

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

[By email]

22 February 2023

Dear Sir Bob,

EVIDENCE TO JUSTICE COMMITTEE

Thank you for your letter of 9 February on the additional information on which I agreed to follow up with the Justice Committee, following our appearance last month.

Whether it is possible for the department to publish details of an offender's non-custodial work in the community? [Question 34]

The purpose of Community Payback is to ensure that offenders are publicly giving back to the communities they have harmed, by undertaking work that is valuable to local areas. The Government is investing up to an additional £93 million in Community Payback, which will enable us to ramp up delivery from 5 million to up to 8 million hours a year.

Owing to the size of the Community Payback caseload (the current caseload is approximately 48,000 offenders) and the time and resourcing it would require to extract the relevant information, this proposal would present significant administrative burdens on Probation teams. It would compromise efforts to ramp up placement delivery, therefore minimising the number of hours available for communities, and would not be an effective use of Probation resource.

However, we recognise that public and judicial awareness in unpaid work is important to building confidence in community sentences. This is why, as part of our efforts to relaunch Community Payback, we are focusing on ways to improve engagement so that the public have a greater voice in shaping delivery in their local areas and a better understanding of the positive impact placements have had on issues that matter to them. As part of this, we are legislating to create a statutory duty for Probation to consult community leaders and organisations on Community Payback, via enabling secondary legislation under the Police, Crime, Sentencing and Courts Act 2022. We have also required Community Payback teams to promote and facilitate visits for magistrates and judges to observe Community Payback placements in action. We are considering wider opportunities to improve the data we provide to the judiciary on the outcomes of court and suspended sentences orders, including completion of Community Payback requirements at an aggregate level.

What steps the department is taking to assess public and victim satisfaction with sentencing outcomes? [Question 56]

While sentencing decisions are entirely a matter for our independent courts, the Government is committed to ensuring that victims and the public are able to have a role in the process and have confidence in sentencing. For example, the victim personal statement allows victims to explain the effect the offending has had on them and their family. The Unduly Lenient Sentence scheme also provides a mechanism whereby anyone can ask the Attorney General to refer sentences to the Court of Appeal to consider whether they are too lenient and should be increased.

The public can also provide views at various stages of the policy development process, which of course, will influence sentencing outcomes. Following publication of the Sentencing White Paper, ‘A Smarter Approach to Sentencing’ in 2020, the Government has delivered on tougher sentencing for the worst offenders, ended automatic release from prison for serious crimes, and also tougher and more effective community sentences to break the cycle of offending.

We also conduct public consultations during the development of policy and legislation to enable victims and the public to provide their views on Government proposals. Our responses to consultations are published and explain how consultee’s responses have been considered in the development of policy.

The independent Sentencing Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines and monitoring their impact. The Council periodically carries out research

to understand the public's attitude to, and knowledge of, sentencing and the sentencing guidelines, and the department considers relevant findings of the Council's work as part of policy development.

How much the onerous lease for land in Aylesbury is costing the department annually and what it has cost the department to date? What are the barriers in terminating that lease and who owns it? [Question 61]

The following information is obtainable from HM Land Registry. In 2008 the department acquired the land on Walton Street in Aylesbury under a leasehold agreement, with the intention to build a new crown court building on this site. Following a review of planned new court buildings in 2010, the decision was made to not progress further with this replacement court building. The initial rent payable for the land in Aylesbury was £155,000 per annum, with fixed 10.4% increases at the end of each 5th year. Currently we are paying £188,944 per annum and the total cost of the lease to the department so far is £2,512,402. The landowner is the Aylesbury Conservative Constituency Association. The terms of the lease include a restriction, which means that the use of land is restricted to the development for a court or offices.

If you will provide more details of the legal challenge that has given rise to the contingent liability set out under the heading "Injuries to staff, prisoners and the public"? [Question 67]

The legal challenge referred to is an appeal against a Court decision to greatly restrict the Claimant's case that the Secretary of State ruled incorrectly on Prison Service Pay Review Body recommendations.

What information you hold on the size of the backlog in the county court? What steps the department is taking to tackle that backlog, and what are the challenges in doing so? [Question 129]

The majority of the circa 1.5m cases proceeding through the Civil courts each year resolve without the need for a hearing: either through default judgment in the absence of a defence; mediation (including the free service for claims valued under £10,000 provided by HM Courts and Tribunal Service (HMCTS)); or other settlement between parties¹. For the county courts, therefore, there is not a clear 'backlog' which can be measured. However, statistics on the volumes of civil cases, and the overall timeliness

¹ [Civil Justice Sankey \(moj-analytical-services.github.io\)](https://github.com/moj-analytical-services/CivilJusticeSankey)

of these cases, are regularly published² and HMCTS closely monitors the throughflow of work through the courts.

For defended cases that require a full hearing, which account for 5% of all case starts, we recognise that timeliness performance remains a complex challenge, particularly because of our heavy reliance on fee paid judiciary in respect of small claims cases (those being cases generally valued below £10k). Timeliness declined in 2016/2017 following a significant increase in workload and was further impacted by the pandemic. There is notable regional variance with performance with cases in London and the South East experiencing longer waiting times than elsewhere. However, since August 2022, the number of claims awaiting a hearing date has decreased by 22% by November 2022 (the latest data available).

