



Public Accounts Committee
Inquiry update on reducing the backlog in Criminal Courts
Bar Council written evidence

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of Response

This submission addresses the subject areas the Committee has sought evidence on – progress addressing backlogs; workforce issues; impact on victims, witnesses and defendants; and oversight and planning across the courts system.

Executive Summary

The current backlog of criminal cases awaiting disposal, in particular in the Crown Court, was too high before the COVID-19 pandemic, and then rose to crisis levels as a result of the suspension of criminal trials during the pandemic. There has been no significant progress in reducing the backlog since then. The crisis of this unprecedented backlog in the criminal courts inevitably has a very serious impact on victims, witnesses and defendants.

The main reason why the system cannot operate to make progress is the lack of capacity caused by long-term underfunding in previous years, causing systemic issues in the numbers of courts, court-staff, judiciary and advocates that are needed to resolve criminal cases. This has then lead to issues such as a dramatic increase in ineffective trials due to lack of counsel. There are also knock-on effects caused by funding issues in other interconnected parts of the justice system e.g. prisons and the family courts. Sufficient levels of funding for the criminal justice system are necessary to resolve the problem going forward. Fundamentally that must include proper remuneration for counsel, so that the advocates necessary to prosecute and defend serious crime are recruited and retained (and can then go on to help provide the judiciary of the future). In addition, the Bar Council has identified areas for improvement in terms of early legal advice, early guilty pleas, prison transportation and interpretation services, the use of remote hearings, judicial recruitment, community resolution, scheduling and listing, support for legal aid professionals and better targeting of resources.

Progress addressing backlogs

The overall position is not in dispute, and the data is well known to all. As the statistics clearly show, no substantive progress has been in fact made in reducing the backlog. The Crown Court backlog stood at 37, 964 in Q4 2019 before the pandemic.¹ (In itself, this pre-pandemic baseline represented an increase of 23% from 2018.) The Crown Court is still, as of March 2024, experiencing a growing

¹ Ministry of Justice (28 September 2023) "Criminal court statistics quarterly, England and Wales, April to June 2023" Table C1 <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2023>

backlog of 67,492 cases, a rise of 12% from March 2023. The backlog is disproportionately composed of more serious cases, which will take longer in court. There has been a 23% increase in receipts of sexual offences into the Crown Court, there were 7,647 cases in March 2023 and 9,436 cases in March 2024. There has been a similar 15% increase in receipt into the system of cases of offences of violence against the person, there were 12,360 cases in March 2023 and 15,500 in March 2024.² If adjusted for case complexity, the Institute for Government estimates the backlog is more like 89,937 cases – well over twice (137%) the pre-Covid baseline.³

Waiting times for victims and defendants have inevitably lengthened as a direct result of the backlog. The volume of outstanding cases that have been open for a year or more in the Crown Court rose to 17,790 in Q3 2023– this represents 28% of outstanding cases, up from 15% in Q3 2020 and 7% in Q3 2019.⁴ The median time from offence to completion at the Crown Court decreased slightly on the previous quarter (from 400 to 374 days) but remains above pre-COVID levels (254 days in Q1 2020).⁵

The government has pledged to reduce the Crown Court backlog to 53,000 cases by the end of March 2025, to support their priority outcome of “swift access to justice.”⁶ The Public Accounts Committee called this a ‘meagre’ ambition yet, with 10 months to go, no progress has been made.⁷ If this outcome were to be achieved, it would nevertheless still represent a standing backlog 36% higher than before the pandemic.

Although, as noted above, there was an unacceptably high backlog of cases before the pandemic, the primary driver for the current crisis is of course the (undoubtedly correct) decision by the government and the judiciary to pause jury trials during the depths of the COVID-19 outbreak. Although the action by criminal barristers in 2022 also increased the backlog by circa 7,000 cases, there is no real evidence that this action in and of itself *prevented* any further real progress that the MoJ/HMCTS would otherwise have made in eliminating that proportion of the backlog caused by the pandemic. Additionally, it should be noted that if there had not been an immediate increase in the funding of criminal advocates then there would likely have been even greater rates of departure of those advocates undertaking criminal work, which would itself have contributed to even more ineffective trials and a consequent further increase in the backlog. For those reasons, we do not see the 2022 action by barristers as being a substantial cause of the current crisis.

