



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary
of State for Justice

The Rt Hon. the Baroness Taylor of Bolton
Chair of the Constitution Committee
House of Lords
London
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28 May 2021

**GOVERNMENT RESPONSE TO THE HOUSE OF LORDS SELECT COMMITTEE ON THE
CONSTITUTION 22nd REPORT OF SESSION 2019-21: COVID-19 AND THE COURTS**

Dear Lady Taylor,

Thank you for your Committee's report on 'COVID-19 and the Courts', published at the end of March as the first part of your inquiry into the constitutional impact of the pandemic. I am grateful to you and the Committee for such a detailed and wide-ranging report.

When I appeared before the Committee to give evidence alongside Susan Acland-Hood, the then Chief Executive of HM Courts and Tribunals Service, back in July 2020, we were the last in a series of witnesses to give oral evidence, starting with the Lord Chief Justice just over a year ago in mid-May 2020. It will therefore come as no surprise to you that a good deal has happened since those oral evidence sessions, and I am pleased to be able to use the opportunity of responding to the recommendations in the Committee's report to provide an update on our efforts both in terms of our response to, but also our recovery from, the impacts of the pandemic.

Since Susan and I gave evidence to the Committee, HMCTS has published recovery plans for the [criminal jurisdiction](#) (September 2020) and the [civil, family and tribunals jurisdictions](#) (November 2020). Those plans continue to be delivered and have had a significant positive impact. We have allocated over £250m to recovery over the last financial year, making court and tribunal buildings safe, rolling out new technology for remote hearings, recruiting an additional 1,600 HMCTS staff and opening additional Nightingale courtrooms.

The Committee's report rightly notes that it was "an essential constitutional requirement for the justice system to keep working through the pandemic", and that is why I am particularly proud that we were one of the first countries in the world to resume jury trials last year. Despite the ongoing challenge of delivering this public service within a pandemic, we have now achieved a restoration of completed cases ("disposals") to pre-pandemic levels. This means that we have stopped the growth in outstanding cases in many jurisdictions, and we are continuing to focus on our recovery across jurisdictions by maximising capacity, improving efficiency and changing policy.

Your report, and its conclusions and recommendations, were split into four themes: impact of the pandemic on the justice system; managing the backlog; data in the courts system; and technology and the future of the justice system. I have therefore included as an annex to this letter my Department's recommendation-by-recommendation response grouped under those same four themes.

I hope that the Committee will take reassurance from this response that we have taken, and will continue to take, the necessary steps to address the important issues that you have raised.

Robert Buckland

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Annex: Ministry of Justice response to the recommendations in the House of Lords Constitution Committee report on ‘COVID-19 and the Courts’

[Paragraph numbers are taken from the report’s ‘Summary of conclusions and recommendations’: [House of Lords - COVID-19 and the Courts - Select Committee on the Constitution \(parliament.uk\)](#)]

1. Impact of the Pandemic on the Justice System

Paragraph 5: We recommend that all future risk assessments prepared by the Government, the Ministry of Justice and HMCTS consider the impact of major threats to the operation of courts and tribunals. The results of those risk assessments should be made publicly available on at least an annual basis, and include a statement of the steps that have been taken to manage the identified risks. It is essential that the operation of courts and tribunals be adequately protected as part of all future Government risk planning.

Paragraph 7: We recommend that the Government publish all papers and minutes relating to Exercise Cygnus including a statement of the actions that were taken in response to its recommendations before March 2020.

HMCTS has in place a Business Continuity Management System (BCMS) to support and ensure the continued operation of the courts and tribunals in the event of any disruption. The BCMS has been developed to comply with the requirements of the Government’s Security Policy Framework and to meet established standards for corporate governance. HMCTS has well-tested plans, policies and procedures in place to reduce its vulnerability and increase its resilience, and a robust network of Gold (National), Silver (Regional) and Bronze (Cluster) commands is in place. It is this framework on which HMCTS has relied heavily both at the onset and then during the course of this current pandemic.

HMCTS has also put in place a programme of activity relating to Business Continuity testing, maintenance and continual improvement, and has invested in the provision of training for staff at all levels across the organisation.

Governance arrangements for the organisation are overseen by the HMCTS Audit and Risk Assurance Committee, reporting into the HMCTS Board, as well as by the executive team on a day-to-day basis. The HMCTS risk strategy was introduced in 2017 and is now well embedded across the organisation. It is at the core of its Risk Management Framework and conforms to the Orange Book cross-government standard. HMCTS publishes an Annual Report and Accounts which includes further details on how risks are managed and assured.

With regards cross-Government risk registers, the National Risk Register is maintained and published by the Cabinet Office’s Civil Contingencies Secretariat every two years. The most recent version was published in December 2020 and can be found [here](#).

Exercise Cygnus was an exercise delivered by Public Health England on behalf of the Department for Health, under the direction of the Emergency Preparedness, Resilience and Response Partnership Group. Working across Government and with a range of stakeholders, the lessons from Exercise Cygnus have both informed the Government’s preparedness for an influenza pandemic, and continue to be considered by Government as part of our response to infectious disease outbreaks. Although the government does not routinely publish reports on exercises such as this, the report on Exercise Cygnus was published in October 2020.

Paragraph 13: We recommend that the Government sets out a timetable within three months for implementing the HMCTS reform programme, including a clear commitment to the funding that will be provided to ensure its prompt implementation.

