

January 2021



**The Bar Council**

**The Bar Council  
Budget Submission**

## About us

The Bar Council represents over 17,000 barristers in England and Wales. It promotes the Bar's specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

A strong and independent Bar exists to serve the public and is crucial to the administration of justice, making a vital contribution to the efficient operation of criminal and civil courts and alternative dispute resolution. It provides a pool of talented lawyers, from increasingly diverse backgrounds, from which the vast majority of the senior judiciary (and most of the overall judiciary) is drawn, and on whose independence the rule of law and our democratic way of life depend.

## Key Facts and Figures

- Legal services contributed £22.2bn to the UK economy in 2018 and produced a trade surplus of £5.9bn in 2019.
- Legal services generate 1.2% of UK Gross Value Added and employ over 350,000 people across the country, two-thirds of whom are based outside London.
- Major centres of legal services employment include Manchester (14,000 in employment), Birmingham, Bristol and Leeds (9,000 each) and Liverpool (7,000).<sup>1</sup>

## Background

In recognition of the ongoing Covid-19 pandemic, and having recently produced a submission to the Government's 2020 Spending Review<sup>2</sup>, the Bar Council makes four short term recommendations in this Budget submission, including the court backlog, legal aid and ensuring there is enough court staff to operate courts.

## Summary

We call on HM Treasury to urgently invest in our justice system by implementing the following four recommendations:

1. **Create 42 (to bring overall numbers to 60) additional Nightingale Courts to help ensure that courts can progress hearings safely during the pandemic and help clear the backlog.**
2. **Invest £55m for HM Courts & Tribunals Service (HMCTS) to recruit and retain more staff to help respond to increased demand on court staff as a result of Covid-19.**
3. **Make non-means tested legal aid available for all domestic abuse cases.**
4. **Introduce early access to legal advice for social welfare issues.**

## **Recommendation 1: Create 42 additional Nightingale Courts to help ensure that courts can progress hearings safely during the pandemic and help clear the case backlog.**

An efficient, effective and respected justice system needs a court estate which is fit for purpose. The current court estate is not fit for purpose in scale or condition. Since 2010, eight Crown Courts<sup>3</sup> (out of 92) and 164 Magistrates' Courts have been closed (out of 320)<sup>4</sup>, as well as 90 County Courts (out of 240), 18 tribunal buildings (out of 83) and 17 family courts (out of 185). That is a total of 297 closures, leaving an estate of approximately 350 buildings. There are now backlogs throughout the entire justice system, not solely the criminal justice system.

With courts remaining open in the latest lockdown, public safety in the court estate is critical. As a result of court closures over the last decade, many of the court buildings that remain are old and decrepit and often have poor ventilation. Social distancing is also challenging within these old buildings.

Meanwhile, the backlog in courts continues to rise. While the number of outstanding cases in the Magistrates Courts has fallen (479,489 as of 22 November 2020), the number in the Crown Court is alarmingly high (53,318 as of 22 November 2020).<sup>5</sup> Many of the outstanding cases are particularly complex and challenging cases that need trial by jury or otherwise cannot be dealt with by remote hearings, and in the interests of victims, witnesses, defendants and public confidence in the justice system, they need to be resolved quickly. The Institute for Government estimate the government would need to spend an extra £55m–110m a year for two years to run the necessary extra trials.<sup>6</sup>

In order to stabilise the backlog in the Crown Court, more physical space is urgently needed to allow increased throughput and sitting days while ensuring the safety of all those involved in proceedings. Nightingale Courts present an opportunity to help progress cases during the pandemic and respond to the increasing backlog, and are one of the four pillars of the HMCTS recovery strategy.<sup>7</sup> In June 2020, the Justice Select Committee was told by the then head of HMCTS of the need for an additional 200 court venues.<sup>8</sup> The Criminal Bar Association maintains that, at a minimum, 60 extra criminal court venues are needed.<sup>9</sup> As of January 2021, 18 Nightingale Courts are operational. This includes nine that opened in December 2020.<sup>10</sup>

The Government should urgently fund an additional 42 Nightingale Courts, to bring the total number to 60 across England and Wales, to help respond to the rising backlog, increase efficiency and activity and prevent further delays.

