courts. They are temporary courts set up in variety of buildings, including sports arenas, hotels and conference centres. Some "former courts" that been closed through the courts estates programme but had not yet been disposed of were also used, for example in Chichester. Nightingale court rooms were used as Crown Court rooms and as civil, family and tribunal court rooms. In March 2022, the Government announced that 11 of the Nightingale Courts would close and that 30 would be extended until March 2023.[16] **HMCTS deserve praise for delivering the Nightingale Court project. The project made a major contribution to increasing the capacity of the courts during the pandemic.**

11. More broadly, there was a general consensus from the evidence we received, that the courts estate in England and Wales is under-resourced, and that many court buildings are not fit for purpose. For example, the Lord Chief Justice told the Committee:

11 Crest Advisory (COC0055) Institute for Government (COC0062) Institute for Government (COC0040)
12 Q21 [Thomas Pope]
13 Q246 [Daniel Bonich]
14 Q39 [Thomas Pope]
15 See HM Courts and Tribunals Service (COC0069).
16 Letter from the James Cartlidge MP, Parliamentary Under-Secretary of State for Justice, dated 2 March 2022, on Nightingale Courts

> [W]e have some buildings that are, frankly, an embarrassment that I do not think members of the public as users of our courts, the staff working in the courts or the judges also working in the courts should be expected to tolerate. The shortfall in maintenance has been recognised for years by Government, but the money necessary to deal with it, just to put the estate into a decent condition, has not yet been made available.[17]

12. Kevin Sadler, then Chief Executive of HMCTS, acknowledged that maintenance was a problem: "[t]oo many times, we lose courtrooms at the moment due to heating failures or air-conditioning failures".[18] He provided the following update in March 2022:

> The Treasury has been quite generous over the last two years. We got an extra £105 million capital funding for building improvements, on top of our normal capital funding of £50 million in 2021. We have invested in 165 sites, or about half our estate, to improve its resilience. This financial year, we expect to spend about £105 million capital and £40 million resource on the estate. That is more than we have normally spent in recent years.[19]

He went on to explain that, despite this extra funding, problems remain:

> [O]ur estimate of our overall maintenance backlog is about £1 billion and Covid has created more challenges, because heating and ventilation systems have had to run harder than they normally would, and that means they need to be replaced more regularly, so we still have a big challenge ahead. We are in discussion with the Department at the moment about funding for next year and the year after, and we will want to do as much as we can within the available funding. I think it would be unreasonable to expect the Treasury to cough up enormous amounts of money and, to be frank, we would not be able to spend it. Improving a courtroom means taking that courtroom out of action. At the moment, we need to use all of those courtrooms as much as possible, so there is a balance, and the allocation process will work that through. We still have a lot more to do, but we have made some improvements over the last couple of years.[20]

The Lord Chancellor and Deputy Prime Minister also acknowledged that failing to invest in the maintenance of the courts was "a false economy".[21]

13. The Lord Chief Justice told the Committee about his concern over the current approach to funding the courts:

> Something that increasingly frustrates me is that funding for the courts for the administration of justice is done annually, and there is not a longer-term view about the financial support that is necessary. One of the consequences of that, particularly in recent years [when] money has been very tight—

17 Justice Committee, The work of the Lord Chief Justice, 16 November 2021, Q32
18 Q454
19 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q149
20 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q149
21 Justice Committee, The work of the Ministry of Justice, 30 November 2021, Q75

> perhaps it is always very tight—is that one looks around for the worst leak in the boat and you then plug a particular leak, but there is nothing to make the vessel seaworthy in the long term.[22]

14. **The maintenance backlog in the court estate is a serious problem. While there are some good court buildings, far too many are in a poor condition. This is having a negative effect on other elements of court capacity and, if not addressed, risks undermining the delivery of the high-quality justice system which this country expects.**

15. ***The Government should develop and deliver a comprehensive plan to improve the quality of the court estate, which is funded on a multi-year basis. The plan should identify solutions for delivering essential maintenance without reducing physical capacity. It should also set out a long-term strategy for improving the court estate so that it provides a proper and acceptable environment for all its users. The Government has shown through the use of Nightingale Courts that temporary courtrooms can be made operational if required and, if necessary, this model should be used to enable permanent buildings to undergo essential work.***

Digital capacity

16. A £1 billion court reform programme was launched in September 2016 promising a revolution in the role of technology within the justice system. The vision was to introduce new technology and modern ways of working through more than 50 projects. This included removing surplus capacity in the court estate, improving technological infrastructure and bringing many court IT services online.[23] A number of projects have been delivered which, for example, facilitated a dramatic increase in the use of remote hearings during the pandemic—albeit starting from a low base.

17. The reform programme has been beset by delays and criticism, with the Public Accounts Committee concluding in 2018 that it had little confidence in its successful delivery.[24] In March 2019, the Government put the programme's completion date back a year to 2023,[25] whilst the Ministry of Justice's response to our own 2020 Report *Coronavirus (Covid-19): The impact on courts*, said that some aspects of the reform programme had been further delayed.[26] It is now more than five years since the programme was launched and it is unclear who is responsible for delivering on its original objectives, whether they have changed, or when they might be delivered. ***We recommend that the Ministry of Justice publish an update on the progress made on each project within the HMCTS court reform programme and, in particular, the date by which the programme is expected to complete and its anticipated final cost.***

18. A major problem for this inquiry has been trying to work out what exactly is going on in the courts. As the Lord Chief Justice said to us in May 2020, "because of the rather haphazard systems that still operate in a lot of our courts it has been extremely difficult to

22 Justice Committee, The work of the Lord Chief Justice, 16 November 2021, Q13
23 HMCTS, 'HMCTS reform programme projects explained', accessed 3 September 2021
24 Public Accounts Committee, Fifty-Sixth Report of Session 2017–19, *Transforming courts and tribunals*, HC 976
25 "*Additional year to deliver ambitious court reforms*", HMCTS press release, 5 March 2019
26 Justice Committee, Seventh Special Report of Session 2019–21, *Court and Tribunal reforms: Further Government response to the Committee's Second Report of Session 2019 and Coronavirus (Covid-19): The impact on courts: Government response to the Committee's Sixth Report of Session 2019–21*, HC 1008, p. 2

get reliable data".[27] Ultimately, we were struck by witnesses telling us that there was not sufficient data, or analysis undertaken to evaluate the effectiveness of interventions, such as improved digital access.[28] Indeed, these criticisms extended into evidence relating to legal aid which was collected alongside evidence to this inquiry.[29] This lack of data also affected the quality of evidence that we were able to take. Some witnesses were unable to fully answer questions we asked because the data was simply not available.[30] Dr Byrom from the Legal Education Foundation, was highly critical of the lack of data collection by HMCTS. She said that the courts service had chosen not to collect the data needed to assess the impact of the pandemic on access to justice,[31] and outlined instances of where Parliament had told HMCTS and the Ministry of Justice that more needed to be done.[32] For example, she told us that information about users of the justice system was absent, including that HMCTS did not have data on how many judges had sat since March 2020.[33] She said it:

> is basically the equivalent of a hospital going into the pandemic choosing not to collect data on the number of surgeons it has or the number of operations that have taken place, or not to follow up patients after they have been treated to find out whether they survived.[34]

The Police Fire & Crime Commissioner for Essex told us that "it has been difficult to gain a true understanding of the backlog and its make-up" and that the CPS and HMCTS data did not present the same picture.[35] The Law Society argued there was need for more data on the use of video and audio technology in specific courts and areas.[36] The Victims' Commissioner argued there was a lack of data on whether cases involving vulnerable witnesses and victims were being prioritised.[37] Natalie Byrom's written evidence outlined a number of areas where the quality of the data is problematic, including:

- data on hearing type and duration
- data on case type or outcome
- data on legal representation
- data on court users[38]

27 Justice Committee, Coronavirus (COVID-19): The impact on prison, probation and court systems, 22 May 2020, Q138
28 Q32 [Thomas Pope]; Q68, Q83 [Derek Sweeting]; Q89 [Richard Miller]; for example Q125,Q136, Q143 [Dr Byrom]; Q304 [Simon Mullings]; Q368 [Nimrod Ben-Cnaan]
29 Q332 [Chris Minnoch]
30 Qq32–33 [Thomas Pope]; Q83 [Derek Sweeting]
31 Qq124–125
32 Q125
33 Qq124–125
34 Q125
35 Roger Hirst (Police, Fire and Crime Commissioner for Essex at Police, Fire and Crime Commissioner for Essex) (COC0010)
36 The Law Society of England and Wales (COC0034)
37 Victims' Commissioner for England and Wales (COC0043)
38 Dr Natalie Byrom (COC0061)

She also highlighted the lack of data standards, which means that, for example, listings data is not standardised across different courts.[39] This lack of standards means that it is "difficult to link data on individuals and therefore understand paths through the system and identify causes of delay".[40]

19. Kevin Sadler, the then chief executive of HMCTS told us that Dr Byrom's report *Digital Justice: HMCTS data strategy and delivering access to justice* had been accepted in full by the Department, and data about protected characteristics was already being captured.[41] We note the increasing emphasis on data from the Ministry of Justice. The Permanent Secretary, Antonia Romeo, told us that the Ministry is a "very data and evidence-based organisation".[42] She explained that "we have a lot of excellent analysis and a lot of data".[43] However, she also acknowledged that improvements were required.[44] She also emphasised the need to improve understanding of data across the whole system, noting that the Ministry was working with the Home Office, the CPS, the Attorney General's Office and the police colleagues to understand the flow through the criminal justice system.[45]

20. In her evidence to the Committee in March 2022, Antonia Romeo emphasised to us the importance of forecasting to the Ministry: "A lot of what we do is to take the flow through the whole of the criminal justice system, so we have to get our forecasting, data and evidence right".[46] She also explained that the Ministry has recruited a board level director general to focus on "performance, analysis and strategy".[47] She added that the relevant Director General will be responsible for a unit that will focus on joined up work across the criminal justice system on data.[48]

21. As part of the reform programme, HMCTS is rolling out Common Platform in the criminal courts and Core Case Data across civil and family courts and tribunals.[49] These are digital case management systems, which should, among other things, enable cases to be tracked and identify when deadlines are missed.[50] It follows that these systems should have the capacity to collect, in a secure form, data that will help measure how reforms are affecting access to justice.

22. **The Ministry of Justice and HMCTS have missed opportunities to swiftly deliver an ambitious court reform programme. Many of the problems that we heard about during our inquiry and continue to hear about, could have been avoided if better data collection had been built into the system much earlier. We recognise that the MoJ and HMCTS are taking steps to improve the data situation. However, we would stress that the level of improvement required will need a sustained focus and significant investment.**

39 Dr Natalie Byrom (COC0061)
40 Dr Natalie Byrom (COC0061)
41 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q479
42 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
43 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
44 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
45 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
46 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
47 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q109
48 Justice Committee, The work of the Ministry of Justice, 1 March 2022, Q111
49 HMCTS, *Reform Update Summer 2019*, 4 June 2019, p. 10 and 27
50 Ministry of Justice (COC0060) para 19

23. **Improving the quality of data in the justice system will help the MoJ to determine whether the courts have the capacity they need to deal with cases in a timely fashion. The Government needs to have access to high-quality data in order to be able predict how the number of cases are likely to change and to be able to analyse the ability of the courts to process cases.**

24. ***The Ministry of Justice must ensure that it ring-fences funding from Spending Review 2021 to expedite work to deliver on its commitments to improve data, as well as allocating funding for this work as part of Spending Review 2022. In so doing, the MoJ should publish a detailed timetable for implementation to ensure it is accountable for progress.***

Judicial capacity and HMCTS staff capacity

25. According to the latest statistics, as of 1 April 2021, there are 3,314 court judges and 1,711 tribunal judges.[51] In 2012, there were 3,575 court judges and 2,060 tribunal judges.[52] In terms of the magistracy, there were 12,651 magistrates in England and Wales.[53] In 2012, there were 25,710.[54] The Committee heard evidence that there are particular problems in certain jurisdictions, and the criminal courts and the Family Court are covered below. In March 2022, the MoJ set out in a Written Statement that it intended to recruit 1,000 judges by the end of 2021/22 and a further 1,100 during 2022/23.[55] The Public Accounts Committee argued that the Government's plan to recruit 78 full-time salaried circuit judges did not seem credible.[56] As their report notes, the previous recruitment round only resulted in 52 of 63 positions being filled.[57]

26. The latest figures show that in 2020/21, there were 16,713 full-time equivalent staff at HMCTS, of whom 2,218 were contractors or agency staff (13% of the total).[58] The total number of employees fell by 20% between 2010/11 and 2019/20.[59] The table below shows the year-on-year change in both types of staff.