HMCTS remains committed to delivering the full intended scope of its Reform programme and remains confident that this is achievable and the right thing to do. HMCTS is also committed to delivering this programme on time by the end of 2023, a commitment reconfirmed by Acting CEO, Kevin Sadler, when he gave evidence to the Public Accounts Committee in February of this year. HMCTS reports regularly to both the Public Accounts Committee and the Justice Select Committee on its progress in delivering Reform, and commits to continuing to do so.

Paragraph 14: We recommend that the Government ensures training and guidance is available to all judges and court staff operating virtual hearings urgently and, at the latest, by the end of 2021. It is vital that those working in courts are comfortable with the technology used for remote hearings, and that they adopt a consistent approach to its implementation and use.

Paragraph 25: We recommend that the Government ensures sufficient guidance is available to all judges and court staff on how to facilitate the needs of court users and ensure procedural justice. It is vital that those working in the justice system are sufficiently equipped to cater for common challenges and to secure a fair process for all court users.

Earlier this year, HMCTS launched a comprehensive package of training and guidance on how to use video platform technology to provide administrative support in video hearings. The package includes learning on how to support court and tribunal users and has been developed considering the different learning styles of staff. Learning and support has also been developed and made available to judges through the Judicial College.

HMCTS has also worked to bring forward technical developments to the system that have improved the user experience of intermediaries as well as language and non-language interpreters taking part in video hearings. This has been supported with training and guidance for staff on how to meet the needs of this group of users. Staff also receive training on how to use video technology to protect vulnerable parties, victims and witnesses in remote hearings, and clear guidance is in place on how to consider reasonable adjustments for those court and tribunal users with disabilities or other needs.

Paragraph 18: We recommend that the Ministry of Justice, the Home Office and police forces across England and Wales make concerted efforts to increase the use of video remand hearings as a matter of urgent priority. The Government must report to Parliament on the progress made within six months.

The Ministry and HMCTS continue to maintain a dialogue with the police around progressing the use of video remand hearings (VRH) and the vast majority of forces are still using VRH in instances where there is a suspected or confirmed case of COVID infection. In addition, three forces have given a commitment to operationalise VRH during this financial year and beyond, and one has committed to using VRH for breach of bail and warrant cases until at least the end of June 2021 and potentially for longer. The Police, Crime, Sentencing and Courts Bill will also expand upon and make permanent other measures in the Coronavirus Act 2020 which facilitate remote proceedings across all jurisdictions.

Paragraph 19: We recommend that the Government prepares and publishes a statement setting out: (a) the lessons it has learned from the uneven adoption of new technologies during the pandemic; (b) how these lessons will inform the future development and implementation of the HMCTS reform programme; and (c) how the Government plans to support the courts and other public services to make full and effective use of new technologies introduced in future.

COVID-19 has resulted in a swift transition to the widespread use of audio and video technology for conducting court and tribunal hearings. HMCTS has taken a two-stage approach to research and evaluation of the use of audio and video hearings during the COVID period.

First, it carried out a review between March and July 2020 to quickly develop and improve the audio/video processes that were put in place at pace at the onset of the pandemic. Findings from this review have been used to shape and develop a video hearings continuous improvement plan, which is focused on activities that will improve the efficiency of video hearings, including improving staff capability, designing digital solutions to enable simultaneous interpretation and designing a digital solution to protect vulnerable parties in fully video hearings.

The second stage involves a formal evaluation of these revised audio/video processes. This evaluation will cover hearings that occurred from July 2020 onwards, and its findings will inform our use of audio/video technology through the Reform programme and further into the future, helping us to address issues around user experience, the administration of hearings, staff support for hearings, technology and quality standards. Surveys and interviews with a range of user groups are currently being conducted, and the study is expected to be completed by summer 2021. A research report summarising the findings will be published in the Autumn following an external peer review process.

Paragraph 24: We recommend that the Government provides simple and accessible guidance for ordinary court users, available in advance of remote hearings, providing information on the technological practicalities of attending different kinds of hearing.

Guidance is available for users across all jurisdictions to support them in advance of participating in a remote hearing; people can either access that [here](#) at GOV.UK, or we also have a technical helpline through which support and advice is given on what users can expect through remote hearings. Over the course of the last year, national level guidance and templates have been further refined and updated taking on board user feedback, and a further review of the information provided to users in criminal hearings is taking place in the second half of this year.

HMCTS is also working closely with a team from Oxford University, who are developing a series of online tools to support members of the public taking part in remote hearings.

Paragraph 30: We recommend that the Government further increases the funds available for legal aid to match the reality of need.

The Government remains committed to legal aid and recognises that a sustainable legal aid market is an essential element of ensuring access to justice.

We injected £51m into the criminal legal aid schemes in September 2020 following the completion of the first phase of the Criminal Legal Aid Review. Earlier this year the Government appointed Sir Christopher Bellamy QC to lead the second phase - an independent review of the criminal legal aid system. The review is wide-ranging, considering how to ensure the criminal legal aid system provides high quality legal advice and representation through a diverse set of practitioners, is resilient, and is delivered in a way that represents value for money for the taxpayer. The review is also considering how to ensure the criminal legal aid system supports recovery and improvement of the wider Criminal Justice System. The review will report this year and the government has committed to respond within the year. In the interim, we have launched a Call for Evidence, which is considering the impact of the pandemic on the Criminal Legal Aid System.

We are also considering the sustainability of the civil legal aid market, looking at a range of factors, from the current remuneration rates to the pipeline into a career in legal aid, as well as the ability of providers to offer legal aid services into the future.

