

Written evidence submitted by The Law Society of England and Wales (CCB0001)

1. The Law Society of England and Wales is the independent professional body that works globally to support and represent 200,000 solicitors, promoting the highest professional standards and the rule of law.
2. The Law Society welcomed the National Audit Office's (NAO) report on the Crown Court backlog. It painted a compelling picture about the backlog, highlighting the significant challenges facing the courts. Most importantly of all, it highlighted the serious toll delays take on victims, witnesses and defendants.
3. The report focused on shortages of lawyers in the system, the state of the courts estate and the other factors contributing to the backlog. While the pandemic has worsened the problems facing the Crown Court backlog, it did not cause them and many of these issues were already chronic to the system.
4. We have focused our evidence on some of these challenges and the steps that must be taken to resolve them.

Crown Court backlog data

1. The most recent data puts the backlog in the Crown Court at 67,600 outstanding cases at the end of December 2023, this was the highest end-of-quarter total ever recorded.
2. However, since then, no new data has been published on the level of the backlog. This is due to a statistical error, believed to date back a number of years. This is extremely concerning as it leaves the Government, the professional bodies and most importantly, the public in the dark as to the true level of the backlog.
3. Without accurate data, it is impossible to seriously address the backlog including the ability to accurately ascertain where the backlogs are more pronounced and which courts/regions require additional resource. This issue must be resolved with the utmost urgency. While the Government commissioned data audit is welcome, there must be clarity on when this will be completed.
4. The Ministry of Justice should publish an expected timeframe for when the data issue will be addressed, outline what steps it has taken to address the issue and confirm, as soon as it is able, how far back the issue goes and what the actual current level of the Crown Court backlog is.
5. The Ministry should also confirm that other statistics across the criminal and civil courts are not similarly affected and are robust.

Addressing the Crown Court backlog

6. Little progress has been made to address the Crown Court backlog in recent years. While the previous Government targeted a backlog level of 53,000 cases, no substantial progress has been made on reaching this level. Under the current Government, a new target has not been set.
7. The Law Society believes a target should be set to help maintain public confidence in the justice system, show progress on achieving the Government's mission to tackle crime, and to show the Ministry of Justice is serious about bringing the backlog down to manageable levels.
8. A number of steps can be taken to help bring the backlog down. Judicial sitting days should remain uncapped for the foreseeable future, so the system can bring as many cases to trial as it has capacity for. While the Government has said it has increased sitting days by 500, there is still a cap in place.

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9. Human capacity in the system must also be increased – ensuring that there is sufficient judicial and court staff resource as well as lawyers in the system. Since 2017, over 25% of criminal duty solicitors, who provide representation at the earliest stages of a case have left the system. Without a sustainable criminal legal aid system, the backlogs will only worsen. To address this, all criminal legal aid rates should be increased by 15%, in line with the Bellamy Review.
10. Following the Law Society’s successful Judicial Review, it was recognised by the High Court that the system is “*coming apart at the seams*”. If the Government is serious about addressing the backlog, it must take a whole system approach to justice to ensure that criminal legal aid work is funded properly.
11. The NAO report recognised that the MoJ must work more closely with partners across the justice system to share intelligence and take coordinated action to respond to changes in policy. This must include criminal defence practitioners, as well as the prisons, police and other government departments.
12. The MoJ must also address court repair issues. While the NAO has said these are not currently affecting disposal rates, they may do so in the future. Research by the Law Society found in 2022 that 64% of members surveyed in the previous 12 months had experienced a delay to a hearing due to the state of the courts.¹
13. The court closure programme before the pandemic had a significant impact on court capacity and meant that there was limited additional space to use when the pandemic began. Nightingale courts have helped respond to this and funding must be kept in place to continue to run these.
14. It is welcome that the Government previously committed £200m to addressing repair issues. This funding should be topped up once it runs out in March 2025, so we do not see repair issues begin to worsen the backlog.
15. The Ministry of Justice secured an increase of around 5% at the recent Budget. The Ministry must confirm how this funding will be used to address the backlog, what plans it has to increase human capacity in the system and what funding will be committed to repair issues.

Technology in the Crown Court

16. Technology also has a role to help address the backlog in the Crown Court and should be utilised effectively to do so. Remote hearings for example can be an effective tool for administrative and case management hearings. However, our members have told us their use can be inconsistent.
17. While listing is a judicial function, and must remain so, it is important that a consistent approach is taken to how remote hearings are used in the system. Some judges will use remote hearings for administrative type sessions, while others still insistent on them being in person.
18. We call on the Ministry of Justice and HMCTS to work with the judiciary to ensure that the most effective use of remote hearings is being made, so courtrooms are being used effectively across the estate to help address the backlog.

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¹ <https://www.lawsociety.org.uk/campaigns/court-reform/news/five-point-plan-to-fix-court-backlog>