51 Ministry of Justice, Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics, 15 July 2021
52 Ministry of Justice, Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics, 15 July 2021
53 Ministry of Justice, Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics, 15 July 2021
54 Ministry of Justice, Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics, 15 July 2021
55 Written Statement, Court Recovery Update, James Cartlidge, Parliamentary Under Secretary of State for Justice, 3 March 2022
56 House of Commons Committee of Public Accounts, Reducing the backlog in criminal courts, Forty-Third Report of Session 2021–22, 9 March 2022, para 3
57 House of Commons Committee of Public Accounts, Reducing the backlog in criminal courts, Forty-Third Report of Session 2021–22, 9 March 2022, para 8
58 House of Commons Library, Court statistics for England and Wales, CBP8372, 23 December 2021 p.30
59 House of Commons Library, Court statistics for England and Wales, CBP8372, 23 December 2021 p.30

Table 1: HM Courts and Tribunals Service Staff

HM Courts and Tribunals Service staff
Annual average, England and Wales

Year	Permanently employed staff	Annual change (%)	Agency and contract staff	Annual change (%)	Total
2010/11	20,392	..	385	..	20,777
2011/12	19,433	..	271	..	19,704
2012/13	17,587	..	682	..	18,269
2013/14	16,999	-3%	830	22%	17,829
2014/15	16,162	-5%	871	5%	17,033
2015/16	15,209	-6%	1,077	24%	16,286
2016/17	14,269	-6%	1,480	37%	15,749
2017/18	13,841	-3%	2,034	37%	15,875
2018/19	14,177	2%	2,042	0%	16,219
2019/20	14,041	-1%	2,223	9%	16,264
2020/21	14,495	3%	2,218	0%	16,713

Source: HM Courts and Tribunals Service Annual Report and Accounts, various years

27. In March 2021, Kevin Sadler explained that the Treasury has provided funding for 1,600 extra staff as part of its Covid funding, adding that: "It has been pleasing to see new members of staff starting in HMCTS, something we have not been familiar with for a few years".[60] He also emphasised that rates of pay are also an issue in HMCTS:

> My staff would not forgive me if I did not say that HMCTS staff are among the lowest paid in the civil service, and we need to address that. Their commitment to their work keeps them at work and has kept them at work through the pandemic, and I pay testament to everything they have done during that period. We have a challenge on low pay, and I would like to be able to address that and I am keen that we do so with the Ministry.[61]

Laura Bee, the PCS union industrial officer for justice, also made the same point:

> The fact that the Ministry of Justice continues to be one of the most poorly paid Departments impacts significantly on retention and clearly that will have a direct impact on the courts recovery plan over the next period. In some instances, our members can move on a level transfer to other Departments and attract £3,000 more per annum for that level transfer, so we can see that there are a suite of issues that have to be addressed in order to ensure that we are prepared to deal with the challenges of the recovery programme.[62]

28. **When the number of staff and judges falls more sharply than the overall caseload, there are bound to be capacity issues in the courts. Even if the number of cases falls more quickly than the number of staff, reducing judicial and staff capacity creates a**

60 Q485
61 Q486
62 Q442

risk when there is always a possibility that the number of cases will increase again. As discussed later in this Report, at present, judicial capacity is the most pressing constraint on the capacity of the courts.

29. ***The Government, the Judiciary and the Judicial Appointments Commission should work closely together to address the challenges in recruiting judges in those areas where there is the greatest need for increased capacity. In relation to the pay of HMCTS staff, the Government needs to ensure that pay levels keep up with those for equivalent roles in other departments.***

Evaluating court capacity

30. The growing number of outstanding cases in the courts has led to renewed public interest in the administration of the courts. One of the issues our inquiry has highlighted has been the need for independent analysis of the administration of the courts. Our work was greatly assisted by the criminal justice inspectorates: HM Crown Prosecution Service Inspectorate, HM Inspectorate of Constabulary and Fire & Rescue Services, HM Inspectorate of Prisons and HM Inspectorate of Probation. In January 2021, they produced a joint report on the impact of the pandemic on the criminal justice system. It concluded that the backlogs in the Crown Court "constitute the greatest risk to criminal justice", recommending urgent action "to reduce and eliminate what were already chronic backlogs".[63] Sir Tom Winsor, the then HM Chief Inspector of Constabulary and HM Chief Inspector of Fire and Rescue Services, described the pre-pandemic state of the criminal justice system as "parlous".[64]

31. Earlier this year, the second and final part of Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services and HM Crown Prosecution Service Inspectorate's joint inspection of the investigation and prosecution of rape in England and Wales was published. As part of this inspection, their staff visited four Crown Courts. The final report contained significant conclusions and recommendations for the administration of justice. The report found that in rape cases, court delays were frequent and that late adjournments were causing significant distress.[65] The report recommended the establishment of specialist rape offence courts.[66]

32. These two interventions highlight the value of inspections for the efficient administration of the courts, as they do for other public services. However, there are limitations on what can be covered by the existing inspectorates. Kevin McGinty, the then HM Chief of the CPS explained to us that:

> We all have the power to inspect the court service, provided—there is a limitation—it is in connection with an inspection that we are doing, in my case the CPS. There is a bigger problem […] which is that no inspector can look at judicial discretion. If the court service does anything that is touched

63 Criminal Justice Joint Inspection, Impact of the pandemic on the Criminal Justice System, January 2021, para 4.8 and para 5.4

64 Justice Committee Oral evidence: Coronavirus (Covid-19): The impact on prison, probation and court systems, 19 January 2021, HC (2021–22) 299, Q264

65 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p.7

66 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p.9

> by judicial discretion, we cannot look at it. I would love to look at listing, for instance, because it has a huge impact on the effectiveness of the system, but that is outside scope.[67]

During our inquiry, and in our wider work, we heard support for the re-creation of the courts' inspectorate to scrutinise, advocate for and help improve the courts.[68] This work had previously been undertaken by Her Majesty's Inspectorate of Court Administration (HMICA). However, in 2009 the then Government announced the closure of HMICA, and the organisation's operations were wound up under the Coalition Government.[69] At the time Government argued that "robust audit methods of HMCTS" negated the need for independent inspection and "it is not necessary for purely administrative systems to be subject to inspection by an independent body".[70] **The Government also argued that the inspection provided by the existing criminal justice inspectorates and the National Audit Office was sufficient.[71] We do not believe that this argument has stood the test of time.**

33. James Mulholland QC, the then Chair of the Criminal Bar Association, told us that:

> To be frank, what we probably need is an inspectorate of court administration, which we had at one point and we lost back in 2011. Never has Her Majesty's Inspectorate of Court Administration been so desperately needed as now, when we see the clear dysfunctionality between all the elements of the criminal justice system—the judiciary, HMCTS, PECS, you name it. If ever there is one drum that needs to be banged, it is to bring back that institution.[72]

Crest Advisory have argued that there "is a need for more rigorous accountability" to drive up standards across the Criminal Justice System.[73] Andrew Caley QC, HM Chief Inspector, HM Crown Prosecution Service Inspectorate, told us that in his experience "there has not been much inspection of HMCTS" by the existing inspectorates, but "that there needs to be".[74]

34. **We are concerned that at present there is a significant gap within the inspection regime in the justice system. For example, there is no inspectorate that covers the civil and family courts. Nor is there one in respect of Coroners' Courts—indeed, our Report on the Coroner Service recommended that the Ministry of Justice should establish a dedicated Coroner Service inspectorate. A new courts' inspectorate could also inspect Coroners' Courts. Any courts' inspectorate would have to respect judicial independence by focusing on the administration of the courts as opposed to substantive judicial decisions. It would also need to learn the lessons from the limitations of the Her Majesty's Inspectorate of Court Administration.**

67 Justice Committee Oral evidence: Coronavirus (Covid-19): The impact on prison, probation and court systems, 19 January 2021, HC (2021–22) 299, Q248

68 Q234 [James Mulholland]; Q237 [Emma Fenn]; Q310 [Simon Mullings]; Q312 [Jane Russell]; Oral evidence taken on 19 January 2021, HC (2021–22) 299, Q248

69 Ministry of Justice, Abolition of HM Inspectorate of Court Administration, Impact Assessment, 2011

70 Ministry of Justice, Abolition of HM Inspectorate of Court Administration, Impact Assessment, 2011

71 Ministry of Justice, Abolition of HM Inspectorate of Court Administration, Impact Assessment, 2011

72 Q234

73 Crest Advisory, Survive. Recover. Rebuild. Justice post Covid-19, January 2021

74 Justice Committee Oral evidence: The work of the Criminal Justice Inspectorates, HC 1182 Tuesday 8 March 2022, Q51

35. ***A Courts' Inspectorate, which is independent from Government, could make a substantial difference to the accountability and transparency of the justice system. It could use inspections and the promised improvements to the quality of the data to make recommendations that can inform policy and guidance in both criminal and civil justice. An inspectorate could also help to monitor the use of technology in the courts. Accordingly, we recommend that the Government re-establish a Courts' Inspectorate with updated and broadened terms of reference.***

3 The criminal courts

36. The current situation in the criminal courts, and in particular the Crown Court, in England and Wales is very concerning. For example, in December 2021, there were 14,612 cases that had been outstanding for a year or more.[75] This constituted 25% of the total outstanding caseload, having risen from 19% during the same period in 2020.[76] In contrast, the situation in the magistrates' courts was described to us as being "quite positive" by the Lord Chief Justice in November 2021.[77]

37. Since the publication of our Report, *Coronavirus (COVID-19): The impact on courts*, it has continued to prove extremely difficult to hold jury trials in the Crown Court. Now that covid-19 restrictions have been lifted and the Crown Court has returned to full physical capacity, there is a real opportunity to reduce the number of outstanding trials and delays in 2022. However, moving beyond the short-term recovery, the criminal courts will need to ensure that they have sufficient capacity to deal with the expected increase in case numbers resulting from the recruitment of 20,000 police officers by 2023.

The Crown Court

38. At the end of December 2021, 58,818 cases were outstanding at the Crown Court, having reduced slightly (by 2%) on the previous quarter. This figure was 3% higher than the 57,093 cases outstanding in December 2020 and 54% higher than the 38,271 outstanding cases in 2019.

39. The increased backlog is the result of there having been more cases arriving in courts each week on average than leaving them (receipts and disposals to use the courts' terms) in the two years to December 2021. In those years, the Crown Court received around 195,000 cases and disposed of 174,000.[78] The gap between receipts and disposals was particularly pronounced between September and December 2020. That said, disposals have now recovered to their pre-pandemic level and were higher than receipts in the third quarter of 2021 for the first time since the start of 2019.[79] The number of disposals of trials has also now returned more or less to its pre-pandemic level, although there were still 18,000 more outstanding cases for trial in December 2021 than two years prior.

40. From 2015 to early 2019 the number of effective Crown Court trials held per week in England and Wales reduced. In Q1 of 2015, the number of outstanding cases in the Crown Court was relatively high, at 55,124, with 405 effective Crown Court trials being conducted each week on average. By Q1 of 2019 the number of outstanding cases had declined to 33,329, with an average of 271 effective Crown Court trials being conducted each week. This trend reflected a decline in the number of receipts over this period. During 2019, the average number of weekly effective trials continued to decline as a result of a decision to

75 Ministry of Justice, Criminal court statistics quarterly: October to December 2021, Table O3, Published 31 March 2022

76 Ibid.

77 Justice Committee, The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021, Q2

78 These figures have been rounded.

79 Ministry of Justice, *Criminal court statistics quarterly, England and Wales, October to December 2021*, 31 March 2022, table C1

reduce the number of sitting days to such an extent that the downward trend in the level of outstanding cases had reversed and was increasing steadily even before the pandemic took hold.

Table 2: Average weekly number of effective Crown Court trials and the outstanding case load

Average weekly number of effective Crown court trials and the size of the outstanding caseload

England and Wales

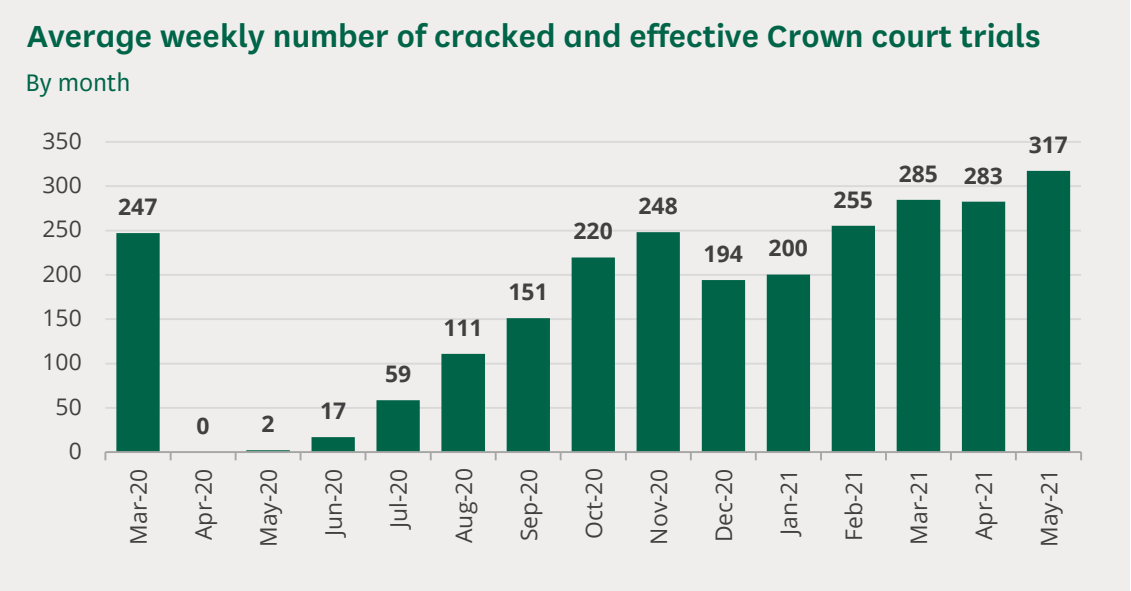
	Number of effective trials per week	Number of cracked trials per week	Effective + cracked	Number of outstanding trials	Total outstanding Crown court caseload at quarter end
2015					
Q1	405	286	691	47,692	55,124
Q2	374	275	650	45,965	53,648
Q3	378	253	631	45,085	53,017
Q4	338	245	583	44,016	51,907
2016					
Q1	378	246	624	40,694	48,440
Q2	372	253	625	37,510	45,044
Q3	368	253	621	36,040	43,647
Q4	335	227	562	35,438	43,291
2017					
Q1	376	241	617	34,185	41,895
Q2	330	216	546	33,542	41,292
Q3	332	227	559	32,678	40,373
Q4	314	213	527	31,556	39,157
2018					
Q1	315	228	542	29,379	37,006
Q2	301	201	502	28,050	35,813
Q3	283	194	477	27,070	34,837
Q4	252	173	425	25,715	33,255
2019					
Q1	271	181	452	25,736	33,329
Q2	240	159	399	26,721	34,462
Q3	231	163	394	27,665	35,668
Q4	188	129	317	29,754	38,271
2020					
Q1	184	127	311	32,098	41,068
Q2	6	2	8	34,469	43,208
Q3	83	36	119	41,750	51,337
Q4	140	65	206	46,460	57,093
2021					
Q1	169	92	262	49,060	59,859
Q2	213	119	332	49,924	60,893
Q3	217	142	360	49,082	60,049
Q4	196	131	328	47,946	58,818

Sources: Ministry of Justice, Criminal court statistics quarterly October to December 2021, tables C1 and C2

Notes: Number of outstanding trials includes triable-either-way and indictable only. It excludes appeals and committals for sentencing. The weekly number of effective trials has been calculated as the weekly average for the total in that quarter. Does not take into account the additional day in leap years.