Alongside the sustainability work, we are undertaking a comprehensive review of the legal aid means tests, including the financial eligibility thresholds and the wider eligibility criteria. The review is assessing the effectiveness with which the means test protects access to justice, particularly for those who are vulnerable. It will consider the income and capital thresholds for civil and criminal legal aid (which have not been updated since 2008/2009), as well as other areas, including passporting provisions for people receiving certain benefits. The review is scheduled for publication in 2021 and will include a paper setting out policy proposals for consultation.

However, legal aid is only one part of the solution within a wider eco-system of legal support. We are exploring ways to enhance the breadth of legal support available that will benefit everyone in society, focusing on evidence of what works. Since 2015, we have invested £9m into support for litigants in person, which last year was supplemented by our Legal Support for Litigants in Person Grant, providing an additional £3.1m over two years for services across England and Wales. The additional grant builds on the investment already made and is specifically aimed at helping us build our evidence base of a litigant in person's journey through the justice system, helping us to understand what kinds of support works best at different stages of the process. The grant is working with services at national, regional and local levels to demonstrate how partnership working can help strengthen referral routes and improve access to justice for litigants in person. In addition, to help manage the immediate pressures in demand and resource created by the pandemic on the advice sector, last summer we delivered £5.4m in grant funding, £2.4m of which went through the Community Justice Fund (CJF), a joint initiative between a number of key actors and umbrella bodies within the not-for-profit advice sector. The remaining £3m was distributed to individual Law Centres via the Law Centres Network.

We are also committed to working with the advice sector to improve and enhance information, guidance and signposting across the full breadth of legal support available. Through a number of pilots and initiatives, we will build our understanding of what kinds of interventions work for different people and where we can support early intervention in a person's legal problem to ensure that, where appropriate, we avoid unnecessary time and money being spent on cases which could have been dealt with before reaching court.

We are exploring radically different ways to resolve disputes other than through traditional court-room processes. For example, in March 2021 we announced the launch of the £1m

Family Mediation Voucher Scheme to help reduce the outstanding caseload in the family courts. The scheme offers eligible families a financial contribution of up to £500 towards their mediation costs and is designed to support thousands of families settle their disputes more easily and effectively outside of the family court.

In the civil courts we launched in February, a new Government-funded possession mediation pilot, to support landlords and tenants to resolve disputes in possession cases and thus avoid the need for a formal court hearing. The aim is to help more tenants at an early stage of the formal possession process, in order to help sustain tenancies where possible and reduce the risk of tenants becoming homeless.

We know that the COVID-19 pandemic has created a range of challenges for legal aid practitioners both in responding to the challenge of providing their services throughout the lockdown. Throughout the pandemic we have engaged and continue to engage constructively with providers and their representative bodies. We took forward many ideas from the profession to help support them during the pandemic, including expanding the scope and relaxing the evidence requirements for hardship payments in crown court cases and changing the rules of payment on account for civil legal aid practitioners to allow for work done to be paid as quickly as possible. We also halted the pursuit of outstanding debts owed by providers of legal aid to the Legal Aid Agency.

Providers have also been encouraged to use existing avenues of financial help, such as the ability to apply for early payment for work already done on a case, benefitting cashflow in the short-term and ensuring that providers can claim the same amount of money for online hearings as they can for face-to-face hearings. We will continue to engage positively with providers and representative bodies on the reviews underway within the legal aid and wider legal support and dispute resolution sectors.

Paragraph 32: We recommend that HMCTS sets out how it will improve the availability of information in the courts for the press and the public. This should include timely, complete, and consistent court listings (for physical and remote hearings alike), documents relating to cases (such as written arguments in appropriate cases), and free access to all court judgments. This work should be integrated with efforts to improve the collection, management, and publication of data on the courts.

HMCTS is committed to improving the availability of information in the courts for the press and the public, including court listings for both physical and remote hearings.

Court lists are currently published in a number of places: in hard copy on site at courts and tribunals buildings; and/or online through a number of websites. All Crown and magistrates' court lists are now available online (with some exceptions, such as youth court lists, for example).

Media court lists provide additional information to public court lists, and are available on request. The [HMCTS media guidance](#) and [HMCTS Protocol on sharing magistrates' court lists, registers and documents](#) sets out the approach.

We are embarking on a project to consistently publish court lists through a single online platform. We are currently in the early design phase of the project and we are speaking with users - including representatives of the media – to understand their needs and capture requirements. We expect the new 'publication hub', which is being funded and developed as part of the HMCTS Reform Programme, to be launched in 2022.

Separately we are supporting two pilots (being undertaken by third party organisations) which are exploring the publication of magistrates' court listings, specifically for members of the media. The pilots are evaluating the value of processable listings data for improving press coverage of hearings and both have been extended for a further 12 months as a result of the Covid pandemic.

We are also working with the judiciary on developing a coherent approach to the publication of legally significant judgements.

2. Managing the backlog

Paragraph 35: We recommend that the Government provides the assistance and funding necessary to ensure that: (a) all cases in the Crown Court are tried within one year of the plea and trial preparation hearing; and (b) the average time from charge to disposal in the magistrates' courts falls to 8 weeks or fewer. The Government should also report to Parliament annually on the progress made in respect of both matters.

Paragraph 36: We recommend that the Government sets out how it is responding to the fact that court delays appear to have resulted in a reduction in prosecutions and convictions.

Operating the justice system in the context of social distancing has been, and remains, a significant challenge. Taking into consideration that courts are still operating within these constraints, our indicators on current levels of timeliness within the system are positive.

