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Why better court data is vital to address the backlog created by COVID-19

1. Background: the courts backlog

During the COVID-19 pandemic, despite increased use of remote hearings and other changes to working practices, the backlog of cases waiting to be heard in the court system has grown dramatically, reaching record levels in the crown court. HMCTS has announced a [recovery programme](#) to tackle the backlog, with measures including COVID-secure ‘Nightingale courts’, additional remote hearings, and longer court opening hours. Government has provided courts with £142m extra funding to upgrade court buildings and technology.

2. How poor data affects the response to the backlog

The absence of both data and robust governance for managing data undermines the court service’s ability to tackle the backlog effectively in the following ways:

2.1 It undermines the ability to develop cost-effective and sustainable solutions

HMCTS does not have robust data on the nature of the case backlog, whether the measures to address it are working, and the broader impact of those measures.

- HMCTS also does not have robust data on the speed, cost, and outcomes of different approaches to tackling the backlog. This undermines its ability to compare approaches to tackling the backlog (such as comparing the failure rate of different online and telephone platforms used to support hearings or the efficacy of extended court hours), and to secure buy-in across the courts system for these initiatives
- The impact of remote hearings on case outcomes is also unclear, as HMCTS’s case management systems in most jurisdictions [do not record](#) whether cases are being heard remotely. It is also unclear whether HMCTS collects evidence on the impact of delays by case type or complexity, and whether it uses this evidence to prioritise cases for listing.
- There is little reported data on the distribution of backlogs by area or case type (in particular, there is likely to be substantial geographical variation, as listings are at the discretion of local courts).
- Data is not reconciled across different parts of the justice system e.g. police estimates of backlogs vary from those provided by the court service. The absence of consistent, agreed data makes it impossible to accurately assess the cost of delays in the court system (or the cost of measures to address the backlog to other parts of the justice system).

Case study: Virtual remand hearings

As long as social distancing remains in place, remote hearings will be a key tool in reducing the backlog. For these to work, HMCTS needs to resource them effectively, which means modelling their cost. As early as 2018, the [Public Accounts Committee warned HMCTS](#) that it was failing to take adequate account of the financial consequences of virtual remand hearings for other parts of the justice system. During the pandemic, police forces have supported the delivery of virtual remand hearings from custody suites. However in October, [it was announced that the police would be withdrawing their support](#) for such hearings because running them is not financially or operationally viable. HMCTS’s past failure to accurately model the financial resources needed to deliver remote justice has led to virtual remand hearings being put at risk, just when they were needed

2.2. It undermines the ability to use automation to reduce the backlog

Via the [court reform programme](#) (which predates COVID-19), Government has committed to a £1bn investment in improving the technology available to the justice system and creating digital end-to-end services. This is a fantastic opportunity - however, unless basic data issues are tackled first, the justice system may remain unable to realise the benefits of this investment.

Case study: The Continuous Online Resolution Pilot

The failure of the Continuous Online Resolution pilot developed in the welfare benefits tribunal illustrates this point. Figures in 2019 showed that nearly two-thirds of welfare benefit appeals were successful, but that delays in the tribunals system meant that vulnerable people were waiting months without their entitlements. The Continuous Online Resolution pilot aimed to help appellants to get a decision on their cases faster, reducing delays and backlogs. However, this pilot was abandoned in part because identifying eligible cases was too resource-intensive and not enough of the onboarding process could be automated, due to a lack of basic data to identify eligible cases. If better basic data was available on case characteristics and appellants, the prospects for automating aspects of onboarding and case management improve, as do the prospects for data analysis, and this investment will be better-spent.

2.3 It makes it difficult to encourage the use of alternative dispute resolution to reduce the pressure on courts

Across the civil courts, reducing the backlog will require court users to choose alternative dispute resolution pathways, such as mediation. Currently, court users are not provided with accurate information to make informed choices on different routes, such as the expected level of outcome, time to resolution etc. **Attempts to encourage more people to mediate by switching from an opt-in to opt-out process in small claims have actually resulted in a decline in the number of users opting to mediate.** Better information on mediation outcomes could encourage users to use this route rather than the court system, while better data on court performance could help private mediation providers to benchmark their services and encourage uptake.

2.4 It undermines the courts' ability to ensure access to justice, risking a rise in appeals or cases returning to court

Reducing pressure on the court system requires that trials are effective and unnecessary appeals avoided. The EHRC and numerous legal advice organisations have raised concerns about the impact of remote hearings on court users who are digitally excluded. Currently, cases where a party is likely to experience digital exclusion are not identified prior to listing, so it is not possible for court staff to take action to support such users. In addition, even newly implemented case management systems (such as Common Platform) do not capture data on protected characteristics, so it is not possible to assess whether remote hearings affect particular groups differently. **This risks undermining the fairness of proceedings, increases the likelihood of appeals, and risks cases returning to court avoidably, compounding the backlog.**

3. Underlying data issues

The issues underlying the failures above are long-standing and well-documented. We identify four key underlying failures, as follows:

- **Basic management data is not routinely collected:** Key information is missing from existing datasets: missing data includes basic management information, such as data on the number of judges who sit over a given period of time in the county courts, data on hearing type and duration, data on case type or outcome and data on legal representation. Data on court users is inadequate: for example, data is currently not routinely collected on

protected characteristics, users requiring reasonable adjustments to participate or other attributes to identify the number of users requiring support in the court system.

- **Data standards are not routinely used:** For example, listings data is not standardised across different courts, despite all courts using the same software to produce lists. Across the different criminal justice agencies (police, prosecutors, courts, prisons and probation) standards for recording data such as dates, places and names are inconsistent, making it difficult to link data on individuals and therefore understand paths through the system and identify causes of delay.
- **Linking data on individual court users is difficult and expensive:** Data is recorded at the case level rather than the individual level, making it expensive and time-consuming to study user journeys.
- **Data governance is under-developed, undermining confidence in data sharing:** Prior to 2020, HMCTS did not have a data governance mechanism capable of representing the views of all parties to the framework agreement. A governance model has now been developed, but this is currently funded by research councils and charitable funders. The nascent state of data governance within the organisation undermines confidence in data sharing.

4. Recommended immediate next steps

HMCTS has already [received](#)¹, and [agreed in principle to implement](#), a data strategy that would address the deficiencies in their data infrastructure. However, progress on implementation has been slow and ring-fenced funding to deliver this work has not materialised. The Ministry of Justice must now ensure that ring-fenced funding from Spending Review 2020 is dedicated to expediting the work to improve data that has already been agreed to, allocate funding for this work through Spending Review 2021 and commit to a detailed public timetable for implementation to ensure they are accountable for progress.

¹ As set out in the [Digital Justice Report](#), published in October 2019.