41. The cessation of jury trials at the start of the pandemic led to a significant growth in the number of outstanding cases. Even when jury trials were able to start again, social distancing requirements meant that it was very difficult to increase the capacity of many Crown Courts to hold jury trials. Accordingly, the number of outstanding cases continued to grow. The Government's recovery plan indicated that by November 2020 the Crown Court would be disposing of 333 jury trials per week.[80] In practice it took longer than predicted to reach the pre-Covid baseline of 333 jury trials being disposed of per week. Even though there was no financial constraint on the number of sitting days, the difficulties of holding jury trials meant that it was not until May 2021 that an average of more than 300 jury trials was being disposed over each week. Table 3 shows the trend over the course of the pandemic (cracked trials are those where on the on the trial date, the defendant offers acceptable pleas or the prosecution offers no evidence).

Table 3: Average weekly number of cracked and effective Crown Court trials



Source: HMCTS, Weekly operational management information March 2020 to May 2021, https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-may-2021

42. The Government has repeatedly stressed that progress made in the Crown Court should not be assessed by only looking at the total number of outstanding cases in the Crown Court. The capacity of the Crown Court should also be assessed by examining the number of Crown Court trials being disposed of each week and each month, as this directly affects the length of time it takes to process an outstanding case. A high level of outstanding cases will not necessarily lead to increased delays if the courts can hold a correspondingly high number of trials each week or each month. In the first quarter of 2015 the number of outstanding Crown Court trials was 47,692 and the average number of effective trials being disposed of each week was 405. By contrast, in the fourth quarter of 2021, the number of outstanding Crown Court trials stood at 47,946 but the average number of effective trials being held each week was only 196.

43. **The recovery in the Crown Court will depend on the ability of the courts to dispose of a significantly higher average number of trials each month.** ***While we recognise the difficulties of setting prescriptive targets, the Government should set out the number of***

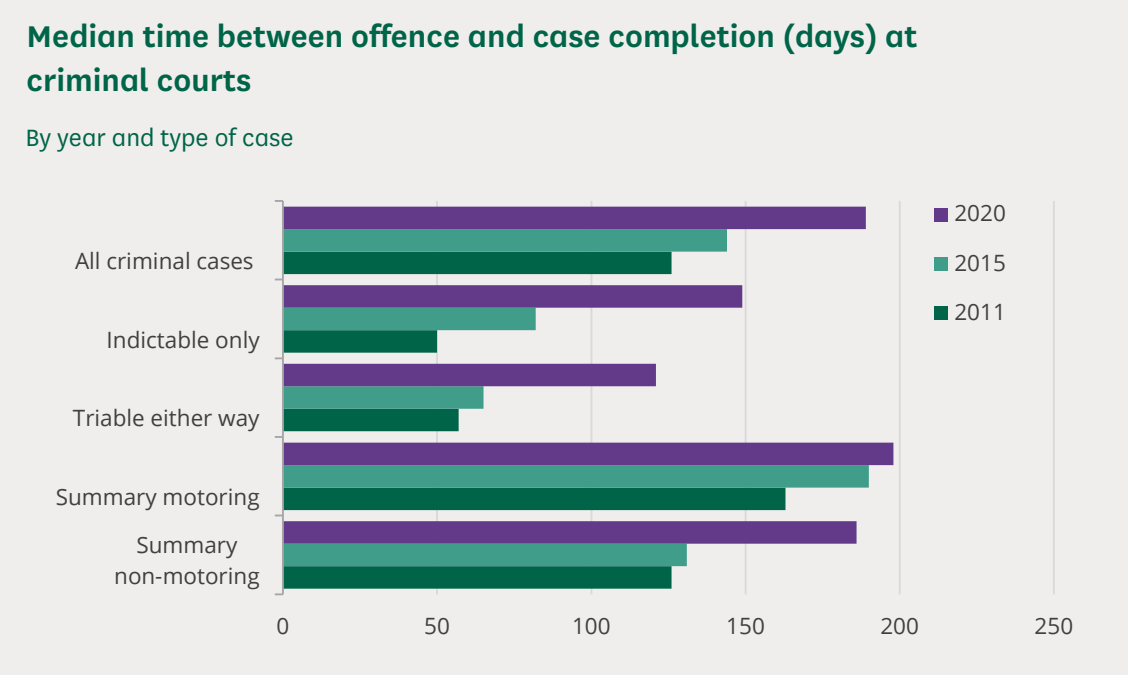
80 HMCTS, COVID-19: Update on the HMCTS response for criminal courts in England & Wales September 2020 p.7

Crown Court trials that will need to be disposed of each month in order to deliver the reduction in the number of outstanding cases to reach its target of 53,000 by March 2025, and complement this with a detailed roadmap for achieving this.

Timeliness

44. The timeliness of cases is one of the most important ways of evaluating the impact of constrained court capacity, and can be measured in a number of different ways. The Ministry of Justice has started to publish experimental statistics that set out the age of an outstanding case in the Crown Court.[81] In Q4 2021, the average (mean) age of an outstanding trial case was 282 days, an increase of 64 days or 30% from a year previously. The median age was 217 days, which was 77 days (55%) longer than the equivalent figure a year previously. Fraud, sexual offence, and drug offence cases had the highest median age in Q4 2021 (269 days for a fraud case, 220 for a sexual offences case, and 199 for a drug offences cases).[82] The median age of drug offences cases awaiting trial in the Crown Court doubled in a year from 95 days in Q3 of 2020 to 188 days in Q3 of 2021.[83] Overall, the median length of time between offence and completion in all criminal cases has been rising since 2011, and the rise has been particularly significant in Crown Court cases.[84]

Table 4: Median time between offence and case completion (days) at criminal courts



Source: Ministry of Justice, Criminal court statistics, table T2

81 The age of an outstanding case is calculated from the point of receipt into the Crown Court and the latest outstanding date, e.g. as at the end of September 2021.

82 Ministry of Justice, *Criminal court statistics quarterly, England and Wales, Jul to September 2021*, (20 January 2022) 'Crown Court outstanding case duration tool'. This is the median age for trial cases only.

83 Ministry of Justice, *Criminal court statistics quarterly, England and Wales, Jul to September 2021*, (20 January 2022), Estimates of outstanding time in the Crown Court: Pivot Table Analytical Tool for England and Wales..

84 House of Commons Library, Court statistics for England and Wales, CBP8372, 23 December 2021 p20–21.

45. When courts do not have capacity to hear cases, the time that victims and defendants spend waiting for justice is increased. James Mulholland QC, the then-chair of the Criminal Bar Association, told us that offence to completion took 391 days on average in 2010 but 511 days in 2019.[85] The Minister told us that the current average for all offences was 275 days, although for sex offence cases it was about 620 days.[86] We heard that in criminal cases, those involved not only wait, but often experience cases being cancelled or being asked to appear at short notice.[87] James Mulholland QC told us:

> You really have to be there on the ground to see the stress that many individuals are undergoing and have been for years. It really makes you think. I have been in the system for many years, and for many years the system has not done justice to those who participate in the trial process, and often cost is being put in front of witness care, as we have seen over the last decade.
>
> It is also important at the back end of matters, because […] the greater the delay, the greater the problems that the witness has in recall, which has an impact on reliability, credibility and, indeed, the very trial process. They are not seeing justice at any stage of the proceedings.[88]

46. When witnesses, victims and defendants have to wait a long time for their time in court, this has implications for all involved. Witnesses and victims need support before, during and after the court process, and we heard that where court capacity has increased, this has put significant strain on witness support services and their staff.[89] We note, however, that the Government has made just under £151 million available for victim and witness support services with an extra £40 million to increase support for rape victims.[90] Until cases are concluded, victims and witnesses are often unable to put events behind them and move on with their lives. As Marc Jones, Police and Crime Commissioner for Lincolnshire put it: "victims feel that the defendant has some sort of control still, they are aware that if they don't plead guilty at the first available time, that they are lengthening this process and in a victim's eyes, prolonging the control and fear of the victim".[91]

47. We also heard that the longer it takes for a case to come to court, the more difficult it becomes to recollect the key facts.[92] There was also considerable concern that witnesses and victims were becoming more likely to withdraw from cases.[93] This itself leads to cases

85 Q241
86 Q462 [Lord Wolfson]
87 Q229 [James Mulholland]; Q335 [Dame Vera Baird]; Roger Hirst (Police, Fire and Crime Commissioner for Essex at Police, Fire and Crime Commissioner for Essex) (COC0010); The Bar Council (COC0033) para 17c; Association of Police and Crime Commissioners (COC0044)
88 Q229
89 Roger Hirst (Police, Fire and Crime Commissioner for Essex at Police, Fire and Crime Commissioner for Essex) (COC0010); Association of Police and Crime Commissioners (COC0044)
90 Q464 [Lord Wolfson]
91 Mr Marc Jones (Police and Crime Commissioner for Lincolnshire at Office of the Police and Crime Commissioner - Lincolnshire) (COC0021)
92 Q230 [Hollie Collinge]; Q229 [James Mulholland]
93 Q376 [DCC Blaker]; Mr David Munro (Surrey Police & Crime Commissioner at Surrey OPCC) (COC0006); Victims' Commissioner for England and Wales (COC0043)West Midlands Police and Crime Commissioner, Staffordshire Police and Crime Commissioner, West Mercia Police and Crime Commissioner, Warwickshire Police and Crime Commissioner (COC0046); Crown Prosecution Service (COC0050); Domestic Abuse Commissioner for England and Wales (COC0052)

collapsing or cracking, adding to inefficiencies that negatively affect court capacity.[94] In her written evidence to us, Dame Vera Baird, the Victims' Commissioner, explained that victims of "the most intimate and serious offences are increasingly likely to withdraw their support for the investigation or prosecution: in 2016, 35% of domestic-abuse flagged cases ended because the victim did not support the action, and by March 2019 this figure was 53%".[95]

48. When there is a long wait for cases to be heard, those who are accused of crimes also face a wait to be tried, and sentenced, or found to be not guilty. As of 30 June 2021, 12,727 people were on remand. This represented an annual increase of 12% and was the highest annual figure since 2010.[96] Those remanded during the pandemic experienced pandemic-related restrictions in prison that were unusually severe. In addition, the custody time limit (CTL) was increased temporarily from 182 to 238 days, although it has now returned to 182 days.[97] We heard that the remand cohort lacked the access to support that is available to sentenced prisoners.[98] The inspectorates report on the impact of Covid on the criminal justice system explained that between March and September 2020 the remand population increased by 22%.[99] The report also stated that increased time spent on remand would add to "the anxieties and frustrations of individual prisoners".[100] The inspectorates stated that "a growing and increasingly-frustrated remand population has the potential to have a serious adverse effect on the stability of reception prisoners".[101] For young people, there are additional concerns as those who were under-18 at the time of an offence but who turn 18 before their court appearance are tried and sentenced as adults, rather than as the young person they were when their crime was committed.[102]

49. Those who work to keep the wheels of justice turning can also be negatively affected by the backlog of outstanding cases. We heard that court staff faced an increased workload and burnout during the pandemic, and this was exacerbated as the number of cases that needed to be listed increased.[103] We heard that many people working in the courts were exhausted, and morale was "at an all-time low".[104]

50. **The current situation on timeliness in the Crown Court is causing significant injustice. The pandemic has made the situation worse, but the factors responsible for increased delays over the past decade are deep-rooted. A long-term approach to investment in the capacity of the Crown Court and the wider criminal justice system is required to improve the situation on timeliness.**

94 Julia Mulligan (Police, Fire and Crime Commissioner for North Yorkshire at Office of the Police, Fire and Crime Commissioner for North Yorkshire) (COC0012) para 7; Crest Advisory (COC0055)
95 Victims' Commissioner for England and Wales (COC0043)
96 Ministry of Justice, *Offender Management Statistics Bulletin, England and Wales*, (29 July 2021), p. 4
97 The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 (SI 2020/953)
98 Oral evidence taken on 19 January 2021, HC (2021–22) 299, Q261 [Charlie Taylor]
99 Impact of the pandemic on the criminal justice system (justiceinspectorates.gov.uk) p.21
100 Impact of the pandemic on the criminal justice system (justiceinspectorates.gov.uk) p.23
101 Q126 [Dr Quirk]; Transform Justice (COC0022); "*Taking the rap: crime*", The Law Society Gazette, 17 May 2021
102 We made recommendations about this in our report *Children and Young People in Custody (Part 1): Entry into the youth justice system*, Twelfth Report of Session 2019–21, HC 306, paras 109–116 and discuss this in our report *Coronavirus (COVID-19): The impact on courts*, Sixth Report of Session 2019–21, HC 519, para 23.
103 Q437 [Laura Bee]
104 Q220 [Hollie Collinge]

51. Antonia Romeo told the Public Accounts Committee that for individual victims, timeliness is what mattered.[105] In her evidence to us, she stressed that the criminal justice scorecards, which were launched in December 2021, are designed to improve timeliness in the criminal justice system.[106]

52. **The Committee welcomes the publication of criminal justice scorecards. *We recommend that the Government builds on these scorecards by setting itself targets to improve timeliness across the criminal justice system. The Government should also set timeliness targets for the average time taken from offence recorded to ultimate conclusion for specific offences, such as rape.***