Our internal management information shows that a high majority of cases that had their first hearing in March 2021, where the defendant has pleaded not guilty and been released on bail, have been listed for trial prior to April 2022. The majority of those cases where the defendant is in custody have been listed for trial prior to November 2021. There will be rare exceptions where a trial is listed into 2023, and there are often valid reasons for that to do with the progress of a particular case which include the wishes of the prosecution and defence. Ultimately, decisions on when cases are listed are a matter for the judiciary.

Detailed data on timeliness in the magistrates' and crown courts is already published quarterly, and the most recent figures can be found here: [Criminal court statistics quarterly: October to December 2020 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2020).

We are keenly aware of the need to improve timeliness as far as possible for both defendants and victims. To do this we are maximising court capacity and will run Crown Courts to the fullest possible extent this year, using every judge and available courtroom to maximise court sitting days. This will enable as many hearings to take place as is safely possible.

However, it is important that speed is not prioritised at the expense of justice. How and when cases are listed to be heard in court is a judicial function, and every case will differ in complexity. It is essential that the right amount of time be allowed for the case to be prepared for both the prosecution and the defendant.

With regards the question of the number of prosecutions and convictions, while these are not areas that come under the direct remit of the Ministry of Justice, the Committee's recommendation highlights the importance of agencies working closely together across all aspects of the criminal justice system. This is exactly what is happening, with officials and Ministers from the Home Office, the Attorney-General's Office, the CPS and the Ministry of Justice joining together to drive forward and oversee cross-system recovery work.

Paragraph 39: We recommend that the Government reports to Parliament by the end of 2021 on the steps it will take to reduce the proportion of children on remand in custody. Depriving a child of liberty should always be a last resort and for the shortest possible time. Alternatives to custody, such as enhanced monitoring arrangements, should be utilised wherever possible.

The Committee is right to highlight the number of children on custodial remand as a matter that requires careful and close consideration. Indeed, in response to recent recommendations from the Justice Select Committee, and the Independent Inquiry into Child Sexual Abuse, the Ministry of Justice has recently carried out a review of the use of custodial remand for children and is due to publish its report shortly. This work is the culmination of extensive engagement carried out with a broad range of stakeholders across central and local government, with youth justice partners, the judiciary, the youth voluntary and community sector, and children with lived experiences of remand.

While the review has challenged the widespread view that custodial remand is regularly 'over-used', it has also acknowledged that more can and should be done to limit instances where a child is remanded to a secure setting. The report will highlight areas of best practice and make proposals for improvement, including actions that can be taken in the youth justice system and with key partners to reduce the use of custodial remand for children where appropriate. Alongside this work, we have already taken action through the recently introduced Police, Crime, Sentencing and Courts Bill, to tighten further the tests courts must satisfy in making the decision to remand a child to custody and to require courts to record the reasons for imposing custodial remand.

Paragraph 40: We recommend that any further extension to custody time limits be scrutinised and debated by Parliament before taking legal effect. The extension of custody time limits is a significant policy decision with serious implications for the right to liberty and the rule of law. Adequate Parliamentary scrutiny and debate is essential for a change of such fundamental constitutional importance to take effect.

Pre-trial detention is never considered lightly, and numerous safeguards exist to ensure that custody is used appropriately. In September 2020, the Department legislated to temporarily extend custody time limits (CTLs) from six months to eight months due to the impacts of COVID-19. The extension aimed to minimise the risk that defendants who posed a risk to the public, or those likely to abscond and evade justice, could be released back into the community on bail before their trial was listed. If this had happened, it could have significantly undermined public confidence in the justice system and had a detrimental impact on victims and witnesses.

The extension was intended to be temporary, and it will be. The legislation included a sunset clause so that the measure would not remain in force for any longer than necessary, and on 28 June 2021 CTLs will revert to six months as planned. The Ministry of Justice recognises the significance of policy decisions regarding pre-trial detention, and, should the issue require further scrutiny, the Department will ensure that Parliament is sufficiently engaged on any policy changes.

Paragraph 42: We recommend that the Government explores additional ways to reduce the backlog in the family courts as a matter of urgent priority. Additional funding for temporary courtrooms in suitable buildings, greater use of retired and part-time judges, and greater use of alternative dispute resolution would help to reduce the backlog in the family courts.

Paragraph 45: We recommend that the Government considers how alternatives to litigation might be implemented to alleviate the volume of housing repossession cases awaiting disposal in the courts.

Paragraph 69: We recommend that HMCTS facilitates and encourages greater use of alternative dispute resolution in appropriate civil cases, subject always to the condition that access to justice is secured through its use.

In November, HMCTS set out the steps it was taking to support civil and family courts towards recovery in its [published recovery plans](#). In the family courts, HMCTS committed to look to maximise sitting day levels and focus on improving the number of cases completed to manage the volume of outstanding cases. In the civil courts, the plan set out the intention to maximise judicial capacity, including fee-paid judicial capacity, to begin to reduce the number of cases waiting to be listed.

These steps have allowed us to make progress towards recovery. By the end of the last financial year, we had achieved near-record levels of sitting days in the family court, and since January the number of cases completed has been consistently at or above pre-Covid levels. This has meant that we have been able to prevent any further growth in the outstanding caseload since Autumn last year.

Similarly, in civil justice, we have made good use of additional courtroom capacity, increased numbers of remote hearings, and maximised the capacity of the civil fee paid judiciary to bring us further towards recovery. We are making progress in returning the number of final hearings held to pre-COVID levels, and we have been able to significantly reduce the number of cases waiting to be listed since June last year.

