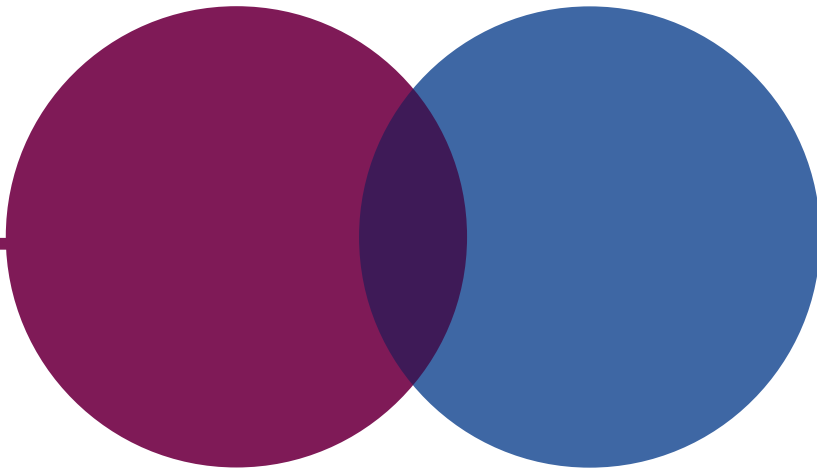




National Audit Office



Reducing the backlog in criminal courts

Ministry of Justice and HM Courts & Tribunals Service

REPORT

**by the Comptroller
and Auditor General**

**SESSION 2021-22
22 OCTOBER 2021
HC 732**



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National Audit Office

Reducing the backlog in criminal courts

Ministry of Justice and HM Courts & Tribunals Service

Report by the Comptroller and Auditor General

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Gareth Davies
Comptroller and Auditor General
National Audit Office

14 October 2021

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Key facts

60,692

backlog of cases in the Crown Court, 30 June 2021

48%

percentage increase in the Crown Court backlog between 31 March 2020 and 30 June 2021

302%

increase in the number of cases waiting longer than a year in the Crown Court, from 2,830 as of 31 March 2020 to 11,379 as of 30 June 2021

£63 million spent by Her Majesty's Courts & Tribunals Service (HMCTS) on pandemic response and recovery in the criminal courts in 2020-21, in addition to that spent on expected operational activities

£2.2 billion the estimated system-wide costs of delivering the criminal justice action plan, 2022-23 and 2023-24

48,000 to 52,000 range of estimates modelled by the Ministry of Justice for the size of the backlog in the Crown Court by November 2024

435% increase in the number of sexual offence trial cases in the Crown Court backlog for longer than a year, from 246 as of 31 March 2020 to 1,316 as of 30 June 2021

27% increase in the number of defendants held on remand in custody between 31 March 2020 and 30 June 2021

Summary

Introduction

1 The Ministry of Justice (the Ministry) is headed by the Lord Chancellor and is accountable to Parliament overall for the effective functioning of the court system. Her Majesty's Courts & Tribunals Service (HMCTS), an agency of the Ministry, provides the system of support, including infrastructure and resources, for administering criminal, civil and family courts in England and Wales and tribunals nationally. The judiciary, headed by the Lord Chief Justice, is constitutionally independent from government.

2 In the year to 30 June 2021, criminal courts dealt with 1.24 million cases, including more than 90,000 in the Crown Court, which hears the most serious cases. Cases enter the system when a defendant is charged with an offence and are allocated a court date through a process called 'listing,' which is a judicial function. By the end of June 2021, there were around 61,000 cases received and not yet completed in the Crown Court, and more than 364,000 cases received and not yet completed in the magistrates' courts. HMCTS does not distinguish between the outstanding caseload it says is required to run criminal courts efficiently and effectively and what it considers a 'genuine backlog' of cases. For this report, we have defined the backlog as all cases waiting to be heard or completed. There are limitations to this definition, set out in Appendix Two.

3 The COVID-19 pandemic significantly affected the work of the criminal justice system and necessitated extensive changes in criminal courts to keep judges, court staff, and users safe. The accumulating backlog in criminal court cases has been the subject of significant Parliamentary, media and wider public interest. This report assesses the Ministry and HMCTS's plans for, and progress, in reducing the backlog in criminal courts. It examines:

- trends in the backlog up to and since the onset of the pandemic and the impact on victims, witnesses and defendants (Part One);
- HMCTS's emergency response and pandemic recovery programme (Part Two); and
- the Ministry's forecasts for the backlog, the long-term action plan to address it and the risks to long-term recovery (Part Three).

4 This report primarily focuses on the Crown Court where the backlog is acute and the cases are more serious. We do not look at HMCTS's court reform programme, ongoing since 2016, or examine in detail the work of other criminal justice agencies, such as the Crown Prosecution Service (CPS) and the police. This report looks at HMCTS's efforts to increase capacity as part of its recovery programme and does not look in detail at work within HMCTS or other agencies to improve efficiency. Our audit approach is described in Appendix One and evidence base in Appendix Two.