Oversight and planning across courts system

The reason **why** the criminal justice system is in such a parlous position, and is so unable to reduce any part of that proportion of backlog caused by the pandemic, is due to the systemic reductions in

² Recent update from MoJ/HMCTS via the Legal Professional Bodies Court Recovery Update, 3 May 2024

³ Institute for Government Performance Tracker (October 2023) [Performance Tracker 2023: Criminal courts | Institute for Government](#)

⁴ Ministry of Justice (18 December 2023) “Criminal court statistics quarterly, England and Wales, July-September 2023” [Criminal court statistics quarterly: July to September 2023 - GOV.UK \(www.gov.uk\)](#)

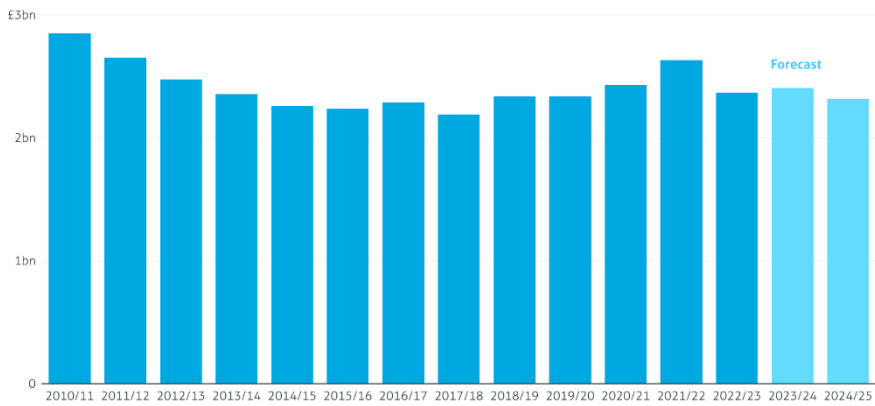
⁵ Ministry of Justice (18 December 2023) “Criminal court statistics quarterly, England and Wales, July-September 2023” [Criminal court statistics quarterly: July to September 2023 - GOV.UK \(www.gov.uk\)](#)

⁶ HM Treasury (29 October 2021) “Autumn Budget and Spending Review 2021: documents” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1043688/Budget_AB2021_Print.pdf

⁷ PAC (July 2022) “Reducing the Backlog in the Criminal Courts” <https://committees.parliament.uk/publications/9159/documents/159649/default/>

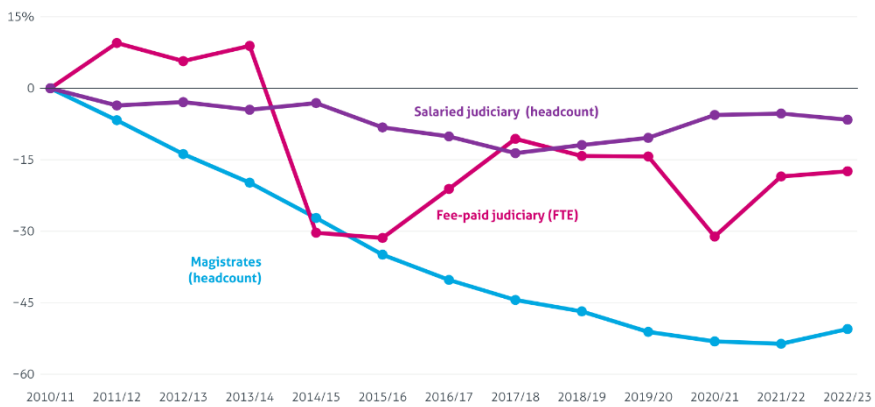
funding and capacity across the criminal justice system that occurred over the preceding decade of austerity. The Crown Court backlog increased by 23% in the year leading up to the pandemic compared to an increase of a further 48% since the onset of the pandemic.