However, we recognise there is more to do to address the challenges still facing the civil and family courts. In the short term, we will continue to maximise the judicial and courtroom capacity we have available, to ensure we can continue to hear as many cases as possible. A key lever to our recovery is maximising the use of our fee-paid judiciary, including those sitting in retirement. For the second year in a row, the Lord Chancellor has approved an increase in the maximum number of sitting days for all Recorders and DDJs: for 2021/22 this increase is to 80 days.

Alongside this, we undertake a regular rolling programme of recruitment for salaried and fee-paid judges across the Courts and Tribunals, and 2021/22 sees our most ambitious ever programme of judicial recruitment. In recognition of the need to increase judicial capacity as part of recovery, the Lord Chancellor approved an increase from 70 to at least 100 in the recent Recorder recruitment exercise which the Judicial Appointments Commission is currently undertaking. Recommendations are due in September. The next recruitment exercise for a further 100 Recorders will commence in early 2022. In addition, the most recent Circuit Judge recommendations are being worked through, with the next exercise due to launch in May. Recommendations for the District Bench are due in May and June, with the next recruitment launching in July and October.

In the family courts, our priority is to continue to improve disposal rates to begin bringing outstanding caseloads down. We continue to work across the family justice system to boost

the throughput of cases, building on steps already taken such as enhancing the role of legal advisors and encouraging the more effective triaging and tracking of cases according to type. The safeguarding of vulnerable children remains our primary focus, and we are closely working with Cafcass to continue monitoring the situation in each local area.

In the civil courts, we will continue to build on the progress we have made by continuing to maximise our judicial and courtroom capacity. We remain committed to investing in the modernisation and digitisation of the civil justice system, and we are continuing to drive the modernisation of our systems through and beyond the HMCTS Reform programme to ensure the future resilience of the civil justice system.

In the longer term, we recognise that court is not the best option to resolve every dispute. We want to improve the system to ensure we are helping families and parties settle their disputes out of court where appropriate. Our ambition is to make England and Wales the best place in the world to resolve a dispute by delivering a justice system where families, businesses, and individuals have access to methods of dispute resolution that are simpler, more accessible and quicker to resolve than being involved in a court case.

As such, we are establishing a programme of work that aims to change the climate and culture of dispute resolution in England & Wales by enabling citizens to access the appropriate level of support at an early stage of a problem, to help them resolve legal problems more efficiently and effectively. As part of this work, we are exploring what currently works and what doesn't as well as a range of different ways to resolve disputes other than through traditional court-room processes, addressing the cultural and structural factors influencing uptake of resolution avenues such as mediation and arbitration, and exploring what might be the most appropriate ways to resolve disputes.

In the family courts, a key focus for this government is to ensure that parents can understand and navigate the family justice system, and easily access the different options available to resolve their disputes, including out-of-court options such as mediation, where safe and appropriate. In response to Covid, in March we announced the launch of the £1m Family Mediation Voucher Scheme to help reduce the outstanding caseload in the family courts. The scheme offers eligible families a financial contribution of up to £500 towards their mediation costs and is designed to support thousands of families settle their disputes more easily and effectively outside of the family court.

In the civil courts we launched in February a new Government-funded possession mediation pilot, to support landlords and tenants to resolve disputes in possession cases and thus avoid the need for a formal court hearing. The aim is to help more tenants at an early stage of the formal possession process, in order to help sustain tenancies where possible and reduce the risk of tenants becoming homeless.

We will be closely monitoring the outcome of these initiatives as we continue to assess further initiatives this government can put in place to support families, individuals and businesses to resolve their disputes out of court where possible, in a way that continues to uphold access to justice, is proportionate and supports users to reach a fair outcome..

Paragraph 47: We recommend that measures to address the backlog be demonstrably effective, well-funded and implemented urgently. Actions taken to reduce the backlog must also be manageable for those working in the justice system, including judges, court staff and legal professionals.

Paragraph 49: We recommend that the Government sets out detailed plans for reducing the backlog of criminal, family and employment cases, including a timeline for implementation.

Paragraph 71: We recommend that the Government sets out clear plans, both short-term and long-term, for addressing the backlog in all jurisdictions, along with timelines and targets for implementation. Clarity is necessary to facilitate scrutiny of the adequacy of the Government's response and to restore faith in the justice system.

We continue to review our recovery plans with our focus on improving timeliness, reducing the outstanding caseload and improving victim engagement. Our published plans for [crime](#) and [civil, family and tribunals](#) continue to be delivered, and have had an impact. In the [Magistrates' Courts](#), HMCTS and the senior judiciary have recently published a plan setting out its ambition to restore court listing and timings to pre-pandemic levels before the end of the year.

Progress so far

We allocated over £250m to recovery last financial year, making court buildings safe, rolling out new technology for remote hearings, recruiting an additional 1,600 HMCTS staff and opening the additional Nightingale courtrooms. We were one of the first countries in the world to resume jury trials and are hearing over 20,000 cases with remote technology per week, up from a standing start last March.

Despite the ongoing challenge of delivering this public service within a pandemic, this has enabled a restoration of completed cases (“disposals”) to pre-pandemic levels. This means that we have stopped the growth in outstanding cases in many jurisdictions, which is set out further below.

Current plans

We are continuing to recover across jurisdictions by maximising capacity, improving efficiency and changing policy. Projections and timeframes on levels of outstanding cases depend on the outcome of the social distancing review, and we will therefore have more details in the summer.

Across jurisdictions, maximising sitting days is key to recovery, which is why the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals have agreed to make available a record number of total sitting days in this financial year.

