

Written evidence submitted by the Legal Education Foundation

1. We are grateful to the committee for undertaking this vital and timely inquiry. As is stated in the National Audit Office report¹, COVID-19 has compounded the existing case backlog in the criminal courts. In the year leading up to the pandemic, the Crown Court backlog had already increased by 23%. (from 33,290 to 41,045 cases). Since the onset of the pandemic this backlog has increased a further 48% to 60,692 cases by the end of June 2021². We endorse the view presented by the National Audit Office that the criminal courts backlog will remain: “a problem for many years to come”- exacerbating the suffering experienced by victims, witnesses and defendants. Tackling the backlog is arguably the most pressing and fundamental challenge facing the justice system over the next five years.
2. In response to the backlog, the Ministry of Justice and HMCTS have introduced a number of measures, including investing in Nightingale Courts, increasing the use of remote hearings, removing sitting day limits and expediting the roll out of the Common Platform³. The Ministry of Justice has been awarded a significant amount of public money to address the backlog from the Treasury- £477m was allocated to the criminal justice system through the 2021 spending review⁴.
3. Managing Public Money principles state that accounting officers have a duty to ensure that their organisation uses resources: “efficiently, economically and effectively, avoiding waste”⁵. They are also tasked with ensuring that their organisation: “uses management information systems to gain assurance about value for money and the quality of delivery.”⁶ As a consequence of the failure to collect basic data, we are concerned that the Ministry of Justice and HMCTS have the capacity to ensure their organisations are upholding these standards and delivering value for money for the taxpayer.

¹ Comptroller and Auditor General (2021) “Reducing the backlog in criminal courts” Session 2021-22 22, October 2021 HC732 available online at:

² Ibid pp6.

³ <https://www.lawgazette.co.uk/news/early-users-warned-hmcts-about-common-platform-problem/5110270.article>

⁴ It has been acknowledged by Justice minister James Cartlidge in the House of Commons that this funding will only support a reduction in the backlog of 7,000 cases over three years- see <https://www.lawgazette.co.uk/news/sunaks-millions-will-cut-case-backlog-by-just-7000-government-admits/5110479.article>

⁵ Managing Public Money pp19.

⁶ Supra note 5

4. For example, Her Majesty’s Courts and Tribunals Service (“HMCTS”) does not gather robust data on the speed, cost, and outcomes of different approaches to tackling the backlog. This undermines their ability to compare the efficacy of approaches (such as comparing the failure rate of different online and telephone platforms used to support hearings, or the efficacy of Nightingale Courts versus remote hearings in addressing backlogs). The impact of remote hearings on case outcomes is unclear, as HMCTS’s case management systems do not record whether cases are being heard remotely. 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). The National Audit Office report highlights the dearth of reliable data to evaluate the impact of the backlog, or measures to address it, on vulnerable and ethnic minority users of the justice system⁷. In the absence of this data, it is impossible for MoJ and HMCTS to assure themselves that the £477m investment made by the Treasury is being spent efficiently and effectively.

5. Publicly, the current Lord Chancellor⁸ has suggested that the department faces a choice between investing in data and tackling the backlog. **This is a false dichotomy- it is only through investing in data that the Ministry of Justice and HMCTS can assure themselves that they are effectively tackling the backlog and delivering value for money.** The data gaps are so basic that the current situation is equivalent to the government choosing to roll out a vaccine programme and not capture data on how many vaccines have been administered, how much these vaccines cost or whether they are effective in preventing illness.

