

Sir Robert Neill MP
Chair, Justice Select Committee
House of Commons
London
SW1A 0AA

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09 February 2023

Dear Sir Bob,

FUTURE OF LEGAL AID: ORAL EVIDENCE SESSION

Thank you for inviting me to provide the Justice Committee with an update on our response to the Criminal Legal Aid Independent Review and the Crown Court. There were a few points raised during the session where we committed to write to the committee.

1. During the session you referred to an increase in both practitioners and duty solicitor provision since October last year, would you be able to provide us with the figures that demonstrate this increase? You helpfully referred to some figures on the number of firms and duty solicitors during the session, but it would be useful to be able see this data in context so that the trend over time can be fully examined.

As I said during the session, the commencement of the new Standard Crime Contract in October 2022 does suggest a slight increase in the number of providers and offices as compared to 2021/22, since when the numbers have stabilised somewhat.

PROVIDERS	2021/22	2022/23
APRIL	1090	1051
MAY	1089	1049
JUNE	1088	1047
JULY	1085	1045
AUGUST	1083	1042
SEPTEMBER	1079	1039
OCTOBER	1074	1141
NOVEMBER	1070	1132
DECEMBER	1067	1131
JANUARY	1064	1127
FEBRUARY	1061	
MARCH	1056	

OFFICES	2021/22	2022/23
APRIL	1589	1517
MAY	1585	1513
JUNE	1581	1509
JULY	1574	1507
AUGUST	1568	1504
SEPTEMBER	1564	1499
OCTOBER	1553	1774
NOVEMBER	1549	1727
DECEMBER	1544	1715
JANUARY	1539	1700
FEBRUARY	1534	
MARCH	1526	

Commencement of 2022 Standard Crime Contract

ROTA START DATE	DUTY SOLICITORS
01- APR- 21	4446
01- OCT- 21	4361
01- APR- 22	4222
01- OCT- 22	3813
03- JAN- 23	4023

Duty Solicitor numbers are fixed when new rotas are issued and are not adjusted until the next rota is prepared. Where a duty solicitor leaves mid-rota, the provider retains the slot until the next rota. Duty rotas last for six months except at the start of contracts where they run for three months. This is to allow for duty solicitors who miss the opportunity to join the first rota to join the second to maximise coverage.

2. Whether the Government has any projections on the number of criminal legal aid firms and the number of practitioners who will be undertaking criminal legal aid work in 2024 and 2025?

We do not have any such projections. As announced in CLAIR in November 2022, we will be putting additional investment into criminal legal aid. There is also expected increase in workload in the crime area.

3. What are the seven areas in England and Wales, referred to by Daniel Flury, where there are fewer than four duty solicitors?

Dolgellau
North Ceredigion / South Ceredigion
Newtown (Mid Wales)
Pembrokeshire
Barnstaple
Skegness
Berwick & Alnwick

The Legal Aid Agency (LAA) regularly reviews and monitors market capacity, including the number of duty solicitors on each local duty scheme to make sure there is adequate provision and access to legal aid throughout England and Wales.

In the areas outlined in the table above, the LAA works closely with local police, court, and defence representatives to ensure that the rota arrangements continue to be effective in each area. In areas where issues have arisen (for example, in Barnstaple and Skegness) the LAA has conducted consultations with local stakeholders on measures to widen the membership of those schemes and increase the number of contract holders on the scheme. Changes have been implemented as a result and the LAA is closely monitoring the situation in those areas.

4. Daniel Flury said that there had been an increase in the number of ineffective trials due to the absence of prosecution advocates. Could you provide any statistics that are available that shows the number of ineffective trials in the last 12 months due to the lack of a prosecution advocate?