- We will be running our Crown Courts to the fullest possible extent, with no limit on sitting days, using up the entire court estate, and every available judge. This will help maximise the system to safely hold as many hearings as possible over the coming year – and the impact will depend on when social distancing ends, as this will enable more rooms to be available.
- There will be additional sitting days compared to the 20/21 allocation made available in other jurisdictions, including Civil and Family Courts and the Employment Tribunal.

We are also legislating to improve efficiency and modernise processes. The Police, Crime, Sentencing and Courts Bill will allow for more virtual hearings to support the ongoing use of

live links and remote hearings (using video and audio technology) and underpins the principle of open justice by facilitating access to remote observers.

In the Crown Courts, we are also continuing to explore the role of additional courts (“Nightingales”) to maximise use of those sitting days, alongside consideration of whether changes in court operating hours could be a useful tool to enable more cases to be heard more quickly.

We are looking at ways to increase efficiency across all parts of the Criminal Justice System, to speed up our processes, and make every second of court time count. The new Criminal Justice Action Group bringing together the Ministry of Justice, the Home Office and the Attorney General’s Office is driving forward this inter-agency work.

In tribunals, civil and family courts we will enable the judiciary to safely hold as many cases as possible, through maximising our use of sitting days, continuing to drive judicial recruitment with our most ambitious ever programme this financial year, and making use of fee-paid judiciary including those sitting in retirement.

In the **employment tribunals** specifically, we are working closely with the Department for Business, Energy, and Industrial Strategy on further steps to support recovery. In the **family courts**, we continue to work to boost the throughput of cases, building on steps already taken such as enhancing the role of legal advisors and encouraging the more effective triaging and tracking of cases according to type. In the **civil courts**, we remain committed to investing in the modernisation and digitisation of the civil justice system, and we are continuing to drive the modernisation of our systems through and beyond the HMCTS Reform programme to ensure the future resilience of the civil justice system.

Latest position on outstanding caseloads

- The Magistrates Court saw outstanding cases increase from 410,000 before COVID, to 525,000 last summer. This has been reducing, and now stands at 476,000. Disposals have increased significantly since last March: up from an average of 15,000 cases per week in June, to an average 24,000 February.
- The Crown Court – due to the particular operational challenges of jury trials – has been harder hit. The outstanding caseload has increased from 39,000 before COVID-19 to 57,000 now, a historic high. However, pre-COVID levels of cases completed (over 2,000 per week) have been steady since December. The growth in the outstanding caseload has slowed: it rose by 40% from March to the first week of January 2021, but only 4% between January-March 2021.
- In family courts, pre-COVID levels of disposals were restored by September and have remained broadly consistent, at around 300 cases per week in public law, and 900 cases per week in private law. This has prevented further growth in the outstanding caseload.
- In employment tribunals, pre-COVID levels of disposals of 800 per week were restored last October, and are now higher at around 1000 cases per week. The outstanding caseload, however, is now more than 40% higher than the pre-COVID baseline (50,703, compared to 35,653). It also continues to increase, as demand into the tribunal has increased: the average monthly receipts between October-December 2020 were around 200 extra cases per month compared pre-COVID baseline of 889.

- Most of our tribunals have outstanding caseloads that are either static or already beginning to reduce. For example, the SEND tribunal acted quickly to change its ways of working, move to remote hearings, and expand its capacity. This has meant the tribunal has been able to clear the small backlog of hearings caused by pre-COVID hearing postponements with the outstanding caseload now 2,556, almost matching the pre-COVID baseline of 2,439 (and 13.9% lower than its peak of 3,304 last October). During the entire COVID period, the SEND tribunal has disposed of nearly 10% more cases than it was achieving in the pre-COVID period, and has not had to postpone a single hearing since March last year.

Paragraph 52: We recommend that the Government be required to explain precisely how they are using the Nightingale courtrooms, how many cases are being heard in each of these new venues, and the factors it takes into account when identifying new venues for additional Nightingale courtrooms.

HMCTS' priority is to continue to hold as many hearings as possible while operating safely within public health guidelines. Alongside our increased use of the Cloud Video Platform to support remote hearings, and the installation of screens to ensure that our existing estate can be used to the maximum extent possible, we have increased our operational capacity further through our programme of Nightingale venues, which has allowed us to provide temporary non-custodial courts where there is an operational requirement for additional capacity.

When establishing that requirement we have looked at: the current number of non-custodial cases in that region; of those, the number of cases that are considered suitable for a hearing within a Nightingale courtroom; the estimated number of days that such cases would take; the number of jury trial courtrooms already in operation in the region; and the number of additional rooms we would require to hear the outstanding cases.

While not a determining factor, we also consider proximity of staff, judiciary and practitioners when planning Nightingale locations. That is, we prioritise venues in locations where HMCTS already has a presence, as it is more practical for staff, judiciary and justice partners to attend a locality close to one which they already visit, rather than a more remote location.

In selecting suitable venues in those locations, we then take into account the following: the venue's suitability for the type of work intended to be heard; the ability to hold the hearings safely and securely (i.e. the capacity to accommodate socially distanced jury trials); the need for additional physical alterations or other mitigations and the cost and time required to do so; the overall costs of hire set up and operation of the venue; the length of the available lease to ensure that we are able to operate the venue for long enough to justify start-up costs; and whether the venue offers full and sole access to the leased accommodation for the full term of the licence period so that we will not face competition for the use of the space.

We have also broadly approached the nature of Nightingale tenure in the following order of preference: venues owned by HM Courts & Tribunals Service/ Ministry of Justice and venues owned by Local Authorities which we have hired under licence; properties owned by the third sector (charities, universities, the arts) and criminal justice system partners; and finally properties owned by private sector landlords.