Spending on HMCTS, 2010/11–2022/23 (2023/24 prices) IfG



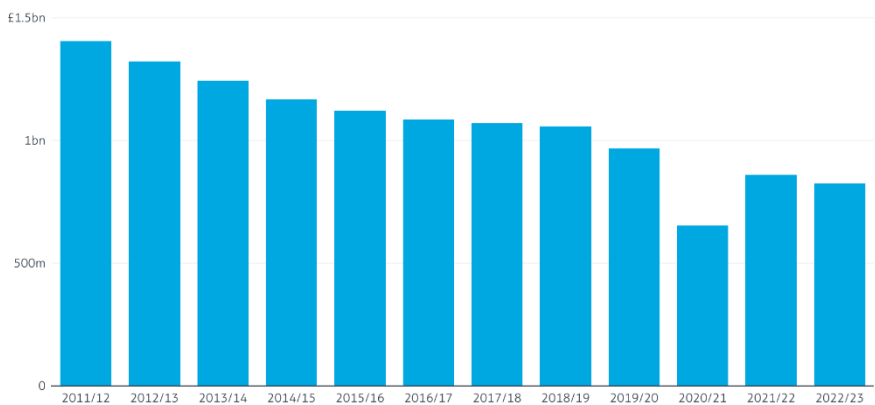
Source: Institute for Government analysis of HMCTS annual reports and accounts from 2010/11–2022/23, supported by CIPFA. • Notes: Figures are only available from 2010/11. See Methodology for details of how figures have been put into real terms. CC BY-NC

Change in magistrate and judge numbers since 2010/11 IfG



Source: Institute for Government analysis of HMCTS, 'Annual Report and Accounts 2022-23' and MoJ, 'Diversity of the Judiciary: 2023 statistics', supported by CIPFA. CC BY-NC

Criminal legal aid spending, 2011/12–2022/23 (2023/24 terms) IfG



Source: Institute for Government analysis of MoJ, 'Legal aid statistics England and Wales tables Jan to Mar 2023', supported by CIPFA. • Notes: Figures are only available from 2011/12. Real-terms spending here is calculated using the consumer price index. CC BY-NC

It is this long-term reduction in funding of (i) the court estate, (ii) court facilities (including interpreters and prison transport), (iii) the judiciary and (iv) the lawyers representing the parties that has meant that there is now wholly insufficient capacity to redress the problem.

In England and Wales, 43% of court buildings were closed between 2010 and 2022.⁸ Just like a prison, it is relatively easy and quick to close a court building – it is very slow and expensive to build a new one.

Similar considerations apply to workforce issues (as detailed below): it takes a long time to train an experienced criminal advocate (and in turn a suitable candidate for judicial office) but it can be a very quick process for that advocate to decide to leave this area of work due to underfunding and inadequate working conditions.

In future, there must never be such an inadequate view taken of the necessity for proper, sustainable, long-term investment in the criminal justice system. Provision of services at levels *more* than the absolute day-to-day minimally acceptable is not ‘wasteful’, and to think otherwise is the worst of false economies.

Workforce issues

Although judicial sitting days have risen to 107,700, up by approximately 7,000⁹, and the HMCTS indicates that they are at maximum levels, it may be difficult to find sufficient judges to hear the backlog of cases - between 2012-13 and 2021-22, the number of judges (full time employed) in England and Wales has fallen by 4% and the number of magistrates in the same period by 47%. This is not simply a response to declining caseloads; judicial capacity has “fallen more steeply than the number of cases in the respective courts in which they operate.”¹⁰ The National Audit Office in October 2021 expressed concern about the MoJ’s modelling of the backlog, identifying that the availability of judges and legal professionals had not been scoped by the MoJ in its modelling.¹¹