Sitting days

53. Prior to the pandemic, the number of sitting days in the Crown Court had declined since 2015–16 and was at its lowest level in ten years in 2018–19.[107] Kevin Sadler, then chief executive of HMCTS, told us that the reduction in sitting days was linked to a reduction in receipts in the Crown Court, and that despite the decrease in sitting days, the overall waiting time in 2019–20 was lower than in 2015.[108] However, both Thomas Pope, senior economist at the Institute for Government, and James Mulholland QC, the then-Chair of the Criminal Bar Association, argued that this was a result of the Government's decision not to process as many cases as it could.[109] Thomas Pope explained that this was "partly because demand from the rest of the system was lower, and police resources and CPS resources were stretched too".[110] James Mulholland QC was more critical:

> In total, we had 36,733 Crown court trials due to be heard in [2019]—far fewer than 58,000 nine years earlier—but the period from offence to completion had increased to 511 days on average. The reason for that was that the Government realised there were far fewer trials but they decided not to deal with them expeditiously. They decided that it would be better to make financial savings rather than ensure the timeliness of participation in a trial through the criminal justice system.
>
> They reduced court sitting days. They stopped judges sitting in courts and hearing trials. That was a deliberate decision. While complainants, witnesses and defendants waited years to be heard, they decided to do that. They reduced the number of court sitting days from 110,000 in 2016 to 82,000 in 2019–20.[111]

54. Increasing the number of sitting days in the Crown Court is a key part of the Government's plan to reduce the number of outstanding cases. On 9 November 2021, James Cartlidge, the Parliamentary Under-Secretary of State for Justice, told the House that the £477 million provided by the Spending Review for the criminal justice system

105 Public Accounts Committee Oral evidence: Reducing the backlog in criminal courts, HC 643 Monday 13 December 2021 Q22
106 Justice Committee Oral evidence: The work of the Ministry of Justice, HC 869 Tuesday 1 March 2022 Q133
107 HC Deb, 23 January 2020, col 4764W
108 Q449
109 Q21 [Thomas Pope]; Q241 [James Mulholland]
110 Q21
111 Q241

would allow the Government to reduce the Crown Court backlog to an estimated 53,000 by March 2025.[112] The Deputy Prime Minister and Lord Chancellor, Dominic Raab, wrote to us in January 2022 to explain that this target was based on three elements:

- The number and types of cases already outstanding or which we expect to see entering the criminal courts over the next three years;
- Planned levels of sitting days in the Crown Court over this period; and
- How cases are prioritised and the impact of planned policy changes.

55. This plan would require an allocation of 105,000 sitting days in 2022/23 and 106,500 in both 2023/24 and 2024/25 across the Crown Court network, compared to a pre-pandemic level of 83,150 for 2019/20. Antonia Romeo subsequently explained to the Public Accounts Committee, that their forecasts had shown that there would be a backlog of 72,000 by November 2024 in their worst-case scenario if they had maintained the same level of funding that had been secured in the 2020 spending round.[113] In evidence to this Committee, she offered us the opportunity to see the MoJ's forecasting models.[114]

56. ***Whilst we welcome the opportunity to view the MoJ's forecasting models, we recommend that the Government routinely publishes its models and publishes a detailed recovery plan that sets out how it plans to meet its target of reducing the number of outstanding cases to 53,000 by March 2025. We believe that this target is not ambitious enough to build the capacity of the Crown Court in the long-term. Reducing delays in the long-term will require a sustained increase in the resourcing of the Crown Court. The Government should therefore also set targets for increasing the physical, judicial and staff capacity of the Crown Court in order to be able to deliver at least 110,000 sitting days a year for the next five years.***

Judicial capacity in the Crown Court

57. Andrew Baigent, Chief Financial Officer, HMCTS, told the Public Accounts Committee in December 2021 that judicial capacity was "the constraint that is most operating in the Crown Court system at the moment".[115] Kevin Sadler, Chief Executive of HMCTS told us in March 2022:

> I confidently expect next year to be running the Crown courts at maximum judicial capacity. We are already listing into next year and that is what people are doing at the moment, but without more judges there is a constraint. The constraint operating at the moment is not rooms; we have enough rooms for all the judges we have.[116]

112 HC Deb 9 November 2021 col 159

113 National Audit Office, Reducing the backlog in criminal courts, October 2021 para 3.2; Public Accounts Committee Oral evidence: Reducing the backlog in criminal courts, HC 643 Monday 13 December 2021 Q19

114 Justice Committee Oral evidence: The work of the Ministry of Justice, HC 869 Tuesday 1 March 2022 Q 228 [Antonia Romeo]

115 Public Accounts Committee Oral evidence: Reducing the backlog in criminal courts, HC 643 Monday 13 December 2021 Q17

116 Justice Committee Oral evidence: The work of the Ministry of Justice, HC 869 Tuesday 1 March 2022 Q200 [Kevin Sadler]

58. The Lord Chief Justice also highlighted this issue to us in evidence in November 2021:

> [T]he Crown court sitting days were quite severely cut in the years before Covid, and the result was that the number of Crown Court judges was also reduced. We are struggling in some parts of the country to provide the judicial resources necessary to do all the work in the Crown court that we want to do. We are encouraging recorders to sit more and they are stepping up to that challenge, but the position is different in different parts of the country. London presents a particular problem, the Midlands the next problem and other parts of the country less so. I am encouraging recently retired circuit judges to sit in the Crown court, and we are deploying High Court judges more than we did before Covid to sit in the Crown court, so judicial capacity is a factor.[117]

The Lord Chief Justice added that the recent circuit judge competition fell short by 12 criminal Crown court judges.[118] He also noted that the capacity of the wider legal profession was also a constraint.[119] For example, increasing reliance on part-tine recorders who are also senior practitioners in the criminal bar reduces the capacity of that level of the profession to take on the most serious cases. The National Audit Office's report also identified the recruitment and availability of judges as a significant risk to the Government's plan to reduce the backlog.[120]

59. **We share the view of the judiciary and the MoJ that judicial capacity is, at present, the most pressing constraint in the courts system. We welcome the Government's plans to recruit more judges.** ***The Government should learn the lesson from past decisions that have led to a reduction in judicial capacity. Increasing the number of judges is a difficult task which requires a long-term approach and a sustained focus. The MoJ should produce a detailed plan on how it intends to increase the number of judges in the Crown Court in the long-term.***

Physical capacity in the Crown Court

60. Although in terms of jury trials in the Crown Court, physical capacity is not currently a constraining factor, there have nevertheless been a number of important developments to the Crown Court estate in response to the pandemic. The establishment of Nightingale Courts played an important role in increasing the capacity of the Crown Court whilst social distancing requirements were in place. The Government established 28 temporary courtrooms in locations such as hotels, former courts and conference centres that could hold Crown Court trials. When we visited the Monument Nightingale Court, we were impressed by the way in which judges and staff had adapted the facilities to hold jury trials. The staff at the court told us that they had taken a robust approach to listing and a proactive approach to communication to maximise the efficiency of the Court. At the time of our visit in November 2021, there was considerable uncertainty over whether their lease would be extended beyond March 2022.

117 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q2
118 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q11
119 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q2 and Q44
120 National Audit Office, Reducing the backlog in criminal courts, October 2021 para 3.13

61. The Government subsequently announced that the Monument Nightingale Court would move to a new location from April 2022. Overall, the courts established at Middlesbrough, Manchester, Liverpool, Bolton, Chester, Peterborough, Warwick, Winchester, Nottingham, and 102 Petty France (London) closed as planned at the end of March 2022. However, the Government also announced the extension of the leases for a number of the Nightingale Courts across England and Wales, equating to an additional 30 courtrooms.[121]

62. **We welcome the Government's announcement of the lease extension for a number of the Nightingale Courts.** ***The Government should now set out its policy on the future use of supplementary venues to support the work of the Crown Court. It should also produce a comprehensive evaluation of the Nightingale Courts, and ensure that the lessons learned from their establishment and operation are taken forward.***

63. In 2021, HMCTS opened two super-courtrooms: one in Manchester Crown Court and another in Loughborough Magistrates' Court (which will act as an annex of Leicester Crown Court). These courtrooms are specially designed to handle cases involving multiple defendants. The Lord Chief Justice told us that cases involving six or more defendants are particularly challenging as there are not many courtrooms that can handle such cases.[122] When we visited the super-courtroom in Manchester, we could see how difficult it was to create a facility that complied with public health guidance and was capable of efficiently holding lengthy trials with up to 12 defendants.

64. **The Committee welcomes the creation of super-courtrooms and commends HMCTS for their work in getting them up and running during the pandemic.** ***The Government should set out how many more super-courtrooms will be provided by 2025.***

Technological capacity in the Crown Court

65. Since the start of the pandemic, the position in the Crown Court has been that remote attendance has been possible if a judge decides that it is in the interests of justice.[123] A number of witnesses to the inquiry stressed the need for national level guidance on the use of remote attendance in the Crown Court. One of the main concerns was that different judges and courts were taking very different approaches to the use of video hearings. On 14 February 2022, the Lord Chief Justice published national guidance that is intended to promote consistency and predictability of approach regarding remote attendance in the Crown Court, whilst recognising the need for flexibility in the individual case and to suit local conditions. The guidance sets out some basic principles, for example, if a defendant is required to attend in person then so must the defence advocate; whereas bail applications, ground rules hearings (to discuss and establish how vulnerable witnesses will be enabled to give their best evidence) and others involving legal argument only will generally be suitable for remote attendance.[124]

121 Written Statement, Court Recovery Update, James Cartlidge, Parliamentary Under Secretary of State for Justice, 3 March 2022

122 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q5

123 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 226 Tuesday 10 November 2020 Q7

124 Courts and Tribunals Judiciary, Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court, 14 February 2022

66. **The Committee recognises the advantages for advocates to attend remotely; however, it is important to recognise that in Crown Court cases dealing with the most serious cases, it will often be in the interests of justice for advocates to attend in person.**

67. Section 28 of the Youth Justice and Criminal Evidence Act 1999 allows for the pre-recording of evidence and cross-examination by children and vulnerable witnesses. The facility is now available in 83 Crown Courts. Dame Vera Baird, the Victims' Commissioner, told the Committee section 28 recorded evidence should be available to a broader range of witnesses, namely "intimidated witnesses".[125] She suggested that expansion of section 28 would remove "several thousand people a year from that backlog".[126] This would mean that courts could prioritise the most vulnerable victims' cases and deprioritise cases where evidence has been pre-recorded. DCC Blaker also emphasised that section 28 evidence represented a "real opportunity" considering that trials will be delayed.[127]

68. The Lord Chief Justice raised some important questions about the role of section 28 in Crown Court trials, including its impact on guilty plea rates and conviction rates.[128] Lord Burnett told us that there were anecdotal concerns that the use of section 28 evidence and cross-examination was "not very effective" and that this could lead to increased acquittal rates.[129] He also raised concerns about the practical implications of the expansion of section 28:

> As this has rolled out to vulnerable witnesses where the cross-examinations are longer, and as it is now being rolled out to non-vulnerable witnesses, the burdens being imposed on the courts are enormous. The judge has to prepare as if for trial; the cross-examination may take half a day or a day; the lawyers have to prepare; the judge and lawyers have to come out of other trials, so trials are being disrupted. One of the real worries I have about expanding it too quickly is that it will result in the outstanding case load being kept artificially high because a lot of time and energy will be devoted to dealing with section 28 cross-examinations.[130]

69. **The rollout and expansion of section 28 of the Youth Justice and Criminal Evidence Act 1999, which allows pre-recording of evidence and cross-examination for children and vulnerable witnesses, is an important step in improving the experience of these witnesses in the criminal justice system. However, it is vital that a thorough review of the practical and procedural implications of the use of section 28 is undertaken before there is any further expansion of its use.**

Listing in the Crown Court

70. The increasing delays in the Crown Court has led to calls to improve listing. The Office of the Police and Crime Commissioner for Gloucestershire told us that the repeated relisting of cases due to lack of capacity was having an effect on victims and witnesses, with a noticeable increase in attrition and other issues.[131] The Police, Fire and Crime

125 Q338
126 Q338
127 Q379
128 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q17
129 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q17
130 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q17
131 Office of the police and Crime Commissioner for Gloucestershire (COC0008)

Commissioner for North Yorkshire's written evidence stressed that "individual criminal justice agencies locally currently have no say in which cases are prioritised or how, where and when cases are listed".[132] Hollie Collinge, a Solicitor Advocate from Kelly's Solicitors, and Derek Sweeting QC, the then Chair of the Bar Council, both told the Committee that effective listing relies on timely communication from court staff.[133]

71. The Joint Thematic Inspection of the Police and the Crown Prosecution Service's response to Rape, published in February 2022, raised concerns over listing, reporting that rape trials are being listed as 'floaters'; that means they can be re-listed at short notice, which can result in delays.[134] Of the 54 case files reviewed, 7 were delayed or adjourned because of court availability.[135] The report concluded that frequent delays meant that rape cases are not proceeding quickly enough.[136] The report recommends that adult rape cases should be grouped into specialist rape offence courts.[137]

72. Andrew Cayley CMG QC, HM Chief Inspector of the Crown Prosecution Service Inspectorate, giving evidence to the Committee on 9 March 2022, raised concerns over the current approach to listing in relation to rape trials being listed as "floaters":

> What that means, essentially, is that in a rape case often, as the Committee will know, the victim, who is already traumatised and is having to wait, having gone through the trauma of the investigation and the charge, gets to court and finds that because their case is a floater, and it is waiting for another case in front of it to finish, they are told, "Terribly sorry, but your case is not going to go on. You are going to have to go home again," when they may well have already waited a long, long time, several hundred days, to get to trial.[138]

He added that in his view it was not correct to think of listing as a judicial function:

> [I]n the Crown court you have a listing officer and a listing department in the court and they are primarily responsible for the listing of cases. A judge then supervises the listing. Normally, it is the resident judge in a court who is in charge of listing. He or she works together with the listing officer. […] A lot of people have expressed concern about the way in which trials are listed. I agree. I think listing is not a judicial function. I do not think you can throw over it the cloak of judicial independence, because it is a problem.[139]

132 Julia Mulligan (Police, Fire and Crime Commissioner for North Yorkshire at Office of the Police, Fire and Crime Commissioner for North Yorkshire) (COC0012)

133 Q234 [Collinge] Q73 [Sweeting]

134 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p 7

135 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p 85

136 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p 7

137 Criminal Justice Joint Inspection, A joint thematic inspection of the police and Crown Prosecution Service's response to rape Phase 2: Post-charge, 2022 p 9

138 Justice Committee Oral evidence: The work of the Criminal Justice Inspectorates, HC 1182 Tuesday 8 March 2022, Q44

139 Justice Committee Oral evidence: The work of the Criminal Justice Inspectorates, HC 1182 Tuesday 8 March 2022, Q50

73. Penelope Gibbs, Director of Transform Justice, suggested to us that the high percentage of ineffective trials meant that it might be worth considering whether the judiciary should continue to be responsible for listing or whether it would be better to be done by somebody else.[140] Lord Wolfson emphasised that listing is a judicial function and that it would be improper for the Government to be 'in charge' of listing.[141]

74. **There is more that can be done to make listing more transparent and effective, for example by distinguishing between listing decisions based on court capacity and those based on case progression. The development of local justice scorecards will help to identify where delays are particularly acute.** ***In terms of effectiveness, national level guidance on listing certain types of cases, such as that produced by the Lord Chief Justice on remote attendance, would be valuable. The Government should make a contribution to improving listing through policy initiatives, such as the establishment of specialist rape courts and guidance on the use of section 28 evidence.***

The magistrates' courts

75. There were 359,261 outstanding cases in the magistrates' courts at the end of December 2021. This figure was 6% lower than at the same point in 2020 (383,064) but still 20% higher than the same point in 2019 (299,831 cases).[142] The number of outstanding cases includes those that are 'for trial' (some of which proceed to the Crown Court), as well as the 'summary' caseload. The 'for trial' caseload fell by 22% in the year ending December 2021, while the outstanding 'summary' caseload did not change.[143] The Government has made a number of changes to the capacity of the magistrates' courts since the start of the pandemic.