## **Recommendation 2: Invest £55m for HMCTS to recruit and retain more staff to help respond to increased demand on court staff as a result of Covid-19.**

HMCTS is the only department within the Ministry of Justice that appears to have had funding increases in the past decade. The court reform programme spent £540m in three years (2016–19), predicated on an expected annual saving of £265m by 2023.<sup>11</sup> This is, however, a

short-term increase intended to result in net savings in the medium term. Government spending on HMCTS has in fact fallen by 32% in real terms between 2010/11 and 2018/19; a reduction partly offset by an increase in fees charged to court users.<sup>12</sup> The reform programme is running well behind schedule and is further threatened due to Covid-19.

In 2018/19, HMCTS employed around 16,100 staff, operated 341 courts and tribunals that heard 4.4 million cases and spent £1.2bn.<sup>13</sup> By 2023, HMCTS expects to employ 5,000 fewer full-time equivalent staff, reduce the number of cases held in physical courtrooms by 2.4 million per year and reduce annual spending by £265m.<sup>14</sup> The Civil Service People Survey 2019 recorded an Employee Engagement Index score of 54% – the lowest in the Ministry of Justice group and well under the benchmark 63% recorded across the civil service.<sup>15</sup> The Public and Commercial Services Union, in a submission to the Justice Select Committee, said, “[the] Courts and Tribunals Service is creaking under unrelenting pressure caused by years of chronic underfunding and is largely held together by the goodwill of our members.”<sup>16</sup>

Following years of squeezing and significant reductions in staff numbers, pay and conditions for remaining HMCTS staff require improving. Staff morale at HMCTS is low and dropping,<sup>17</sup> and pay is in the bottom quartile of civil service remuneration. Everyone working in the justice system should be fairly remunerated for the important work they do, and this includes civil servants who work to keep our courts and tribunals functioning. To help courts quickly respond to the challenges arising from the pandemic, the Government should urgently invest in recruiting more HMCTS court staff, particularly in the Crown Court.

The barristers we represent tell us that the courts do not currently feel like safe workplaces. Of barristers who attended court in December 2020, 84% had concerns about practical arrangements from the perspective of their safety and wellbeing.<sup>18</sup> This has not improved since the summer.<sup>19</sup> Courts often feel unsafe, dirty and poorly ventilated; even when Covid-19-safe measures are in place, they are not consistently enforced. For the benefit of all court staff and users, and to prevent courts acting as vectors of transmission, money needs to be urgently invested to recruit, retain and support court staff.

We suggest that the £110m provided to HMCTS for additional Covid-19-safe measures, including making courts safe, opening Nightingale courts, and recruiting additional staff, does not go far enough in supporting HMCTS staff to operate the courts safely without negatively impacting their safety and wellbeing or that of court users. Out of this budget, HMCTS are currently recruiting 1,600 additional support staff, including 300 staff specifically to support remote hearings.<sup>20</sup>

Current estimates suggest that Crown Court throughput needs to double in the medium term to allow the case backlog to be stabilised.<sup>21</sup> This doubling of throughput will not be possible without staff in place to support it. We propose that the £110m already allocated to HMCTS in the 2020 Spending Review should be increased by at least 50%, with an additional budget of £55m allocated to HMCTS staff recruitment, particularly in the Crown Court.

### **Recommendation 3: Make non-means tested legal aid available for all domestic abuse cases.**

As the Domestic Abuse Bill progresses through Parliament, we urge the Government to go further in ensuring all domestic abuse cases can access the appropriate legal help. Covid-19 has created what Women's Aid have called "a perfect storm", that can "threaten to escalate abuse and close down routes to safety for women to escape".<sup>22</sup>

The Government has already committed to making victims of domestic abuse automatically eligible for special measures in the family and civil courts.<sup>23</sup> We welcome the recognition of the specific legal needs of victims of domestic abuse, and of children involved in these cases. We urge the government to go further and to reverse the legal aid cuts delivered in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which took legal aid for victims of domestic abuse out of scope, unless they qualified under the general means testing criteria.