6. This framing of the issue is particularly frustrating as, through the ongoing £1bn court reform programme, HMCTS **has** received significant investment in improving the organisation’s data collection capabilities. The court reform programme has provided HMCTS with the opportunity to address systemic and longstanding issues with the information it collects and stores. HMCTS have previously been warned by this committee (in March 2021) of the consequences of failing to collect the data they need to direct and assess their response to the backlog⁹. The Treasury Minute response submitted by the Ministry of Justice was lacking in detail on the action being taken to improve data collection through delivering on commitments made in response to the 2019 Digital

⁷ Supra note 1 pp 8

⁸ The Deputy Prime Minister and Lord Chancellor Dominic Raab, speaking at the Conservative Party Conference on 5 October 2021 stated that: “The difficulty with all of these things is collating the data...do I want to spend resources on that or on getting the backlog down?” see: <https://www.lawgazette.co.uk/news/court-backlog-may-not-return-to-pre-pandemic-levels-for-another-year-raab/5110047.article>

⁹ https://publications.parliament.uk/pa/cm5801/cmselect/cmpublic/1190/119005.htm#_idTextAnchor002

Justice report¹⁰. Instead, the Treasury Minute response promised an update which would be published in autumn 2021.

7. On 6 December 2021, HMCTS published the progress update¹¹ they committed to in their Treasury Minute. Disappointingly, this update demonstrates little progress- especially in relation to data relevant to this inquiry¹². A data catalogue (describing what data is held where), remains incomplete, despite that fact that HMCTS has received external funding from ADR-UK to support its production¹³. The only mention of action to improve the data captured on the criminal courts states: *“We are also working with other government departments, particularly colleagues across the Criminal Justice System, to facilitate the development of common approaches to data collection.”*¹⁴. In their previous oral evidence to this committee in February 2021, witnesses from MoJ and HMCTS emphasised the importance of Common Platform in improving the data available on the criminal justice system¹⁵. The rollout of Common Platform has been beset with difficulties and was paused in August and September of 2021¹⁶ due to issues which were reported to create severe delays. These issues have been described as avoidable¹⁷. As of 15th November it is still unclear whether the problems with Common Platform have been fully resolved¹⁸. An HMCTS data strategy, published alongside the update, provides little detail and few concrete milestones against which progress can be assessed. Only four targets are set for the end of 2023¹⁹, none of which relate to improving data collection²⁰. The lack of progress and absence of a detailed plan demonstrates a failure to grip the situation with the urgency that that the crisis created by the backlog requires.
8. In the 2021 Spending Review the Ministry of Justice received a ‘windfall’ settlement²¹ of 4.1% real terms increase in day-to-day spending (£1.7bn in cash terms). It is vital that a significant

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925341/HMCTS_Making_the_most_of_HMCTS_data_v2.pdf

¹¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038714/HMCTS_Data_Update_December_2021.pdf

¹² Ibid per page 4

¹³

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1038714/HMCTS_Data_Update_December_2021.pdf pp6

¹⁴ Ibid per page 4

¹⁵ <https://committees.parliament.uk/oralevidence/1791/default/> pp 6, 10,11, and 14

¹⁶ <https://www.lawgazette.co.uk/news/lcj-reveals-new-platform-for-remote-hearings/5110121.article>

¹⁷ <https://www.lawgazette.co.uk/news/early-users-warned-hmcts-about-common-platform-problem/5110270.article>

¹⁸ <https://www.lawgazette.co.uk/news/union-ballots-hmcts-staff-over-common-platform-rollout/5110543.article>

¹⁹ One of which is the production of the data catalogue

²⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039270/HMCTS626_Data_Strategy_v3.pdf pp11

proportion of this settlement is invested in creating the infrastructure to close critical data gaps. If this investment is not made, the Ministry will remain unable to accurately assess which policies are working to reduce the backlog. Lack of data will continue to undermine the ability of the department to understand what works, design effective policies and deliver value for money for the taxpayer. By acting decisively now within the confines of the generous spending review settlement, Ministers have an historic opportunity to address the issues with data that have been identified and create the right data infrastructure to support the justice system well into the future.

December 2021

²¹ <https://www.lawgazette.co.uk/news/budget-21-moj-set-for-windfall-with-41-real-terms-increase-by-2025/5110300.article>