The latest on ineffective trials due to prosecution advocate failing to attend is below and linked here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/112991/5/trials_tool.xlsx

YEAR	QUARTER	INEFFECTIVE TRIALS - PROSECUTION ADVOCATE FAILING TO ATTEND	AS % OF TOTAL INEFFECTIVE TRIALS	INEFFECTIVE TRIALS - TOTAL
2014	Q1	65	0.7%	8,842
	Q2	51	0.6%	8,321
	Q3	53	0.6%	8,434
	Q4	65	0.8%	7,939
2015	Q1	71	0.9%	8,054
	Q2	63	0.8%	7,554
	Q3	78	1.0%	7,940
	Q4	57	0.8%	7,029
2016	Q1	63	0.9%	7,333
	Q2	54	0.8%	7,063
	Q3	59	0.8%	7,147
	Q4	58	0.9%	6,641
2017	Q1	60	0.9%	6,908
	Q2	56	0.9%	6,311
	Q3	47	0.8%	6,152

2018	Q4	45	0.7%	6,121
	Q1	69	1.1%	6,437
	Q2	63	1.1%	5,936
	Q3	54	0.9%	5,798
2019	Q4	46	0.8%	5,470
	Q1	51	0.9%	5,381
	Q2	61	1.2%	5,273
	Q3	52	1.0%	5,278
2020	Q4	47	1.0%	4,856
	Q1	52	1.0%	5,116
	Q2	3	0.8%	354
	Q3	13	0.5%	2,549
2021	Q4	34	0.6%	5,692
	Q1	35	0.6%	6,222
	Q2	48	0.8%	5,910
	Q3	87	1.2%	7,317
2022	Q4	98	1.5%	6,562
	Q1	135	1.9%	7,281
	Q2	72	1.1%	6,467
	Q3	83	0.9%	8,820

5. Has the department estimated the financial cost of the current level of ineffective trials?

Ineffective trials are a normal feature of the Crown Court system which sees thousands of trials a month listed across England and Wales. Key participants will from time to time fall ill or be otherwise unable to attend, for example. It is certainly not true that an ineffective trial per se wastes court resource (e.g. judges, jurors or courtrooms). The judiciary (supported by HMCTS) manage lists in a manner that ensures if one trial cracks or is ineffective on the day, other work is able to stand up in its place. Court rooms generally do not stand idle because of this reason, therefore. This is borne out by the apparent lack of any relationship between effective (or ineffective) trial rates and the average length of sitting days. But there are clear disbenefits wherever a trial is unable to proceed at the last moment, including for the complainant, defendant and other witnesses. The costs here will not be directly borne by HMCTS, and so we cannot make any reliable or robust estimation of them. However, we – like the judiciary – are acutely aware of the need to target higher effective trial rates and lower ineffective trial rates. Among other things, the recent Crown Court Improvement Group progress on Better Case Management guidance is focused on improving performance here. We publish data on effective and ineffective trials on a quarterly basis through Official Statistics, and so progress will be charted here transparently.

6. The Government's response to the Committee's Court Capacity report, which we published in July 2022, said that the Government was aiming to publish the results of the section 28 review in the autumn. During the evidence session, Daniel Flury said that this review would now be published in the spring, could you set out the reason for the delay?

The delay in the process evaluation for section 28 (s.28) was due to a hold-up in data sharing agreements around sensitive victim/witness information. The data sharing agreement was not confirmed until the end of August which delayed field work for the victim strand of the evaluation. Fieldwork for this strand was completed in the autumn of 2022, which resulted in the publication of the s.28 process evaluation being postponed to spring 2023.

7. During the session, you mentioned that the department is yet to complete its modelling on whether it will be possible to reduce the number of outstanding cases in the Crown Court to 53,000 by March 2025. Could the Department share its latest modelling for what the level of outstanding cases will be in March 2025?

Our projections of the outstanding caseload reflect several different factors including the number and type of cases flowing into the courts, the capacity available across the system to hear those cases and how quickly they can be heard, whilst also ensuring a just outcome.

Despite the challenges faced, we continue to strive to reach our ambition of reducing the backlog to 53,000 cases by March 2025. We will do this by working closely with the judiciary and other cross-system partners. We regularly update our modelling to reflect the latest data and have no plans at this time to revise our public aim to reach 53,000 outstanding cases by March 2025.

8. In relation to the court estate, you mentioned that only 1% of sitting days have been lost due to planned or unplanned maintenance. Could you confirm what the relevant figure is for the Crown Court?