A list of open Nightingale courts is kept updated on GOV.UK here:
<https://www.gov.uk/guidance/courts-and-tribunals-additional-capacity-during-coronavirus-outbreak-nightingale-courts>

Paragraph 54: Given the severity of the backlog in the Crown Court and the urgent need to clear it, we recommend that urgent cases and jury trials continue to be heard in a physical setting where no alternative is feasible. The Government must continue to ensure that courts are as safe as possible during the pandemic.

Throughout the pandemic, HMCTS has worked to facilitate judicial decisions on whether a case is heard remotely or in-person, by enabling remote hearings where directed or ensuring that physical hearings take place in Covid-secure settings.

The health and safety of all those using our buildings is paramount. We have taken action across the estate to put safety controls in every building, including limits on the number of people, plexiglass screens, face coverings, and regular cleaning. Everything we do is kept under regular review and is subject to independent audit. HMCTS' Covid mitigation measures have been endorsed by public health experts and meet government guidelines. HMCTS will continue to be guided by the advice from public health agencies and will adapt our mitigation measures to meet any changes in the advice and guidance as we progress through and beyond the Government's roadmap. HMCTS will always ensure it meets its statutory health and safety duties, identifying Covid-related hazards and then assessing and controlling the risks.

Paragraph 55: We recommend that the Government takes additional steps to encourage and facilitate remote hearings, especially when the risk of infection is at its highest. The decline in the use of the Cloud Video Platform suggests a missed opportunity to keep court users safe by holding more hearings remotely.

The use of remote technology platforms, including the Cloud Video Platform (CVP), has been vital in keeping our courts and tribunals running throughout the pandemic, with a clear public health benefit to allow people to stay at home. Usage has been consistently high, and across CVP and other remote platforms, we have around 20,000 hearings per week with remote participants. The number of face-to-face, video and audio hearings is published monthly as part of our management information statistics:

<https://www.gov.uk/government/collections/hmcts-weekly-management-information-during-coronavirus-outbreak>

Quickly switching to remote hearings has been a huge achievement, both in terms of rollout of technology – now covering 70% of our 2,500 courtrooms – and the quick changes in ways of working by judges, lawyers, and users.

Use of remote hearings has responded to the risks of infection in the community: in January, in line with the return to nationwide restrictions, the Lord Chief Justice confirmed that remote attendance of those involved in hearings should be the default position in all jurisdictions where possible. Judges will consider the facts in the round, including the nature of the matters at stake and any problems that remote hearings may present, when deciding if a case is suitable for a remote hearing.

Alongside enabling more remote hearings, we have adjusted our physical courtrooms to provide COVID-safe environments for cases that need to be heard in-person. This has been vital for cases such as jury trials.

Paragraph 57: Before extending court operating hours, we recommend that HMCTS ensure that it is making maximum use of normal court hours, existing court estate and Nightingale courtrooms, as well as avoiding any restrictions on judges sitting.

Enormous progress has been made on maximising the use of the existing HMCTS estate and extending it further, and we are not ruling out options that could help efforts to tackle the impact of the pandemic on the justice system.

Through the investments made in court and tribunal recovery, we have increased physical and remote capacity – opening 60 new Nightingale courtrooms, making over 400 rooms COVID-secure, and hearing cases remotely when possible.

We are maximising court capacity and will run Crown Courts to the fullest possible extent by setting no limit on the number of days Crown Courts can sit for the next financial year, using every judge and courtroom to maximise court sitting days to further tackle outstanding cases. In tribunals and civil and family courts we are looking to enable the judiciary to safely hold as many cases as possible, through maximising our use of sitting days, continuing to drive judicial recruitment, and using the fee-paid judiciary to maximise the judicial capacity we have available.

Consideration is continuing as to whether changes in court operating hours could be a useful tool alongside these measures to help ensure cases can be heard in court more quickly.

Paragraph 59: We recommend that further funding be made available to HMCTS to significantly increase the number of Nightingale courtrooms open by the end of 2021.

The Nightingale programme has provided additional physical capacity where it is needed. We successfully met our ambition to achieve 60 courtrooms by the end of March 2021, which included 32 rooms for hearing Crown Court jury trials.

In addition to the capacity provided by the Nightingale programme, we have made over 290 courtrooms safe to hold jury trials and over 120 courtrooms for non-jury trial work across 79 Crown Court sites. We have also carried out estate works on around 70 court rooms to increase capability to hear multi-hander trials of up to 10 defendants.

As reflected in the removal of any limit on sitting days this year, we are ambitious with regards to maximising capacity in the Crown Court. We will continue to consider the options for capacity and the role of Nightingales in delivering that ambition.

Paragraph 60: We recommend that the Government further increases the number of sitting days, particularly in the Crown, magistrates' and family courts and in employment tribunals.

Maximising sitting days is key to recovery, which is why the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals have agreed record sitting days in total over the next financial year.

We will be running our Crown Courts to the fullest possible extent, with no limit on sitting days, using up the entire court estate, and every available judge.

There will be additional sitting days compared to the 20/21 allocation made available in other jurisdictions, including Civil and Family Courts and the Employment Tribunal. This will enable the judiciary to safely hold as many hearings as possible over the coming year as we continue to respond to and recover from the pandemic.

Paragraph 63: We recommend that the Government takes additional steps to further enhance judicial capacity. Shortages in the number of available judges could be alleviated through greater use of recorders in the Crown Court and further investment in the recruitment and training of new judges.

A key lever to recovery is maximising the use of the fee-paid judiciary: for the second year in a row, the maximum number of sitting days has been increased for all Recorders. For 2021/22 this increase is from 30 to 80 days.