Perhaps of even greater impact is the loss of advocates (particularly barristers) available to prosecute and defend the serious criminal cases that are heard in the Crown Court. Between 2019-20 and 2020-21 the number of barristers practising full-time in publicly funded criminal law declined by more than 10%.¹²

Increasing numbers of barristers are working increasingly outside of the criminal justice system, reducing the advocates available to prosecute and defend criminal trials. Since 2021, the number of barristers carrying out criminal work has stabilised somewhat, and great efforts have been made

⁸ The Bar Council (November 2022) “Access Denied” [Access Denied: The state of the justice system in England and Wales in 2022 \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/research-briefings/cbp-8372/)

⁹ Information provided to Bar Council from HMCTS/MoJ via Legal Professional Bodies Court Recovery Update, 3 May 2024

¹⁰ House of Commons Library (January 2023) “Court statistics for England and Wales” <https://commonslibrary.parliament.uk/research-briefings/cbp-8372/>

¹¹ National Audit Office (October 2021) “Reducing the Backlog in the Criminal Courts” <https://www.nao.org.uk/report/reducing-the-backlog-in-criminal-courts/>

¹² In 2019-2020 there were 2,670 and in 2020-21 that figure had reduced to 2,400. <https://www.barcouncil.org.uk/static/278149e5-0d7c-44ac-a92115a79cce2af1/Bar-Council-data-analysis-criminal-Bar-April-2022.pdf>

within the Bar to recruit new pupil barristers. Nonetheless, further up-to-date information from the Bar Council's Practising Certificate renewals in 2024 reveals that the number of self-employed barristers declaring themselves as **only** working in crime has fallen from 2568 in 2018-19 to 2452. Similarly, the number of employed barristers working in crime only has fallen from 902 to 800 in the same period. Of those self-employed barristers working 100% in crime, the number declaring 100% of their income as being in publicly funded work – the sort of legal-aid lawyers who have always been the backbone of the criminal justice system - has also fallen from 723 in 2021-22 to 648 in 2024-25.¹³

The criminal Bar is working at absolutely full capacity. Criminal barristers tell the Bar Council they are exhausted, overworked and overwhelmed. In our surveys criminal barristers consistently report the lowest wellbeing and median income of any practising group at the Bar.¹⁴

The available data indicates a startling increase in the number of ineffective trials in the Crown Court due to either the prosecution or the defence advocate being unavailable to attend or being engaged in another trial. Historically, such events were very rare indeed and normally due to sudden ill-health or similar unavoidable events. In 2016-2018 there were less than 200 such ineffective trials each year and that figure reached a low in 2019 of just 71 cases. However, in 2023, the figure for ineffective trials due to absence of counsel was 1,436¹⁵ – a colossal increase caused by the loss to the criminal justice system of appropriately experienced advocates on both sides, and particularly to the CPS to prosecute Rape and Serious Sexual Offences ['RASSO'].

Impact on victims, witnesses and defendants

The volume of outstanding cases that had been open for a year or more in the Crown Court rose to 17,790 in Q3 2023– this represents 28% of outstanding cases, up from 15% in Q3 2020 and 7% in Q3 2019.¹⁶ The median time from offence to completion at the Crown Court decreased slightly on the previous quarter (from 400 to 374 days) but remains above pre-COVID levels (254 days in Q1 2020).¹⁷ Victims, witnesses and defendants are accordingly waiting longer for their cases to be heard as the number of cases older than a year increased from 2,830 to 11,379 (302%).

We are concerned that, as the National Audit Office identified, vulnerable users and people from ethnic minority backgrounds are potentially impacted disproportionately by efforts to tackle the Crown Court backlog, which MoJ and HMCTS have not done enough to understand.¹⁸ We recommend that MoJ and HMCTS should set out their plans to specifically evaluate the experience

¹³ All figures in this paragraph taken from General Council of the Bar Authorisation to Practise data - internal CRM records, as yet unpublished and provisional.