Video hearings

76. At the start of our inquiry we heard evidence concerning the use of video remand hearings in magistrates courts and the decision of a number of police forces to withdraw support for them due to resourcing issues. Video remand hearings are hearings conducted through video technology for defendants held in police custody. It means the defendants do not have to attend the court in person. Daniel Bonich, the chair of the Criminal Law Solicitors' Association, described video remand hearings as "essential" during the pandemic and said the decision to remove them was a "huge regret".[144] However, Penelope Gibbs, Director of Transform Justice, said that they did not improve efficiency:

> From the point of view of magistrates courts, from my evidence, remote working does not contribute to reducing the backlog. Remote working is a Covid measure, but all my observations and conversations with people involved show that in the magistrates courts, if you put people on remote, it slows down everything, because it takes a long time to get people on remote links, there are technical problems, and you cannot be flexible in the same way as you can be in a physical court.[145]

140 Q351
141 Q462
142 Ministry of Justice, *Criminal court statistics quarterly, England and Wales, October to December 2021*, (20 January 2022), table M1
143 Ibid.
144 Q239
145 Q342

77. The Magistrates' Association's written evidence raised concerns over the negative impact that video technology can have on ensuring fair and effective participation. The Association notes that magistrates have reported difficulties with using video link technology, which can have a detrimental effect on the quality and effectiveness of proceedings.[146] DCC Blaker agreed that video remand hearings were particularly difficult:

> It is fair to say, of all the uses of video in the system, the video remand hearing is a particularly complicated piece of business to do virtually. Although we have modelled it, there is more work to be done. There is a significant investment case […] and we estimated that for policing to absorb the cost of that would be around £30 million a year in revenue cost, and at least £11 million of capital investment into estate and IT infrastructure. The capability does not exist now to do it at the quality required, and we are going to continue post pandemic to work with partners around a joined-up video strategy. There are lots of opportunities to use video, but video remand hearings are perhaps the most difficult to get right, and I think there is more work to be done.[147]

78. In February 2021 it was announced that the MoJ and the Home Office had agreed funding to allow for the reintroduction of video remand hearings in certain areas.[148] **The use of video remand hearings in magistrates courts highlights the importance of coordination across the criminal justice system on the use technology within the criminal courts.** ***In the long-term, the MoJ should use research on remote hearings, such as the Evaluation of remote hearings during the Covid-19 pandemic, to develop guidance and policies on when video hearings should be used in the magistrates' courts.***

Judicial capacity in the magistrates' courts

79. In 2021, the Government consulted on a proposal to raise the mandatory retirement age for the judiciary and magistrates from 70 to 75. The consultation noted the recruitment shortfalls at magistrate level.[149] The Government's response, which confirmed the decision to raise the mandatory retirement age to 75, explained that "given the age profile of the magistracy, the retention of the large proportion approaching retirement (at age 70) in the next few years will be essential to ensure magistrates' courts are sufficiently resourced".[150] The Public Service Pensions and Judicial Offices Bill makes the necessary changes to legislation to raise the retirement age. The Government has said that they expect this will be able to retain around 400 judges and tribunal members and 2,000 magistrates annually.[151]

146 Magistrates Association (COC0015)
147 Q380
148 Police stations resume support for video remand hearings, Law Society Gazette, 25 February 2021
149 Ministry of Justice, Judicial Mandatory Retirement Age, July 2020, p 16
150 Ministry of Justice, Judicial Mandatory Retirement Age: response to consultation, March 2021, p 9
151 Letter from James Cartlidge MP, Parliamentary Under Secretary of State for Justice, dated 11 March 2022, on Royal Assent to the Public Service Pensions and Judicial Offices Act

80. In 2016, the Justice Committee recommended that the Government adopt "a wider and more proactive advertising strategy for potential applicants, seeking in particular to attract magistrates from less conventional backgrounds".[152] In January 2022, the Government launched a new recruitment campaign for magistrates. The Deputy Prime Minister wrote to the Committee to tell us that the campaign is making good progress in attracting younger and more diverse applicants.[153] **The Committee welcomes the Government's launch of a major campaign to recruit magistrates.** ***The Government should also consider whether it would be possible, as the Committee recommended in 2016, to streamline the recruitment process, so that applications are processed within six months.***[154]

Increasing the power of magistrates

81. In January 2022, the Government announced that it would be increasing the sentencing power of magistrates from 6 months to 12 months. The Government said that the move would reduce the backlog in the Crown Court. James Cartlidge, introducing an amendment to provide the legislative basis for the change said:

> Extended sentencing powers will allow for more cases to be retained in magistrates courts, allowing these cases to be heard more quickly and with the intended effect of reducing the backlog of outstanding cases in the Crown court. Just to be clear, we estimate that this will save nearly 2,000 Crown court sitting days per year. Magistrates are also fully capable of hearing these cases. They make sound legal decisions, which is supported by the fact that there is very low appeal rate of only 0.7%, 50% of which are dismissed or abandoned.[155]

82. Bev Higgs, National Chair of the Magistrates' Association, welcomed the change, saying that it "demonstrates great confidence in the magistracy".[156] In 2019, our predecessor Committee argued that the sentencing powers of magistrates should be increased:

> We consider that short custodial sentences are less effective than community sentences, but in cases where custody is unavoidable we consider that magistrates should have the power to impose custodial sentences of up to 12 months in cases that would otherwise be sent to the Crown Court for sentencing. As part of its review of sentencing, the Government should implement this measure, subject to establishing a positive evidential basis for doing this from a suitable modelling exercise on the effects of such a step.[157]

83. However, Kirsty Brimelow QC told the Committee recently that the change could have the reverse effect of increasing the backlog in the Crown Court as she argued that for 'either way' offences it removes one of the incentives to stay in the magistrates court.[158]

152 Justice Committee The role of the magistracy Sixth Report of Session 2016–17, 19 October 2016 para 50
153 Letter from the Lord Chancellor and Secretary of State for Justice, dated 24 January 2022, regarding update on Magistrates recruitment programme
154 Justice Committee The role of the magistracy Sixth Report of Session 2016–17, 19 October 2016 para 50
155 HC Deb, 25 January 2022, col 928
156 Ministry of Justice, Magistrates' Courts given more power to tackle backlog, 18 January 2022
157 Justice Committee, The role of the magistracy: follow-up, Eighteenth Report of Session 2017–19, para 109
158 Justice Committee Oral evidence: Human Rights Act Reform, HC 1087 Tuesday 8 February 2022, Q142

She explained that at present "one of the incentives for remaining in the magistrates court is potentially the lower sentence that the defendant will get".[159] By removing that incentive, she argued more defendants could elect to go to the Crown Court. **The Committee supports the decision to increase the sentencing power of magistrates.** ***The Government should conduct a review of the change 12 months after it has come into force and evaluate its effect on the workload of the Crown Court.***

The case for a Royal Commission on the criminal justice process

84. The change to the sentencing power of magistrates raises broader questions about the structure of criminal courts in England and Wales. The Government's manifesto contained a pledge to establish a Royal Commission on the criminal justice process. On 8 July 2021, the then Lord Chancellor wrote to the Committee to say that the work to establish the Royal Commission had been paused.[160] It is now over 20 years since Sir Robin Auld's review of the Criminal Courts of England and Wales was published in September 2001.[161] The landscape of the criminal justice system has changed dramatically since then and the increasing use of technology, in particular, warrants a systemic and wide-ranging review of the criminal justice system. The Lord Chief Justice said, in evidence to the Committee in November 2021, that it might be time to "grapple with long-terms problems" within the criminal justice system.[162]

85. **The evidence to this inquiry has shown that the criminal courts are going through a period of significant change and the question of the role of technology in the courts is particularly pressing.** ***The Government should proceed with its manifesto commitment to establish a Royal Commission on the criminal justice processes.***

159 Justice Committee Oral evidence: Human Rights Act Reform, HC 1087 Tuesday 8 February 2022, Q142

160 Letter from Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, dated 8 July 2021, on Royal Commission on Criminal Justice Processes

161 Criminal Courts Review - Contents - pdf version (criminal-courts-review.org.uk)

162 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q16

4 Civil and family courts

86. The civil and family courts have been profoundly affected by the pandemic and the growing reliance on technology. The dramatic increase in the use of remote hearings since the start of the pandemic has enabled courts to keep the number of outstanding cases under control. However, certain areas face long-term capacity issues. The number of outstanding private law cases in the Family Court has grown substantially and the County Court is yet to be digitised. The court reform programme, which began in September 2016, is designed to bring about significant changes to the way that the civil and family courts operate and make them more efficient and effective.

Family Court

87. The work of the Family Court covers a range of areas, including cases relating to adoption, child protection, divorce, aspects of domestic violence, forced marriage protection, and female genital mutilation protection. The Family Court judiciary comprises of lay magistrates, District Judges, Circuit Judges and High Court Judges. The Court is based on 43 local centres (each presided over by a 'Designated Family Judge') and at the Royal Courts of Justice. The President of the Family Division, Sir Andrew McFarlane, gave us this overview of the work of the Family Court:

> [W]e deal with disputes about children between parents when parents have separated and cannot agree. That is a major part of our work—probably 60,000 to 70,000 cases a year. We deal with domestic abuse. Many of the cases I mentioned in that figure will, unfortunately, have a domestic abuse element in them. Separately, people who want protection with injunctions for domestic abuse come to the Family Court. Separately, we deal with care proceedings when social services take proceedings to bring children into care. Again in round figures, there are about 45,000 cases a year, and some of those go on to adoption.[163]

88. In November 2021, the Lord Chief Justice gave us the following overview of the situation in the Family Court coming out of the pandemic:

> In public family law, essentially care cases, the average time being taken to complete them has extended a little. A good piece of news there is that the volume of care cases coming in has diminished. We think that is largely the result of initiatives proposed by the judiciary and involved local authorities, CAFCASS and others to encourage the issue of public law proceedings only when it is really necessary. By contrast, private law family proceedings—in particular disputes between parents over children—have continued to grow and are causing a good deal of concern.[164]

89. The number of outstanding 'Family–private law' cases (that is cases that are brought by private individuals, generally in connection with divorce or the parents' separation) rose from 51,906 in January 2020 peaking at 85,115 in August 2021, and falling slightly to

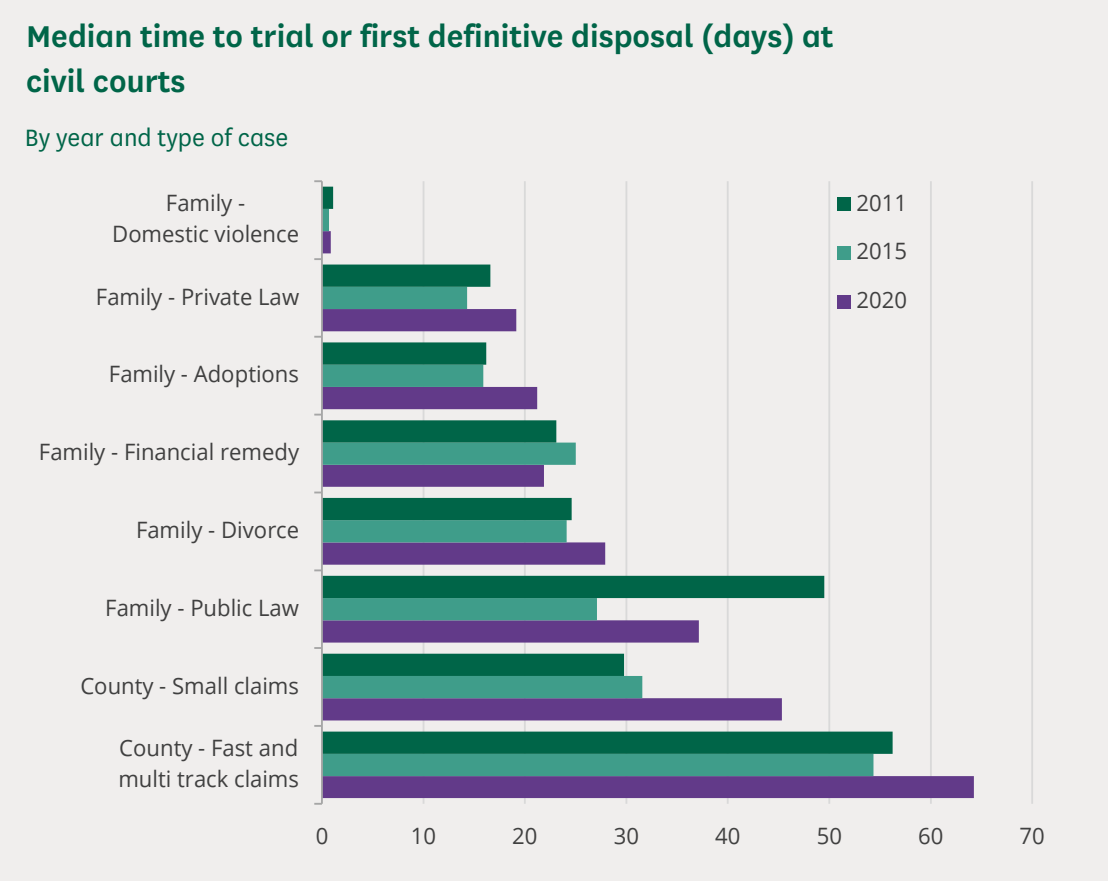
163 Justice Committee Oral evidence: Open justice: court reporting in the digital age, HC 596 Tuesday 11 January 2022 Q1

164 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q2

83,645 by December 2021. The number of outstanding 'Family public law' cases (that is cases that are brought by local authorities or by the NSPCC) was 18,841 in January 2020, and stood at 21,152 in November 2021.[165]

90. Care proceedings, in particular, are taking longer, with the average time that a care and supervision case takes to reach first disposal the highest it has been since mid-2012. A case took an average (median) of 40 weeks in July-September 2021, an increase of four weeks on the same time period in 2020 and 10 weeks on the same period in 2019. Only 22% of care proceedings were disposed of within the 24-week limit introduced by the Children and Families Act 2014, compared with 41% in same period in 2019.[166] The table below highlights the changes in timeliness across the civil courts.