The Bar Council endorses the recommendation of the Ministry of Justice's expert panel that alleged perpetrators and alleged victims of domestic abuse should be able to access legal aid, so that lack of legal representation or evidential difficulties do not place barriers in the way of victims seeking redress.<sup>24</sup>

### **Recommendation 4: Introduce early access to legal advice for social welfare issues.**

Individuals and organisations across the legal services sector agree that early legal help for social welfare issues saves considerable hardship and suffering by preventing people's legal issues from escalating.<sup>25</sup> The Bar Council recognises the crucial function offered by local law centres and advice agencies, and by specialist welfare advisors, particularly for people with disabilities. Our policy position is that access to early legal help and advice is an essential and cost-effective pillar of the justice system.<sup>26</sup> As the Law Centres Network has argued, late legal advice forces "people and their families [to] endure adversity which affects their health, work, accommodation and social relations."<sup>27</sup> Since the implementation of LASPO, over half of the not-for-profit law centres or agencies offering free legal advice have been closed.<sup>28</sup> Where law centres remain, much of the specialist advice for social welfare issues (including debt, employment, welfare benefits, housing and immigration – many of which have been significantly exacerbated by Covid-19) has been removed.<sup>29</sup> As the Equality and Human Rights Commission has reported, legal need is often simply going unmet.<sup>30</sup>

Without detracting from the potentially devastating social costs that can result when legal need goes unmet, it is clear that early legal help also results in net financial savings to the Exchequer. In England and Wales, before LASPO took early legal help for social welfare issues out of scope in 2013, Citizens Advice established that each £1 spent on early legal advice saved between £2.34 – £8.80, depending on the type of legal issue.<sup>31</sup> In Scotland, a 2017 study established that for every £1 spent on housing legal aid, £11 was saved, of which 80% was saved by the recipient of legal aid and 20% by public services.<sup>32</sup> This pattern is replicated globally. The World Bank in 2019 recommended that global cost-benefit analyses of legal aid

indicated overwhelmingly that the economic benefits of providing legal help through legal aid significantly outweighed the costs.<sup>33</sup> One example is restoring legal aid for early intervention in relation to social welfare issues. Someone might be evicted from their home for not paying their rent, due to their benefits having been wrongly stopped. Restoring legal aid for early advice on benefits matters would mean that the eviction stage would never be reached. Legal aid intervention at an early stage is cheaper than only having legal aid when the matter has escalated to crisis point and the matter is more expensive to put right. Given the increase in such matters as a result of Covid-19, now is the time to restore critical aspects of legal aid, to help with the backlog of cases and to resolve matters quickly and efficiently.

Another example is litigants in person. A case in the family or civil court, where one or both parties is not legally represented, takes much longer. The costs of increased court time are likely to be greater than the costs of having provided legal representation. Also, in many family or civil cases, early legal advice can mean that a case is settled before court, which again saves money. With our colleagues throughout the legal sector, the Bar Council urges government to restore funding for early legal help.