¹⁴ See Bar Council/IES (2021) Barristers' Working Lives. [Barristers' Working Lives \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/working-lives) Also unpublished BWL 23.

¹⁵ Information from the pivot tool at <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-october-to-december-2023/criminal-court-statistics-quarterly-october-to-december-2023>. There was an artificial low in 2020 no doubt due to the very small number of trials occurring overall that year. There was an artificial high in 2022 no doubt caused by the action by criminal barristers that year.

¹⁶ Ministry of Justice (18 December 2023) "Criminal court statistics quarterly, England and Wales, July-September 2023" [Criminal court statistics quarterly: July to September 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2023)

¹⁷ Ministry of Justice (18 December 2023) "Criminal court statistics quarterly, England and Wales, July-September 2023" [Criminal court statistics quarterly: July to September 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2023)

¹⁸ NAO (2021) "Reducing the Backlog in the Criminal Courts" <https://www.nao.org.uk/reports/reducing-the-backlog-in-criminal-courts/#downloads>

of victims, witnesses and defendants—particularly those deemed vulnerable and from ethnic minority backgrounds—in criminal courts.

There is a particular cross-over between the backlogs in the criminal and family courts. There is seldom a criminal charging decision in cases until there has been the relevant fact-finding hearing in the family courts. Given delays in the family courts, that builds in a further delay **before charge** of normally a year or more. This is a change from what occurred previously where there would be parallel proceedings, and often the family courts would await the potential criminal conviction of the defendant (which would obviate the need for any fact finding in the family court). This means that there is a further significant number of cases yet to be charged and enter the criminal courts system. There are also similar delays regarding other offences where there are limited resources, for example road traffic homicide cases where there is a shortage of police forensic collision investigators. As a result, the current backlog statistics need to be read with the caveat that the true number is even higher.

We remain unconvinced that the prison system will cope with the likely increase in prisoners given the planned increase in police officers and the Department's work to reduce the backlog in criminal courts. The MoJ should set out how it is building resilience across the criminal justice system and, crucially, how it will ensure there are enough prison places to meet the expected demand from increased police recruitment and faster recovery in criminal courts.

How to solve the crisis

Clearly, there is no 'silver bullet'.

The Bar Council has long been asking for **additional funding for the justice system**, particularly to legal aid and to the court estate. We consider adequate funding the first and foremost remedy to the crisis in the courts. To say 'there is no money' is to ignore the fact many of the consequences of this crisis are *costing* the state¹⁹, and that more funding now will likely reduce the need for even greater expenditure later.

Primarily, with regard to the urgent need to retain, and expand, the pool of appropriately resourced advocates, we urge the Criminal Legal Aid Advisory Board and the relevant stakeholders (MoJ, CPS, LAA etc) to come through with concrete proposals to provide more, and better targeted, funds to remunerate those doing this difficult and vitally important work.

There are a number of additional areas which, taken together, could substantially help address this intractable problem:

1. **Early legal advice.** Giving free early legal advice through law centres and advice networks saves Treasury funding in the long run, as issues can be nipped in the bud before they spiral and become more complex, e.g. domestic issues.²⁰

¹⁹ For example, the loss of sufficiently experienced junior barristers to conduct RASSO work has led to a dramatic increase in the number of silks being instructed to conduct that work instead - at much greater cost. The legal aid fees for a sole junior barrister five-day defence rape trial might (dependent on circumstances) be circa £4,830 but for a KC doing exactly the same case the fees charged would be £9,650. (Scheme AGFS13, 20 September 2022).