Table 5: Median time to trial or first definitive disposal (days) at civil courts



Source: MoJ Civil justice statistics quarterly: table 1.5; MoJ Family Court Statistics Quarterly, table 10

91. Sir Andrew McFarlane, the President of the Family Division gave this overview of the situation in the Family Court to the Committee in January 2022:

> The pandemic struck. Although the Family Court kept going heroically from day one, working remotely with equipment we were not expecting to use for that, we had to adjourn a lot of cases, so we have a backlog that has grown from the pandemic. Separately, the cases where parents have separated and are in dispute about their children have grown pretty well

165 HMCTS, HMCTS Management Information - December 2021, table 2, and January 2021
166 Ibid., table 8

> year on year. […] There is now a substantial volume of those cases in the system, and again the pandemic has caused us not to be able to address them even as promptly as we were before, so we have to work through a substantial backlog in the system.[167]

92. There have been stark warnings about the situation in the Family Court for some time. The report of the Family Solutions Group, commissioned by the President of the Family Division, *What about me?*, published in November 2020, provided the following summary of the system:

> The 'Family Justice System' is in crisis. This is no exaggeration. The numbers of parents making applications are unmanageable and family courts are stretched beyond limits, with the numbers of applications (often about matters that should never have reached the doors of the court) growing exponentially. The system is recognised as broken and in need of radical reform.

93. As an example of the issues facing the Family Court, James Cartlidge, Parliamentary Under Secretary of State at the Ministry of Justice, told us that the East London Family Court is under particular pressure:

> As a result of the continuing exceptionally high receipts of Private Law work at East London Family Court, along with the continuing pressures on judicial recruitment and Cafcass resource, it has been agreed with the Senior Judiciary that some of this work will initially be heard at Central and West London Family Courts with a longer plan of transferring some of the East London postcodes to these courts to balance the waiting times across the region.[168]

We visited the East London Family Court in February 2022 and spoke to the staff about the extent of the caseload at the court and the measures being taken to hear cases in courtrooms elsewhere in London.

94. The Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice, Dominic Raab, told us that he was looking for solutions to the capacity issues facing the Family Court:

> In the private law courts, broadly the range of safeguarding and domestic abuse cases is somewhere between 50% and 60% of their cases. Inevitably, they need to be heard before a judge because of the issues at stake. I have started to talk to the senior judiciary about this and work up a well thought-through approach. The vast majority of the remainder should not really go to court. It should not be so easy just to say, "We'll go to court." These are sad and sometimes tragic family break-up matters and they often involve children, and we ought to be much, much better at using ADR (alternative dispute resolution) mediation in particular. We need to reconcile the incentives for going both to ADR and to court. Frankly, most of those cases

167 Justice Committee Oral evidence: Open justice: court reporting in the digital age, HC 596 Tuesday 11 January 2022 Q97

168 Stephen Timms, Family Courts: Greater London, Question for Ministry of Justice, UIN 96753, tabled on 4 January 2022 answered on 10 January 2022 by James Cartlidge

> should not be going to the family courts. I have been doing this job for only a few months, but I would be in the market for something quite drastic and bold in that area.[169]

95. **The Committee welcomes the Deputy Prime Minister's willingness to consider bold solutions in family justice. It is an area of the justice system that needs the Government's full attention. Just as with the criminal justice system, it is vital that the ministers responsible for family justice work across Government, for example with the Minister for Children and Families, to develop policies that can help improve the support for separating couples and their children.**

96. In 2020, the Harm Panel's report, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*, recommended that the basic design principles for private law children's proceedings should be:

- A culture of safety and protection from harm
- An approach which is investigative and problem solving
- Resources which are sufficient and used more productively
- With a more coordinated approach between different parts of the system.[170]

97. The Government's implementation plan in response to the Harm Panel's report set out a number of steps that were being taken to deliver on these basic design principles, including the piloting of the Integrated Domestic Abuse Court pilots.[171] A shift to a problem solving and investigative approach would require a major change of approach. As we noted in our Report, *The Future of Legal Aid*, an investigative system could assist the courts in dealing with litigants in person.[172] However, it would have resource implications, particularly for Cafcass, the Children and Family Court Advisory and Support Service, which advises the family courts on what is best for children and has a duty to "safeguard and promote the welfare of children going through the family justice system".[173] Cafcass works across private and public family law.[174] Jacky Tiotto, chief executive of Cafcass, told us:

> We were witnessing 6% year-on-year rises in private law proceedings, about 4,000 more children in the system, and a family justice system that was really under-resourced. The pandemic has just served to exacerbate all of that. We now have the highest volume of open work that we have ever had in our history: we have about 23% more open active cases than at the start of the pandemic, which equates to about 60,000 children who are in the system now.[175]

169 Justice Committee Oral evidence: The work of the Ministry of Justice, HC 869 Tuesday 30 November 2021, Q87
170 Ministry of Justice, Assessing Risk of Harm to Children and Parents in Private Law Children Cases (June 2020) p 9
171 Ministry of Justice, Assessing Risk of Harm to Children and Parents in Private Law Children Cases Implementation Plan (June 2020)
172 Justice Committee The Future of Legal Aid Third Report of Session 2021–22, 21 July, para 104
173 Cafcass, 'About Cafcass', accessed 2 September 2021
174 It works across three main areas: divorce and separation; care proceedings; and adoption.
175 Q420

98. Jackie Tiotto told us that this is leading to significant increases in the caseload of Cafcass staff. We heard that cases are open for longer and more were being opened than closed, creating an increase in caseloads, and waiting times.[176] **We are concerned by the growing number of cases in the Family Court.** ***The Government should develop a Family Justice action plan to address this problem. The action plan should set out how the Government will expand the capacity of the family justice system to deal with the growing number of private family law cases. It should also set a target for reducing the number of outstanding cases by 2025, and for improving the timeliness of cases in the Family Court.***

Mediation

99. The Government has indicated that it wants to encourage separating couples to use mediation as an alternative to the Family Court. In March 2021 the Government launched the Family Mediation Voucher Scheme, to provide financial support to families using mediation to resolve disputes involving children.[177] The scheme provides eligible families with up to £500 towards the cost of mediation with a mediator authorised by the Family Mediation Council. The scheme has recently been extended and has received £3.3m so far.[178] It is running alongside the Ministry of Justice's consultation on Dispute Resolution in England and Wales, which proposes to bring non-adversarial dispute resolution mechanisms, such as mediation, into mainstream use.[179]

100. The think tank Resolution's written evidence highlighted that the existing statutory provision on mediation, which requires an applicant to the court to have already attended an initial meeting with a mediator (known as a Mediation Information and Assessment Meeting (MIAM)), has not succeeded in diverting cases away from the court:

> It is also recognised that, in the absence of a requirement for the respondent also to attend a statutory Mediation Information and Assessment Meeting (MIAM) and a sufficiently robust framework and application, the MIAM has unfortunately not steered families away from court as envisaged. […] We believe that many parents are potentially uncertain about the purpose of the MIAM and sometimes wrongly think that their only options are mediation or issuing a court application. Mediation is an important and successful dispute resolution process in suitable cases. But the collaborative process, round table negotiations, arbitration (both the children and money schemes) and private FDRs (Financial Dispute Resolution) may be more suitable or alternative options in some cases. Access to a range of information and assessment from a range of suitable professionals at any stage before or during separation, to increase the source point of access and numbers who receive information and are diverted from court, is needed.[180]

101. **The Government's Mediation Voucher Scheme is a welcome development for the capacity of the Family Court. The initial results, with 400 vouchers being used and with 77 percent of cases reaching full or partial agreements, are promising.** ***While we***

176 Q430
177 Ministry of Justice, Family Mediation Voucher Scheme, 26 March 2021
178 Letter from Lord Wolfson, Parliamentary Under-Secretary of State, dated 17 January 2022, on Family Mediation Voucher Scheme extension
179 Ministry of Justice, Dispute Resolution in England and Wales: Call for Evidence, 3 August 2021
180 Resolution (COC0017) para 9

recognise the value of piloting such approaches, we would encourage the Government to find solutions that can match the scale of the challenge facing the Family Court. We agree with Resolution that the Government needs to ensure that there are a range of options available to separating families.

Technology in the family court

102. On our recent visit to East London Family Court, we were struck by the extent to which remote hearings are continuing to be used in family cases. A number of witnesses highlighted concerns over the use of remote hearings for vulnerable witnesses. Dr Byrom, Director of Research and Learning, The Legal Education Foundation, explained that there were issues with children being removed from their parents' care while their parents were participating in the hearing by telephone, and in the mental health tribunal where patients are listening to decisions being made about their care on the telephone of their consultant.[181] The LIPSS Partnership explained that for litigants in person the virtual process can also be distressing and disorientating:

> With no legal background and limited knowledge of court processes, litigants in person are often overwhelmed when trying to advocate for themselves during a hearing, experiencing distress over terminology and etiquette, and confusion over potential consequences or remedies available. The lack of visual cues in remote hearings can exacerbate this, and litigants in person have repeatedly reported feeling ignored and/or unsure of when it is appropriate to speak.[182]

There was also unease about how participants in proceedings may have taken part, including on shared phones, in public locations, with children present, and in some cases, lacking the technology or knowledge to access the hearing at all.[183]

103. The Evaluation of Remote Hearing during the Covid-19 pandemic by the Ministry of Justice has found that 86% of public users in the Family Court attended via a remote hearing.[184] The Evaluation contains a number of important findings on the use of remote hearings in the Family Court:

- A higher proportion of judiciary sitting in civil and family courts (45%) considered remote hearings to be substantially longer than in-person hearings compared to other jurisdictions (25%-27%).[185]
- Judges sitting in civil and family proceedings were more likely to consider that remote hearings take substantially longer to prepare for (43%) compared to those in other jurisdictions (15–17%).
- Judges sitting in civil and family proceedings were more likely to report circulation of material/evidence during the hearing as a major problem (45% compared to 19%-39% in other jurisdictions).

181 Q133
182 LIPSS Partnership (COC0067)
183 Q64 [Beverley Higgs]; Q133 [Dr Byrom]; Q345 [Jodie Blackstock]; Just Fair (COC0009) para 21
184 HMCTS, Evaluation of remote hearings during the COVID 19 pandemic Research report, December 2021 p 25
185 HMCTS, Evaluation of remote hearings during the COVID 19 pandemic Research report, December 2021 p 32

- Judges sitting in civil and family proceedings were more likely to report impacts on health and wellbeing (74% compared to 47%-55% in other jurisdictions).
- Judicial respondents sitting in civil and family proceedings were more likely to consider there was a difference in public users' attitudes or behaviour in remote hearings (81% compared to 54%-64% in other jurisdictions).

104. **We are concerned that the current approach to remote hearings in the Family Court is having a negative effect both on court capacity but also on the quality of the justice itself. Whilst we note that a significant proportion of users are said to prefer remote hearings, the interest of justice should be placed above what is most convenient to users of the court.**

County Court

105. The Lord Chief Justice told us that County Court receipts remain lower than the pre-covid baseline.[186] In October to December 2021, County Court claims were down 21% on the same period in 2019, to 379,000.[187] The latest Civil Justice Statistics suggest that the time taken from claim to hearing in the County Court has increased. The mean time taken for small claims and multi/fast track claims to go to trial was 51.4 weeks and 74.0 weeks on average between October to December 2021, which was 14.3 weeks longer and 13.0 weeks longer than the same period in 2019 respectively.[188]

106. The longest waiting times were in county courts in London, where small claims took an average of 71.4 weeks to reach trial and multi/fast track claims took 90.6 weeks. This was followed by the East of England where small claims took 66.5 weeks and multi/fast track claims 89.4 weeks, on average.[189] The courts with the longest delays were mostly in outer London (Bromley, Romford, Uxbridge, and Croydon) and Essex (Basildon and Chelmsford). Small claims closed in Q4 2021 at Bromley County Court took 113 weeks to reach trial/hearing, compared with 69 weeks in 2019 and 32 weeks (around the national average at the time) in 2017. The average by region/nation at the end of 2021 is shown in the table below.