From 1 January 2022 to 31 December 2022 the number of sitting days lost due to planned or unplanned estate maintenance across all jurisdictions was 773. Of the 773 lost sitting days, 369 were lost in the Crown Court and 299 were lost in Magistrates Courts. For both jurisdictions, this represents less than 1% of total sitting days in a typical 12 month period.

When conducting estates works, every effort is made to minimise operational impacts as far as possible.

9. Which courts will see their facilities upgraded in 2023?

During the 2023 calendar year, 48 court and tribunal buildings across England and Wales are currently scheduled to receive upgrades or replacement equipment as part of our forward capital maintenance programme. Examples of works include new heating and cooling systems, replacement fire and security systems, replacement lifts and new building management systems. An extra £20m is being spent on revenue based maintenance in 2022/23, with approximately 140 sites expected to receive repairs and replacement items, including re-decoration, replacing carpets, deep-cleans, replacement fire doors as well as other health and safety works.

10. What progress is the department making in resolving the problems with resulting and the Common Platform raised by Lord Chief Justice during the evidence session on 8 November?

The Common Platform is now live across 76% of courts, with the remaining courts going live by Spring 2023. I understand that there have been some issues raised by legal advisers and by PCS around resulting and changes to working practices which colleagues are working hard to resolve. Some cases are more complex to resolve and require additional time and new processes and administrative support are in place for legal advisors to address these cases. HMCTS have met regularly with PCS to discuss the concerns of Legal Advisers and Court Associates and explore potential solutions.

In response to concerns, HMCTS has changed the way that they are listening to people and responding to feedback and have launched a suite of new initiatives to support staff using the Common Platform. This includes a new digital form to make it easier for colleagues to raise feedback about the Common Platform and from that information, key system changes have been identified and are being progressed as a priority. These are on track to be resolved by May 2023.

11. Finally, in the Government's response to the Court Capacity report, the Government said that the HMCTS court reform programme was on track to be completed by December 2023. Could the department confirm whether this remains the case and provide a breakdown of the projects that are due to be completed by the end of the programme?

We are on track to have completed the technical aspects of Reform by 2023 as planned. However, a number of pressures – in particular the impacts of the pandemic and industrial action – have meant that we've needed to review the implementation plans. We are reviewing implementation timetables to ensure that we are able to safeguard delivery and operational performance, and will write to the committee when this review is complete.

Other information that we also agreed to provide during the session is below:

12. How many lawyers are there in the Public Defender Service? [Question 188]

The Public Defender Service (PDS) currently has a total of 41 qualified legal staff. This total is made up of qualified solicitors and qualified barristers.

13. Minister, have you had a chance to meet the CBA yet? [Question 207]

I mistakenly answered that I had met the outgoing and incoming chair of the CBA, when in fact it was Mark Fenhalls KC and Nick Vineall KC of the Bar Council that I had met. I had met the chair of the CBA, Kirsty Brimelow KC, informally, and have since had a formal meeting.

14. Is the membership the same as in July 2021? Perhaps you could share that with the Committee once you have reconstituted. [Question 249]

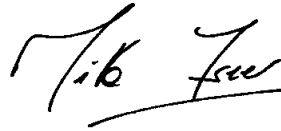
I am pleased to be able to advise that the first meeting will take place on the 2 March 2023 and confirm the Board's membership below:

- Parliamentary Under Secretary of State for the Ministry of Justice
- Minister for Crime, Policing and Fire at the Home Office
- Solicitor General
- President of the King's Bench Division
- Senior Presiding Judge
- Chair, National Police Chiefs' Council
- Criminal Justice Lead, National Police Chiefs' Council
- Criminal Justice Lead, Association of Police and Crime Commissioners
- Commissioner, Metropolitan Police Service
- Director General, National Crime Agency
- Director of Public Prosecutions, Crown Prosecution Service
- Chief Executive, His Majesty's Courts and Tribunals Service
- Chief Executive, His Majesty's Prison and Probation Service

- Chair, Youth Justice Board
- Victims' Commissioner
- Chair, Bar Council
- Head of Justice, Law Society
- Permanent Secretary, Ministry of Justice

I hope that you find this information helpful and addresses the concerns that the Committee raised during the session.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mike Freer', with a long horizontal stroke underneath.

MIKE FREER MP