²⁰ [Supporting free legal advice would save Treasury £4bn next year - The Access To Justice Foundation \(atjf.org.uk\)](https://www.atjf.org.uk)

2. **Early guilty pleas.** The rate of early guilty pleas has substantially reduced.²¹ Encouraging those who are guilty to plead guilty at an early stage, where appropriate, can make considerable savings in court time. Real consideration should be given to reform of the current credit for guilty plea timetable and system, which in its current form was introduced following the 2015 report by Sir Brian Leveson on 'Review of Efficiency in Criminal Proceedings' with the aim of encouraging pleas at the first appearance in the Magistrates' Court, and saving money by reducing the number of cases being sent to the Crown Court.²² That is no longer the primary issue facing the criminal justice system, and it would be much more preferable for greater amounts of credit to be properly available later in the process. It is the experience of advocates that insufficient material is being provided for effective advice before even the Plea and Trial Preparation Hearing in the Crown Court in indictable cases (let alone before the first appearance in the Magistrates' Court) and this is resulting in fewer early guilty pleas.²³ Also, where there is significant delay between the PTPH and the trial (in respect of those on bail) as a result of the backlog, it is further the case that defendants are less likely to plead given (a) the very low reduction in credit available for a guilty plea over that extended period²⁴ and (b) the ability for defendants on bail on qualifying electronically monitored curfews to obtain a deduction (or even, if there is a long enough delay, a total elimination) of the custodial portion of any sentence, incentivising a delay in pleading guilty.
3. **Improved efficiency re contracts with prison transport and interpretation services.** Barristers tell us that, on the ground in court, a regular cause of delays is when all parties are waiting – sometimes for several hours - for the defendant(s) to be delivered from prison. Either the contracts around these transport/escort services are not fit for purpose, or the contracts are regularly being breached. This causes intolerable lengthening of trials: a delay of even an hour to a normal court day is a roughly 20% loss of available time. When that happens nearly every day, as does occur, then the trial inevitably ends up taking longer to complete, preventing other cases being called on. Similarly, widely experienced problems with interpreters either not being booked, not turning up, not speaking the correct dialect or

²¹ Corrected MoJ figures indicate that 2014- 2023 there has been a decline in overall guilty pleas for cases in the Crown Court from 64% to 59% and a substantial reduction in early guilty pleas, that is guilty pleas at the earliest opportunity in the Crown Court, typically the Plea and Trial Preparation Hearing, from 84% to 64%.

²² <https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf> and <https://www.gov.uk/government/news/crime-news-better-case-management-rollout-in-england-and-wales>. See the associated change in Sentencing Council guidance in 2017 from <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-before-1-june-2017/> to <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/> and the binding decision of the Court of Appeal as to the lack of discretion to judges based on the later guidance, *R v Plaku* [2021] EWCA Crim 568 (available at <https://www.bailii.org/ew/cases/EWCA/Crim/2021/568.html>)

²³ Although it is often said (in justification of restricting full credit for a plea of guilty of 33% only to those pleas entered at the very first appearance at the Magistrates' Court) that 'defendants know whether they are guilty', that is simply not always the case e.g. where the defendant was intoxicated or otherwise has no memory of events, or the issue is whether their actions were objectively reasonable, or where a major query is raised which can only be answered by independent evidence. In such cases, lawyers representing defendants **must** be provided with the available evidence in order to be able to provide proper advice.

²⁴ There being just a 15% difference between that available at PTPH (25%) and day of trial (10%) – see <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/reduction-in-sentence-for-a-guilty-plea-first-hearing-on-or-after-1-june-2017/>

not being of sufficient experience to act as interpreters *in court* (a particular skill) also contribute hugely to delay and inefficiency.