186 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q28
187 Ministry of Justice, Civil justice statistics quarterly: October to December 2021 3 March 2022
188 Ibid.
189 Ibid., 'Timeliness' tool, in the Civil Justice and Judicial Review data zip files.

Table 6: Average time between issue and trial/ hearing (weeks) at county courts, by region

Average time between issue and trial/ hearing (weeks) at county courts, by region

October-December 2021

Region/ nation	Small claims	Fast and multi track trials
London	71.4	90.6
East of England	66.5	89.4
South East	54.5	77.6
North West	40.5	77.3
East Midlands	46.6	72.8
West Midlands	49.1	70.8
North East	38.6	66.8
South West	39.3	63.4
Yorkshire and The Humber	39.5	63.1
Wales	35.5	60.3
England and Wales	**51.4**	**74.0**

Source: Ministry of Justice, Civil justice statistics quarterly: October to December 2021, 3 March 2022, Ibid., 'Timeliness' tool, in the Civil Justice and Judicial Review data zip files.

Notes: The published statistics refer to 'average' without specifying if this is median or mean. Regional averages are the average of the court-level averages within a region; they are not weighted for the number of cases at each court and should be taken as rough estimates.

107. Derek Sweeting, the then Chair of the Bar Council, explained that during the pandemic, the county courts, when compared with the other civil courts, "were not equipped to go remote quickly".[190] Dr Byrom also emphasised that there was a need to invest in improving the technology and infrastructure available to judges at County Court.[191] The Personal Injuries Bar Association set out that waiting times for final hearings in the County Court were lengthening and that this was resulting in injured claimants waiting excessive periods to be compensated.[192] The Personal Injuries Bar Association also said that "County Courts appear to struggle to deal with the increased demands that remote digital working makes of staff".[193]

108. The Lord Chief Justice, Lord Burnett, explained to us that the limited data available on the County Court makes analysis of capacity very difficult.[194] As Lord Burnett explained: "it ought to be possible for me to say with confidence how many cases are waiting to be disposed of in the County Court, how long they are taking and all the rest of it, but that is not possible because, as so much is still not digitised, the data is very poor".[195] In November 2020, Lord Burnett outlined his concerns on the digital capacity of the County Court:

190 Q67
191 Q155
192 Personal Injuries Bar Association (COC0028)
193 Personal Injuries Bar Association (COC0028)
194 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q28
195 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q28

> What is most striking about the County Court is the fact that it is still an entirely paper-based court. There is no digital filing of documents in the County Court. During the course of the response to the pandemic, we have seen that the courts that are well advanced in the modernisation programme have fared better. I am referring to those that had the video technology and those that are digitised. The County Court is not digitised. This situation flows into the modernisation and reform programme, which has been running now for four years. It is absolutely critical that it is seen through to its conclusion, not only in the County Courts but in the Family Court, where digitisation is just beginning to roll out. To my mind it is unimaginable that we could contemplate, in the third decade of the 21st century, a court that does more than 90% of the civil work in this country relying on people filling out long forms, putting them in envelopes and sending them in. It is unthinkable.[196]

109. As an example of the issues caused by the lack of data, we asked the Lord Chief Justice and the Ministry of Justice if there was any data available on the reasons that cases are taken out of the list at short notice.[197] We were told by HMCTS that the current case management system does not capture this information.[198] The Government recognises the problem and told us that the new case management system, Core Case Data, will remedy the situation.

110. Lord Wolfson, the then Minister responsible for civil justice, told us that we need to reimagine civil justice for the future. He also stressed the need for "revolutionary" changes to adapt the County Court "to computer, to online and to AI".[199] **We welcome the Government's ambition to improve the use of digital technology in the County Courts. *We would ask the Government to confirm the timeline for the rollout of Core Case Data. Once the data is available, the Government should also publish local civil justice scorecards to enhance the transparency of timeliness in the civil and family courts.***

111. **The County Court is vital to access to justice in England and Wales. The public relies on it to resolve disputes and vindicate their rights. As such, the significant increase in delays in certain cases in the County Court is concerning. *It is imperative that the Government provides the resources to ensure that the County Court has the capacity to deal with cases in a timely fashion. The Government should set out what steps it is taking to reduce delays in the County Court and to improve the judicial, physical, digital and staff capacity of the County Court.***

Judicial resources in the civil and family courts

112. Over this inquiry we heard repeated concerns over judicial capacity in a range of civil jurisdictions. Jane Russell, an Employment and Equality Law Barrister who represented the Employment Law Bar Association told us that the Employment Tribunal lacks employment judges.[200] Similarly, Kevin Sadler told us that HMCTS has "particular challenges with

196 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 226 Tuesday 10 November 2020 Q30
197 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q23
198 Letter from Amy Caldwell-Nichols, Deputy Director, Head of Insights & Analysis, HMCTS, Dated 31 January 2022, on statistics on listing practices in the county courts ; Letter from Amy Caldwell-Nichols, Deputy Director, Head of Insights and Analysis, HMCTS, dated 7 March, on statistics on listing practices in the county courts
199 Q527
200 Q292

district judges to support civil and family work."[201] In November 2020, the Lord Chief Justice told us that the District-bench, which alongside the deputies, is the main judicial resource for the County Court and the Family Courts, is "well under-strength" and the last two recruitment competitions did not recruit sufficient judges to meet need, although over 400 deputy district judges (part-time fee-paid judges), had been recruited in 2019 and 2020. He said that the deputies would need to be encouraged to sit for more sitting days than they are committed to in order to deal with the cases in the system, but warned that this lack of judicial resource could well adversely impact capacity.[202]

113. In November 2021, the Lord Chief Justice reiterated his concerns over the recruitment of district judges:

> Last year, the shortfall in the recruitment of district judges, who provide the backbone of the county court, was very substantial indeed. There is a district judge competition running at the moment where the complement sought is 100 new judges. Whether the JAC will have 100 candidates to recommend for appointment we have to wait and see. There have been some real problems in recruiting district judges of late.[203]

Lord Burnett explained that the quality of the estate and the digital capacity of the courts was having an effect on recruitment of district judges:

> One of the things that worries me is that the district bench is disproportionately located in courts that are not very good. One has to be realistic about this. We are trying to recruit successful lawyers, solicitors and barristers, who will not have spent the last 10, 15 or 20 years of their lives in buildings where the heating or the air-conditioning might not work, the roof leaks, the loos leak and so on. Although that is not the universal picture—I am not suggesting it is—it is too common a picture. People coming from the legal profession are used to working in environments where the IT works, where there is appropriate staff support and so on. This is one of the consequences of the degradation in the funding of the system that we have seen over many years. The environment in which people are expected to work in many places is just not good enough.[204]

Lord Burnett also added that the nature of the workload, with more family work than civil work, was having an effect on recruitment.

114. **To enhance the capacity of the civil and family courts, it is vital to address each of the core elements of court capacity: judicial, staff, digital and physical. As the Lord Chief Justice explained, digital and physical capacity have a significant bearing on the ability to recruit judges and expand judicial capacity.**

201 Q488
202 Lord Chief Justice of England and Wales (COC0058) paras 10–11
203 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q30
204 Justice Committee Oral evidence: The work of the Lord Chief Justice, HC 868 Tuesday 16 November 2021 Q31

Conclusions and recommendations

Enhancing court capacity

Physical capacity

1. HMCTS deserve praise for delivering the Nightingale Court project. The project made a major contribution to increasing the capacity of the courts during the pandemic. (Paragraph 10)

2. The maintenance backlog in the court estate is a serious problem. While there are some good court buildings, far too many are in a poor condition. This is having a negative effect on other elements of court capacity and, if not addressed, risks undermining the delivery of the high-quality justice system which this country expects. (Paragraph 14)

3. The Government should develop and deliver a comprehensive plan to improve the quality of the court estate, which is funded on a multi-year basis. The plan should identify solutions for delivering essential maintenance without reducing physical capacity. It should also set out a long-term strategy for improving the court estate so that it provides a proper and acceptable environment for all its users. The Government has shown through the use of Nightingale Courts that temporary courtrooms can be made operational if required and, if necessary, this model should be used to enable permanent buildings to undergo essential work. (Paragraph 15)

Digital Capacity

4. We recommend that the Ministry of Justice publish an update on the progress made on each project within the HMCTS court reform programme and, in particular, the date by which the programme is expected to complete and its anticipated final cost. (Paragraph 17)

5. The Ministry of Justice and HMCTS have missed opportunities to swiftly deliver an ambitious court reform programme. Many of the problems that we heard about during our inquiry and continue to hear about, could have been avoided if better data collection had been built into the system much earlier. We recognise that the MoJ and HMCTS are taking steps to improve the data situation. However, we would stress that the level of improvement required will need a sustained focus and significant investment. (Paragraph 22)

6. Improving the quality of data in the justice system will help the MoJ to determine whether the courts have the capacity they need to deal with cases in a timely fashion. The Government needs to have access to high-quality data in order to be able predict how the number of cases are likely to change and to be able to analyse the ability of the courts to process cases. (Paragraph 23)

7. The Ministry of Justice must ensure that it ring-fences funding from Spending Review 2021 to expedite work to deliver on its commitments to improve data, as

well as allocating funding for this work as part of Spending Review 2022. In so doing, the MoJ should publish a detailed timetable for implementation to ensure it is accountable for progress. (Paragraph 24)

Judicial capacity and HMCTS staff capacity

8. When the number of staff and judges falls more sharply than the overall caseload, there are bound to be capacity issues in the courts. Even if the number of cases falls more quickly than the number of staff, reducing judicial and staff capacity creates a risk when there is always a possibility that the number of cases will increase again. As discussed later in this Report, at present, judicial capacity is the most pressing constraint on the capacity of the courts. (Paragraph 28)

9. The Government, the Judiciary and the Judicial Appointments Commission should work closely together to address the challenges in recruiting judges in those areas where there is the greatest need for increased capacity. In relation to the pay of HMCTS staff, the Government needs to ensure that pay levels keep up with those for equivalent roles in other departments. (Paragraph 29)

Evaluating court capacity

10. The Government also argued that the inspection provided by the existing criminal justice inspectorates and the National Audit Office was sufficient. We do not believe that this argument has stood the test of time. (Paragraph 32)

11. We are concerned that at present there is a significant gap within the inspection regime in the justice system. For example, there is no inspectorate that covers the civil and family courts. Nor is there one in respect of Coroners' Courts—indeed, our Report on the Coroner Service recommended that the Ministry of Justice should establish a dedicated Coroner Service inspectorate. A new courts' inspectorate could also inspect Coroners' Courts. Any courts' inspectorate would have to respect judicial independence by focusing on the administration of the courts as opposed to substantive judicial decisions. It would also need to learn the lessons from the limitations of the Her Majesty's Inspectorate of Court Administration. (Paragraph 34)

12. A Courts' Inspectorate, which is independent from Government, could make a substantial difference to the accountability and transparency of the justice system. It could use inspections and the promised improvements to the quality of the data to make recommendations that can inform policy and guidance in both criminal and civil justice. An inspectorate could also help to monitor the use of technology in the courts. Accordingly, we recommend that the Government re-establish a Courts' Inspectorate with updated and broadened terms of reference. (Paragraph 35)

The criminal courts

The Crown Court

13. The recovery in the Crown Court will depend on the ability of the courts to dispose of a significantly higher average number of trials each month. While we recognise the difficulties of setting prescriptive targets. While we recognise the difficulties of setting prescriptive targets, the Government should set out the number of Crown Court trials that will need to be disposed of each month in order to deliver the reduction in the number of outstanding cases to reach its target of 53,000 by March 2025, and complement this with a detailed roadmap for achieving this. (Paragraph 43)

14. The current situation on timeliness in the Crown Court is causing significant injustice. The pandemic has made the situation worse, but the factors responsible for increased delays over the past decade are deep-rooted. A long-term approach to investment in the capacity of the Crown Court and the wider criminal justice system is required to improve the situation on timeliness. (Paragraph 50)

Timeliness in the Crown Court

15. The Committee welcomes the publication of criminal justice scorecards. We recommend that the Government builds on these scorecards by setting itself targets to improve timeliness across the criminal justice system. The Government should also set timeliness targets for the average time taken from offence recorded to ultimate conclusion for specific offences, such as rape. (Paragraph 52)

Sitting days in the Crown Court

16. Whilst we welcome the opportunity to view the MoJ's forecasting models, we recommend that the Government routinely publishes its models and publishes a detailed recovery plan that sets out how it plans to meet its target of reducing the number of outstanding cases to 53,000 by March 2025. We believe that this target is not ambitious enough to build the capacity of the Crown Court in the long-term. Reducing delays in the long-term will require a sustained increase in the resourcing of the Crown Court. The Government should therefore also set targets for increasing the physical, judicial and staff capacity of the Crown Court in order to be able to deliver at least 110,000 sitting days a year for the next five years. (Paragraph 56)

Judicial capacity in the Crown Court

17. We share the view of the judiciary and the MoJ that judicial capacity is, at present, the most pressing constraint in the courts system. We welcome the Government's plans to recruit more judges. The Government should learn the lesson from past decisions that have led to a reduction in judicial capacity. Increasing the number of judges is a difficult task which requires a long-term approach and a sustained focus. The MoJ should produce a detailed plan on how it intends to increase the number of judges in the Crown Court in the long-term. (Paragraph 59)

Physical capacity in the Crown Court

18. We welcome the Government's announcement of the lease extension for a number of the Nightingale Courts. The Government should now set out its policy on the future use of supplementary venues to support the work of the Crown Court. It should also produce a comprehensive evaluation of the Nightingale Courts, and ensure that the lessons learned from their establishment and operation are taken forward. (Paragraph 62)

19. The Committee welcomes the creation of super-courtrooms and commends HMCTS for their work in getting them up and running during the pandemic. The Government should set out how many more super-courtrooms will be provided by 2025. (Paragraph 64)