Alongside this, a regular rolling programme of recruitment is undertaken for salaried and fee-paid judges across the Courts and Tribunals and 2021/22 sees the most ambitious ever programme of judicial recruitment. In recognition of the need to increase judicial capacity as part of recovery, the Lord Chancellor approved an increase from 70 to at least 100 in the recent Recorder recruitment exercise which the Judicial Appointments Commission is currently undertaking. Recommendations are due in September. The next recruitment exercise for a further 100 Recorders will commence in early 2022.

Judicial training is the statutory responsibility of the Lord Chief Justice and exercised through the Judicial College. Newly appointed judges complete a jurisdictional specific induction training programme delivered by the College, followed by 5-10 sitting in days, before they can sit in court. For the 2021/22 training year, the most recently appointed criminal recorders will receive training in December and January, public and private family law inductions will take place between November to March and civil recorders will be inducted in March 2022.

Paragraph 65: We recommend that the Government continues to pilot remote jury trials as a further potential solution to the significant criminal trial backlog.

In England and Wales, we have been closely following Scotland's model of remote jury trials and the JUSTICE mock remote jury trials.

The existing legislation in England and Wales means that we cannot currently use this measure. However, we are legislating to allow for remote jury trials within the Police, Crime, Sentencing and Courts Bill.

This is an enabling provision. Any implementation would require careful consideration of factors including maintaining fair access to justice and cost.

3. Data in the courts system

Paragraph 74: We recommend that HMCTS sets out plans for implementing each of the Byrom recommendations that it has accepted, the steps that will be taken, and the timeline for doing so.

Paragraph 75: We recommend that the Ministry of Justice sets out in greater detail its plans for data reform across the courts service, specifying the short- and longer-term projects that will be implemented to enhance the collection, analysis and publication of courts data.

Paragraph 84: We recommend that HMCTS sets out its plans for collecting the 13 data points identified by Dr Natalie Byrom for assessing the vulnerability of court users. This should include a clear commitment to collecting this data across all court services, both physical and digital, within specified timeframes.

Paragraph 87: We recommend that HMCTS sets out specific deadlines and targets for the collection, evaluation and publication of data on the protected characteristics of court users.

HMCTS is working on the recommendations set out in the Legal Education Foundation's 2019 "Digital Justice" report as an integrated part of the Reform programme. We published our response to the report in October 2020 and will issue further updates, including our plans to enhance the collection, analysis and publication of courts and tribunals data, in the Autumn.

Paragraph 78: We recommend that HMCTS sets out what steps it will take to catalogue available courts data, including clear timelines for making appropriate data available to the general public.

Paragraph 80: We recommend that HMCTS prioritises the collation of data that will enable it to identify, and the public to scrutinise, the effects of the increased use of digital technology on non-professional court users.

Paragraph 82: We recommend that HMCTS sets out its strategy by the end of 2021 for analysing: (a) how different categories of individuals use courts and tribunals and (b) what barriers to access there are for non-professional users.

We agree the Committee's recommendations regarding data cataloguing and collation and will set out plans in more detail as part of the further update to be provided with regards progress made following the "Digital Justice" report. These plans will include actions to collect, analyse, and provide appropriate access to data relating to the vulnerability of court users.

It is a fundamental principle of the Open and Shared Data initiative that forms part of our work in this area that all data are shareable within the limits of the law and the public interest.

Paragraph 89: We recommend that HMCTS collects data on remote hearings and corresponding case outcomes so that the effects of remote hearings can be analysed and published.

Data are being collected on remote hearings and remote hearing case outcomes. These data already form part of the ongoing analysis and continuous improvement of our services.

The Ministry has also recently published the framework for the evaluation of the Reform programme as a whole [here](#). This includes an analysis of the impacts of remote hearings, including on case outcomes.

More detail on the work underway to analyse and improve the remote hearings service can be found in the response to paragraph 19.

4. Technology and the future of the justice system

Recommendation 93 - We recommend that the Government continues to invest in and develop the technology for remote hearings and the guidance to support it, learning from its use during the pandemic. There should be an ongoing process of engaging with researchers and the legal sector to ensure that access to justice is secured during the development and implementation of technology to facilitate remote hearings.

The Reform programme is delivering a bespoke video hearings solution, the Video Hearings Service, developed specifically for court and tribunal hearings. The service replicates the formality of a physical hearing and has a user interface, features and support designed to meet the needs of the judiciary and parties attending. The Video Hearings Service was not ready to be used at scale during the pandemic. It is now in use in tribunals and will be implemented across jurisdictions during the Reform Programme. The use of audio/video technology for any given hearing remains subject to judicial discretion.

The design and development of the Video Hearings Service has been overseen by a Judicial Working Group and informed by extensive user research, including the findings from use of audio/video technology during the pandemic. As part of its continuous improvement approach, the video hearings project seeks direct user feedback through surveys and interviews with all types of court user. A focus group of legal professionals has been created comprising representatives from the Law Society, Bar Council and CILEX. This group, and others, will continue to influence the development of the service to ensure it continues to meet the needs of its users.

More broadly, the Department is carrying out an overarching evaluation of the HMCTS Reform Programme to understand what effect Reform has had on outcomes and access to justice. The evaluation framework for the overarching evaluation of the HMCTS Reform Programme has recently been published and can be found [here](#). The evaluation framework describes the evaluation's methodological approach, including its theory of change, individual research projects and the methodological challenges of evaluating reform. It also describes the role of the evaluation's judicial and academic advisory groups, planned publications and next steps.