We are working in partnership with the judiciary to improve timeliness for defended cases which require a full hearing, with a focus on those regions experiencing the longest waiting times. Fee-paid judiciary from elsewhere in England and Wales can now hear suitable cases remotely, to increase the judicial resource available to hear cases from London and the South East.

We are also taking steps to increase capacity, reduce demand and introduce efficiencies to processes at the national level. This includes working to explore proposals to promote the early and consensual resolution of disputes where appropriate and continuing to deliver efficiencies through our Reform programme. Our new digital services for money claims and damages (Online Civil Money Claims (OCMC) and the damages claims portal) is enabling cases to reach hearing readiness three times quicker than our 'legacy' services - currently 9 weeks for claims using the OCMC service compared to 27 weeks for all money claims.

What recent data you hold on the number of sitting days lost in the last 12 months, broken down by court type? [Question 144]

This information can be found in Annex A.

If you will publish or share with the Committee details of all the data attributes recorded in the Common Platform for each criminal case?

The Common Platform has over 400 data attributes and these provide a granular level of information as to any outstanding case progression activity including who is

² Civil justice statistics quarterly - GOV.UK (www.gov.uk)

responsible with this data being available through management information. The system will provide transparency how HMCTS and across criminal justice partner perform against key indicators to improve case management. The Common Platform is delivering an enhanced case progression capability which will provide the ability for Judiciary, defence professionals, CPS and HMCTS court staff to view case readiness in advance of hearing dates through the provision of readiness dashboards. We will provide the full list of data attributes to the Committee in due course.

Crime flags used by the police and CPS provide information about police-recorded offences, but the lack of MoJ data means it is difficult to know how these translate into sentences, or why cases fail. What plans does the department have to add crime flags to its reporting databases, in order to provide more public data on sentencing in areas of public interest such as domestic abuse and hate crime?

‘Crime flags’ in the context of the Criminal Justice System (CJS) are case markers. Common Platform has a set in place, which includes a marker for domestic violence and hate crimes that reflect the CJS Data Standards catalogue definitions and choices which is up to date with the latest changes in respect of the Code of Practice for Victims of Crime.

We are reliant on our CJS partner agencies to enter case markers as soon as a case is initiated by the police, as they send these through the system-to-system interface into Common Platform. However, they can be changed (for example if domestic violence changed to domestic abuse). There is a process for changing these or adding to them, dealt with through the CJS data standards forum on request.

We do also have the capability within HMCTS to select case markers against a case on the Common Platform system, for example in situations where the Police have not provided any case marker, or where it is raised in court that there should be a specific case marker added.

In 2017, the Lammy Review recommended that data should be published to make it “possible to view sentences for individual offences at individual Courts, broken down by demographic characteristics, including gender and ethnicity” (recommendation 12), in order to identify whether there are specific courts where BAME defendants are more likely to go to prison for the same offences. In 2020, the Government told Parliament that actions on this recommendation had been “completed” – yet sentencing data broken down by individual courts still does not appear to be published. Could you clarify to us whether this data will be published?

In 2017 we committed to taking actions against each of the recommendations from the Lammy Review in some way, except for the two for the independent judiciary. Where a recommendation could not be implemented exactly as set out, alternative approaches were sought to achieve the same aim.

As we committed to in 2017 for this recommendation, we have been making more data publicly available. Experts can now access richer data, including on ethnicity and other protected characteristics, through our pioneering data-linking programme - Data First (funded by ADR UK; Administrative Data Research UK). This is providing new insights on justice system users and their outcomes in a way that has not been possible before, by linking data from across the justice system (including the magistrates' and Crown Court, and prisons and probation services) and making it available for independent academic research. The Data First magistrates' courts and Crown Court datasets provide court information for defendants which enables research into offence or demographic breakdowns by court (depending on volumes).

Alongside this, court outcomes for individual offences and protected characteristics are publicly available and can be found in the Criminal Justice Statistics quarterly. This publication produces tools on an annual basis by demographic characteristics, offence information and by Police Force Area. Currently, we can produce data for individual courts, upon request. We will continue exploring ways to develop our data to meet emerging user needs, including the potential to publish more ethnicity data.

My colleagues and I remain committed to engaging closely with the Committee to address any outstanding questions you may have.

Yours ever
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ANTONIA ROMEO

Annex A – Full response to Question 144: 2022 lost sitting days

From 1 January 2022 to 31 December 2022, the number of sitting days lost due to both planned and unplanned estate maintenance across all jurisdictions was estimated to be 773. This represents less than 1% of total sitting days in a typical 12-month period.

Of the 773 lost sitting days, 83 days were due to planned maintenance and 690 days were lost due to unplanned maintenance.

Lost sitting days are distinct from lost courtroom days. Contingency measures, such as relocating hearings to other available hearing rooms or venues, mean that the majority of lost courtroom days do not lead to the loss of a proposed sitting day.

The table below provides a jurisdictional breakdown of sitting days lost due to both planned and unplanned estate maintenance.

Jurisdiction	Sitting Days Lost due to planned and unplanned Maintenance from 1/1/22 - 31/12/22
Civil and Family Courts	89
Crown Court	369
Magistrates' Court	299
Tribunals	16
Total	773