Technological capacity in the Crown Court

20. The Committee recognises the advantages for advocates to attend remotely; however, it is important to recognise that in Crown Court cases dealing with the most serious cases, it will often be in the interests of justice for advocates to attend in person. (Paragraph 66)

21. The rollout and expansion of section 28 of the Youth Justice and Criminal Evidence Act 1999, which allows pre-recording of evidence and cross-examination for children and vulnerable witnesses, is an important step in improving the experience of these witnesses in the criminal justice system. However, it is vital that a thorough review of the practical and procedural implications of the use of section 28 is undertaken before there is any further expansion of its use. (Paragraph 69)

Listing in the Crown Court

22. There is more that can be done to make listing more transparent and effective, for example by distinguishing between listing decisions based on court capacity and those based on case progression. The development of local justice scorecards will help to identify where delays are particularly acute. In terms of effectiveness, national level guidance on listing certain types of cases, such as that produced by the Lord Chief Justice on remote attendance, would be valuable. The Government should make a contribution to improving listing through policy initiatives, such as the establishment of specialist rape courts and guidance on the use of section 28 evidence. (Paragraph 74)

The magistrates' courts: video hearings

23. The use of video remand hearings in magistrates courts highlights the importance of coordination across the criminal justice system on the use technology within the criminal courts. In the long-term, the MoJ should use research on remote hearings, such as the Evaluation of remote hearings during the Covid-19 pandemic, to develop guidance and policies on when video hearings should be used in the magistrates' courts. (Paragraph 78)

Judicial capacity in the magistrates' courts

24. The Committee welcomes the Government's launch of a major campaign to recruit magistrates. The Government should also consider whether it would be possible, as the Committee recommended in 2016, to streamline the recruitment process, so that applications are processed within six months. (Paragraph 80)

Increasing the power of magistrates

25. The Committee supports the decision to increase the sentencing power of magistrates. The Government should conduct a review of the change 12 months after it has come into force and evaluate its effect on the workload of the Crown Court. (Paragraph 83)

The case for a Royal Commission on the criminal justice system

26. The evidence to this inquiry has shown that the criminal courts are going through a period of significant change and the question of the role of technology in the courts is particularly pressing. The Government should proceed with its manifesto commitment to establish a Royal Commission on the criminal justice processes. (Paragraph 85)

Civil and family courts

Family Court

27. The Committee welcomes the Deputy Prime Minister's willingness to consider bold solutions in family justice. It is an area of the justice system that needs the Government's full attention. Just as with the criminal justice system, it is vital that the ministers responsible for family justice work across Government, for example with the Minister for Children and Families, to develop policies that can help improve the support for separating couples and their children. (Paragraph 95)

28. We are concerned by the growing number of cases in the Family Court. The Government should develop a Family Justice action plan to address this problem. The action plan should set out how the Government will expand the capacity of the family justice system to deal with the growing number of private family law cases. It should also set a target for reducing the number of outstanding cases by 2025, and for improving the timeliness of cases in the Family Court. (Paragraph 98)

Family Court: mediation

29. The Government's Mediation Voucher Scheme is a welcome development for the capacity of the Family Court. The initial results, with 400 vouchers being used and with 77 percent of cases reaching full or partial agreements, are promising. While we recognise the value of piloting such approaches, we would encourage the

Government to find solutions that can match the scale of the challenge facing the Family Court. We agree with Resolution that the Government needs to ensure that there are a range of options available to separating families. (Paragraph 101)

Technology in the Family Court

30. We are concerned that the current approach to remote hearings in the Family Court is having a negative effect both on court capacity but also on the quality of the justice itself. Whilst we note that a significant proportion of users are said to prefer remote hearings, the interest of justice should be placed above what is most convenient to users of the court. (Paragraph 104)

County Court

31. We welcome the Government's ambition to improve the use of digital technology in the County Courts. We would ask the Government to confirm the timeline for the rollout of Core Case Data. Once the data is available, the Government should also publish local civil justice scorecards to enhance the transparency of timeliness in the civil and family courts. (Paragraph 110)

Judicial resources in the civil and family courts

32. The County Court is vital to access to justice in England and Wales. The public relies on it to resolve disputes and vindicate their rights. As such, the significant increase in delays in certain cases in the County Court is concerning. It is imperative that the Government provides the resources to ensure that the County Court has the capacity to deal with cases in a timely fashion. It is imperative that the Government provides the resources to ensure that the County Court has the capacity to deal with cases in a timely fashion. The Government should set out what steps it is taking to reduce delays in the County Court and to improve the judicial, physical, digital and staff capacity of the County Court. (Paragraph 111)

33. To enhance the capacity of the civil and family courts, it is vital to address each of the core elements of court capacity: judicial, staff, digital and physical. As the Lord Chief Justice explained, digital and physical capacity have a significant bearing on the ability to recruit judges and expand judicial capacity. (Paragraph 114)

Formal minutes

Wednesday 20 April 2022

Members present:

Sir Robert Neill, in the Chair

Diane Abbott

Rob Butler

Maria Eagle

Laura Farris

Paul Maynard

Dr Kieran Mullan

The following declarations of interest to the inquiry were made.[205]

Draft Report (*Court capacity*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 114 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 27 April 2022 at 2.00 pm

205 For a full record of interests in relation to this inquiry see the formal minutes for the inquiry pertaining to meetings on 12 January 2021, 26 January 2021, 9 February 2021, 23 February 2021, 2 March 2021, 16 March 2021 and 24 March 2021.

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 12 January 2021

Callyane Desroches, Strategy and Insight Manager, Crest Advisory; **Thomas Pope**, Senior Economist, The Institute for Government — Q1–41

Beverley Higgs JP, Chair, Magistrates Association; **Richard Miller**, Head of Justice, The Law Society; **Derek Sweeting QC**, Chair, The Bar Council — Q42–121

Tuesday 26 January 2021

Dr Hannah Quirk, Reader in Criminal Law, Kings College London; **Dr Natalie Byrom**, Director of Research and Learning, The Legal Education Foundation — Q122–167

Dr Vicky Kemp, Principal Research Fellow, University of Nottingham; **Dr Mavis Maclean CBE**, Senior Research Fellow, University of Oxford; **Dr Jo Wilding**, ESRC Postdoctoral Research Fellow, University of Brighton — Q168–211

Tuesday 09 February 2021

Daniel Bonich, Chair, Criminal Law Solicitors Association; **James Mulholland QC**, Chair, Criminal Bar Association; **Hollie Collinge, Solicitor Advocate**; **Emma Fenn Barrister** — Q212–267

Tuesday 23 February 2021

Jane Russell, Committee Member, Employment Law Bar Association; **Simon Mullings**, Co-Chair, Housing Law Practitioners Association — Q268–312

Mr Chris Minnoch, Chief Executive Officer, Legal Aid Practitioners Group; **Ian Townley**, Director and Head of Costs, Broudie Jackson Canter — Q313–332

Tuesday 02 March 2021

Dame Vera Baird DBE QC Victims' Commissioner for England and Wales; **Penelope Gibbs**, Director, Transform Justice; **Jodie Blackstock**, Legal Director, JUSTICE — Q333–357

Nimrod Ben-Cnaan, Head of Policy and Profile, Law Centres Network; **Jo Underwood**, Head of Strategic Litigation, Shelter — Q358–374

Tuesday 16 March 2021

David Lloyd, PCC for Hertfordshire and Criminal Justice System Lead, Association of Police and Crime Commissioners; **DCC Tony Blaker**, Digital First Lead, Criminal Justice Committee,, National Police Chiefs' Council — Q375–387

Phil Copple, Director General of Prisons, HM Prison and Probation Service; **Rebecca Lawrence**, Chief Executive Officer, Crown Prosecution Service — Q388–409

Tony Cooper, Chief Operating Officer, ACAS; **Jacky Tiotto**, Chief Executive Officer, CAFCASS; **Laura Bee**, Industrial Officer and Group Secretary for the Justice Sector Group, Public and Commercial Services Union (PCS) Q410–442

Wednesday 24 March 2021

The Lord Wolfson of Tredegar QC, Parliamentary Under-Secretary of State, Ministry of Justice; **Kevin Sadler**, Acting Chief Executive, HM Courts and Tribunals Service; **Jane Harbottle**, Chief Executive, Legal Aid Agency; **Jelena Lentzos**, Deputy Director, Legal Aid Policy, Ministry of Justice Q443–540

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

COC numbers are generated by the evidence processing system and so may not be complete.

1 ***Multiple submitters:Lord William Bach (Police and Crime Commissioner-Leicestershire, OPCC Leicestershire); Mr Hardyal Dhindsa (Police and Crime Commissioner- Derbyshire, OPCC Derbyshire); Mr Paddy Tipping (Police and Crime Commissioner - Nottinghamshire, OPCC Nottinghamshire); Mr Stephen Mold (Police and Crime Commissioner- Northamptonshire, OPCC Northamptonshire); and Mr Marc Jones (Police and Crime Commissioner - Lincolnshire, OPCC Lincolnshire) (COC0014)

2 Acas (the Advisory, Conciliation and Arbitration Service) (COC0068)

3 Anonymous submitter (COC0048)

4 Antoniou, Mr Christopher (Support , Charity) (COC0035)

5 Association of Police and Crime Commissioners (COC0044)

6 Avon and Somerset Criminal Justice Board (COC0042)

7 Bar Council (COC0047)

8 Bell, Felicity (COC0057)

9 Billings, Dr Alan (Police & Crime Commissioner, Police & Crime Commissioner, South Yorkshire) (COC0004)

10 Byrom, Dr Natalie (COC0061)

11 Carpenters Group (COC0018)

12 Citizens Advice (COC0059)

13 Crest Advisory (COC0055)

14 Crighton Chambers (COC0032)

15 Crown Prosecution Service (COC0050)

16 Domestic Abuse Commissioner for England and Wales (COC0052)

17 Dyfed Powys Police and Crime Commissioner (COC0005)

18 Employment Law Bar Association (COC0013)

19 Fair Trials (COC0038)

20 Griffiths, Mr Rob (Self employed Barrister, 12 CP Barristers, Southampton) (COC0024)

21 HM Courts and Tribunals Service (COC0069)

22 Hieke, Dr Graham (COC0066)

23 Hirst, Roger (Police, Fire and Crime Commissioner for Essex , Police, Fire and Crime Commissioner for Essex) (COC0010)

24 Humberside Criminal Justice Board (COC0003)

25 Institute for Government (COC0062)

26 Institute for Government (COC0040)

27 Irwin Mitchell LLP (COC0051)

28 JUSTICE (COC0054)

29 Jones, Mr Marc (Police and Crime Commissioner for Lincolnshire, Office of the Police and Crime Commissioner - Lincolnshire) (COC0021)

30 Just Fair (COC0009)

31 Keoghs LLP (COC0031)

32 LIPSS Partnership (COC0067)

33 London, James (COC0011)

34 Lord Chief Justice of England and Wales (COC0058)

35 Magistrates Association (COC0063)

36 Magistrates Association (COC0015)

37 Ministry of Justice (COC0060)

38 Motor Accident Solicitors Society (MASS) (COC0016)

39 Mulligan, Julia (Police, Fire and Crime Commissioner for North Yorkshire, Office of the Police, Fire and Crime Commissioner for North Yorkshire) (COC0012)

40 Munro, Mr David (Surrey Police & Crime Commissioner, Surrey OPCC) (COC0006)

41 National Family Mediation (COC0039)

42 OBE, Professor Richard Susskind (COC0064)

43 Office of the Police and Crime Commissioner for Hertfordshire (COC0049)

44 Office of the police and Crime Commissioner for Gloucestershire (COC0008)

45 Personal Injuries Bar Association (COC0028)

46 Police and Crime Commissioner for Devon, Cornwall and the Isles of Scilly (COC0053)

47 Police and Crime Commissioners in Wales (COC0023)

48 Pregnant Then Screwed (COC0030)

49 Quirk, Dr Hannah (COC0056)

50 Resolution (COC0017)

51 Russell, Jane (COC0065)

52 Sander, Audrey (COC0037)

53 The Association of Consumer Support Organisations (ACSO) (COC0019)

54 The Bar Council (COC0033)

55 The Law Society of England and Wales (COC0034)

56 Transform Justice (COC0022)

57 Victims' Commissioner for England and Wales (COC0043)

58 West Midlands Police and Crime Commissioner; Staffordshire Police and Crime Commissioner; West Mercia Police and Crime Commissioner; and Warwickshire Police and Crime Commissioner (COC0046)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2021-22

Number	Title	Reference
1st	The Coroner Service	HC 68
2nd	Rainsbrook Secure Training Centre	HC 247
3rd	The Future of Legal Aid	HC 70
4th	Covid-19 and the criminal law	HC 71
5th	Mental health in prison	HC 72

Session 2019-21

Number	Title	Reference
1st	Appointment of Chair of the Office for Legal Complaints	HC 224
2nd	Sentencing Council consultation on changes to magistrates' court sentencing guidelines	HC 460
3rd	Coronavirus (COVID-19): The impact on probation services	HC 461
4th	Coronavirus (Covid-19): The impact on prisons	HC 299
5th	Ageing prison population	HC 304
6th	Coronavirus (COVID-19): The impact on courts	HC 519
7th	Coronavirus (COVID-19): the impact on the legal professions in England and Wales	HC 520
8th	Appointment of HM Chief Inspector of Prisons	HC 750
9th	Private prosecutions: safeguards	HC 497
10th	Sentencing Council consultation on sentencing guidelines for firearms offences	HC 827
11th	Sentencing Council consultation on the assault offences guideline	HC 921
12th	Children and Young People in Custody (Part 1): Entry into the youth justice system	HC 306
13th	Sentencing Council: Changes to the drugs offences definitive guideline	HC 751
14th	Appointment of the Chair of the Independent Monitoring Authority	HC 954
15th	Appointment of the Chief Inspector of the Crown Prosecution Service	HC 955
16th	Children and young people in custody	HC 922

Number	Title	Reference
17th	Rainsbrook Secure Training Centre	HC 1266
18th	The future of the Probation Service	HC 285