4. **Remote hearings.** As part of HMCTS' Reform Programme, the use of remote hearings was intended to increase. This in fact happened at pace during the pandemic. Subsequently, their use has dramatically fallen. Remote hearings offer the potential for a more modern and more efficient way of conducting much court business, albeit there will always be a proper place for in-person hearings, e.g. sentencing for serious offences and all trials. There have been some moves to bring in more consistent national protocols as to the use of remote hearings, but we remain of the view that more could be done to codify the situation. Making appearance at hearings more efficient, e.g. by reducing travel cost and time, will also make the job of a criminal advocate more financially sustainable, helping counteract the pressures on advocates to leave criminal work.
5. **Judicial recruitment.** If cases are being held up due to insufficient judicial time (as we know is the case), the package on offer for full- or part-time judges needs to be sufficiently attractive to recruit and retain more to this role. The process for recruiting judges and recorders is also extremely lengthy – practitioners report delays can be a year or more – and there would seem to be some scope for improvements in this area without compromising quality.
6. **Community resolution.** As has been done successfully with Youth Justice in recent years, there is scope to take certain offences or categories of offending out of the courts.
7. **Scheduling and listing.** Inefficiencies here, particularly when not considering the availability of legal professionals, causes a massive waste of time and resources. Although there are some isolated examples of good practice there is generally insufficient communication between court listing officers and counsels' clerks. Improvements in this regard would decrease the number of ineffective trials and adjournments, and thereby improve disposal rates. In particular, barristers' experience is that 'over-listing' of trials (by means of warned lists, 'backers', 'floaters' etc resulting in more cases being called on for trial at a court centre than there are court rooms and judges available) does not result in greater efficiency – quite the reverse. It in fact adds to the problems with unavailability of barristers to do those trials which are effective, and, where cases are routinely adjourned as a result, delays payment to barristers – adding to the disincentives to start or continue practising in criminal work.
8. **Recruitment and support for legal aid professionals.** As noted above, lack of availability of legal aid lawyers frequently causes significant delays in cases. In addition to proper funding of remuneration (as set out above), consideration should be made to working with the Bar Council and the Law Society to put measures in place to support recruitment and retention of lawyers e.g. funding of pupillage places or return-to-work programmes.
9. **Targeting assistance to specific areas and court centres.** We recommend MoJ include breakdowns by individual court and offence in its timeliness data tools, help stakeholders identify which courts are taking the longest to progress cases, and direct resources and support accordingly. To give two examples of potential problems which may need proper identification and resolution:

- a. Given the issues with lack of the barristers, and problems for HMCTS with recruiting judges, the running of the extra temporary 'Nightingale' courts – used primarily only for 'on-bail' trials - may in fact spread those resources so thinly (the 'running hot' of the CJS) that, counter-intuitively, the extra courts do not in fact reduce the backlog but instead have a detrimental impact on it. It may be that further analysis would reveal that the cost of the 'Nightingale' courts may be better spent back in the remainder of the regular court estate, where the facilities are better suited to doing the whole gamut of Crown Court work.
- b. In smaller court centres (e.g. court buildings with as little as two courtrooms – found particularly on circuits outside of the South-East) the pressure of other work on those judges (e.g. the hearing of PTPHs, sentences, bail applications etc) means that an hour or more of the court day is not spent hearing the trial in front of the judge. There are examples on circuit where losing a day a week is not unusual. Time estimates that are given by counsel at PTPH for the length of a trial are invariably predicated on full court days being made available for the trial. Where instead the judge has to take one or more hours out of the court day to deal with other matters, there is overrun and delay which causes unavailability of counsel for their following cases, and therefore adjournment of those cases, preventing reduction of the backlog. The same also applies where the Resident Judge of a court centre is the trial judge, as there are very significant demands placed on those particular judges which again prevent full court days being spent on their trials.

What should be always borne in mind when dealing with reforms and changes to the criminal justice system is the principle of unexpected consequences. Like all massively complex systems, changes to one part are highly capable of producing adverse results in another. For example, the previous short-lived increase in Magistrates' Courts sentencing powers resulted in fewer cases being sent to the Crown Court, which generated a saving. However, it also resulted in larger amounts of short custodial sentences, contributing to the current unbearable pressure on prison places, leading to the reversal of the relevant law. Similarly, the welcome significant increase in the number of police officers has in its turn contributed to the large increase in the number of cases being charged, and thus in the number of cases received by the Courts, helping prevent a reduction in the backlog.

For that reason, the Bar Council endorses a 'whole system' review of the criminal justice system (ideally by means of a Royal Commission) to resolve these structural issues preventing elimination of the backlog - in addition to action being taken on the discrete areas outlined above.

The Bar Council
May 2024