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## Endnotes

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- <sup>1</sup> Legal excellence, internationally renowned: UK legal services 2020  
<https://www.thecityuk.com/assets/2020/Reports/1e13ba3d56/Legal-excellence-internationally-renowned-UK-Legal-Services-2020.pdf>
- <sup>2</sup> The Bar Council (2020) <https://www.barcouncil.org.uk/resource/bar-council-spending-review-submission-september-2020-pdf.html>
- <sup>3</sup> Sturge G, Court Statistics for England and Wales, House of Commons Library, 2018, p. 16, retrieved 12 October 2019, [researchbriefingsfiles.parliament.uk/documents/CBP-8372/CBP-8372.pdf](https://researchbriefingsfiles.parliament.uk/documents/CBP-8372/CBP-8372.pdf)
- <sup>4</sup> <https://commonslibrary.parliament.uk/local-data/constituency-data-magistrates-court-closures/>
- <sup>5</sup> HMCTS (10 December 2020) "HMCTS weekly management information during coronavirus - March to November 2020" <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-to-november-2020>
- <sup>6</sup> <https://www.instituteforgovernment.org.uk/publications/criminal-justice-system>
- <sup>7</sup> HMCTS (September 2020) "COVID-19: Update on the HMCTS response for criminal courts in England & Wales"  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/915493/HMCTS401\\_recovery\\_overview\\_for\\_crime\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf)
- <sup>8</sup> Susan Acland-Hood (23 June 2020) "Justice Committee Oral evidence: Coronavirus (COVID-19): The impact on prison, probation and court systems", HC 299, Q185.
- <sup>9</sup> James Mulholland QC (2 November 2020) "Criminal Bar Association Monday Message"
- <sup>10</sup> HMCTS (18 December 2020) "Courts and tribunals additional capacity during coronavirus outbreak: Nightingale courts" <https://www.gov.uk/guidance/courts-and-tribunals-additional-capacity-duringcoronavirus-outbreak-nightingale-courts>
- <sup>11</sup> National Audit Office (2018) "*Early progress in transforming courts and tribunals*"
- <sup>12</sup> Institute for Government (2019) "Criminal Courts Performance Tracker"
- <sup>13</sup> National Audit Office (2019) "*Transforming Courts and Tribunals: A Progress Update*"
- <sup>14</sup> National Audit Office (2018) "*Early progress in transforming courts and tribunals*"
- <sup>15</sup> Cabinet Office (26 March 2020) "Civil Service People Survey 2019: All organisation scores"
- <sup>16</sup> Parliament (31 October 2019) "Justice Select Committee - Court and Tribunal reforms"
- <sup>17</sup> <https://www.instituteforgovernment.org.uk/publication/performance-tracker-2019/criminal-courts>
- <sup>18</sup> Bar Council (December 2020) Survey of barristers.
- <sup>19</sup> In fact, it is slightly worse. In July, 82% of those who had attended court had concerns about court arrangements.
- <sup>20</sup> HMCTS spokesperson quoted in, Rachel Flint (12 December 2020) "*Covid: Years waiting for trial mean 'people will lose faith'*" <https://www.bbc.co.uk/news/uk-wales-54957734>; HMCTS (November 2020) "COVID-19: Overview of HMCTS Recovery for Civil and Family Courts and Tribunals"  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932496/HMCTS\\_CFT\\_Recovery\\_Plan\\_v2b.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932496/HMCTS_CFT_Recovery_Plan_v2b.pdf)
- <sup>21</sup> Crest Advisory (30 October 2019) "Impact and legacy of Covid-19 on the CJS"  
[https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c\\_e16b3e351b12430bb79cd6a2830f88f3.pdf](https://b9cf6cd4-6aad-4419-a368-724e7d1352b9.usrfiles.com/ugd/b9cf6c_e16b3e351b12430bb79cd6a2830f88f3.pdf)

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- <sup>22</sup> Women’s Aid (18 August 2020) *“A Perfect Storm – The impact of the Covid-19 pandemic on domestic abuse survivors and the services supporting them.”*
- <sup>23</sup> Ministry of Justice (June 2020) *“Assessing Risk of Harm to Children and Parents in Private Law Children Cases Implementation Plan”*  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/895174/implementation-plan-assessing-risk-children.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/895174/implementation-plan-assessing-risk-children.pdf)
- <sup>24</sup> Ministry of Justice (June 2020) *“Assessing Risk of Harm to Children and Parents in Private Law Children Cases”*
- <sup>25</sup> The Law Commission (January 2014) *“Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales”*; Fabian Policy Report (September 2017) *“The Right to Justice: The Final Report of the Bach Commission”*
- <sup>26</sup> The Bar Council (2021) *“Civil Legal Aid Report: Running on Empty”*  
<https://www.barcouncil.org.uk/resource/running-on-empty-civil-legal-aid-full-report.html>
- <sup>27</sup> Law Centres Network (September 2018) *“LASPO Act 2012 Post-Implementation Review”* 4.
- <sup>28</sup> The Law Society (2019) *“Technology, Access to Justice and the Rule of Law: Is technology the key to unlocking access to justice innovation?”*
- <sup>29</sup> Law Centres Network (February 2018) *“Joint Committee on Human Rights Inquiry: ‘Human Rights: Attitudes to Enforcement’”*
- <sup>30</sup> Organ and Sigafos (September 2018) *“Equality and Human Rights Commission Research Report 118: The impact of LASPO on routes to justice”* 35-41.
- <sup>31</sup> Citizens Advice (July 2010) *“Towards a business case for legal aid Paper to the Legal Services Research Centre’s eighth international research conference”*
- <sup>32</sup> Hammond, Clare, Vermeulen, Inga (2017) *“Social Return on Investment in Legal Aid, 2017”*
- <sup>33</sup> The World Bank (September 2019) *“A tool for Justice: The cost benefit analysis of legal aid”*