Key findings

Trends in the backlog

5 The Crown Court backlog increased by 23% in the year leading up to the pandemic. The number of cases in the backlog increased from 33,290 on 31 March 2019 to 41,045 on 31 March 2020. The Ministry allocated 16% fewer sitting days in 2019-20 than in 2018-19 because it expected the number of cases entering the court system (receipts) to continue to decline. It did so despite acknowledging the possibility of a long-term increase in demand as a result of increasing police funding. This lower allocation proved insufficient to meet demand and the then Lord Chancellor allocated 850 additional sitting days. In October 2019, the government announced its programme to recruit an additional 20,000 police officers, which the Ministry expects will lead to an increase in court receipts from 2021-22 (paragraphs 1.10, 1.11 and 1.15, and Figure 2).

6 The Crown Court backlog has increased a further 48% since the onset of the pandemic. Between 31 March 2020 and 30 June 2021, the Crown Court backlog increased from 41,045 to 60,692 cases. The Lord Chief Justice suspended all jury trials between 23 March and 18 May 2020, and HMCTS could not safely use large parts of its court estate without modifications. The Crown Court backlog grew slowly at first as cases were initially held up in the magistrates' courts, where the backlog grew 29% during the first national lockdown alone. The backlog in the magistrates' courts has been recovering since a peak in June 2020. The Crown Court backlog continued to increase up to June 2021, albeit at a much slower rate since March 2021. Cases waiting for trial account for more than 90% of the increase (paragraphs 1.14 to 1.16, 1.20 and Figure 3).

7 Victims, witnesses and defendants are 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%). Cases in the backlog on 30 June 2021 had been waiting an average of 230 days, 84 days (57%) longer than cases in the backlog on 31 March 2020. Delays could mean more victims and witnesses withdraw from the process, increasing the likelihood of cases collapsing. In September 2020, the government temporarily extended the maximum time limit a defendant could be held before trial by 56 days. Between 31 March 2020 and 30 June 2021, the number of people held on remand in custody increased by 27% at a time when the prison population declined by 6% (paragraphs 1.19 to 1.22 and Figure 5).

8 Waiting times vary considerably by region. The pandemic exacerbated the regional variation in backlogs and waiting times: between 31 March 2020 and 30 June 2021, the Crown Court backlog increased the most in London, by a further 72%, compared with only 18% in the South West. There is also significant variation in waiting times, with the average age of a case in London increasing by 63% to 266 days throughout the pandemic, more than any other region. London is closely followed by the Midlands where the average age of cases increased by 62% to 256 days (paragraphs 1.17 and 1.18, and Figure 4).

9 Rape and serious sexual offence cases have been acutely affected. Defendants accused of rape or serious sexual offences are typically more likely to plead not guilty compared with other offences. Cases with not guilty pleas typically take much longer to complete in the courts than cases where a defendant has pleaded guilty. Delays to jury trials have therefore disproportionately affected victims of these crimes: between 31 March 2020 and 30 June 2021, the number of sexual offence trial cases in the Crown Court backlog rose by 71% from 3,606 to 6,173, with cases waiting longer than a year increasing 435% from 246 to 1,316. The criminal justice action plan, which looks at long-term recovery, includes initiatives to tackle rape and serious sexual offences. Robbery and weapon possessions cases have also seen relatively large increases in waiting times (paragraphs 1.20, 1.21 and 3.5).

HMCTS's recovery programme

10 HMCTS responded quickly in the early stages of the pandemic, prioritising staff and court user safety and access to justice for urgent cases. It quickly introduced emergency governance structures and rolled out audio and video technology to enable remote hearings. It worked with the judiciary to prioritise cases that were time-critical or urgent, including those relating to national security (paragraphs 2.2 to 2.4 and 2.12).

11 HMCTS's recovery programme increased criminal court capacity by 30% in the Crown Court and 7% in magistrates' courts between September 2020 and July 2021. HMCTS launched a courts recovery programme in May 2020 that focused on increasing court capacity to hear criminal cases, including through greater use of remote attendance at hearings and adaptations to existing court buildings. Between July 2020 and June 2021, it opened 72 temporary courtrooms (Nightingale courtrooms), 38 of which (53%) handled Crown Court cases. HMCTS also modified 71 courtrooms to hear cases with multiple defendants, increasing its overall capacity for these larger cases by 28% by 31 March 2021. HMCTS spent £63 million on its response and recovery work in criminal courts in 2020-21, in addition to that spent on expected operational activities (paragraphs 2.5 to 2.8, 2.10, 2.11 and 2.14 to 2.16, and Figures 7 to 11).

12 The Ministry's latest models indicate the Crown Court backlog could be between 17% and 27% higher than pre-pandemic levels by November 2024. In July 2021, to inform Spending Review negotiations with HM Treasury, the Ministry set out two scenarios – an 'ambition' and a 'cautious' approach – that forecast a backlog of 48,000 and 52,000 respectively by November 2024. These scenarios forecast a much quicker recovery than the Ministry's previous central estimate in April 2021, even though considerable uncertainty remains about demand flowing into the courts following the pandemic and the pace of new police recruitment and deployment. Both scenarios assume increasing the use of part-time judges to unprecedented levels. Since the two sets of projections are very similar, it is difficult for decision makers to understand the reasonable range of potential outcomes from their funding and other strategic decisions. The Ministry later developed a third scenario to support its 2021 Spending Review discussions, which assumed maintaining the funding that was agreed in the 2020 Spending Review and forecast a backlog of 72,000 cases by November 2024. In the magistrates' courts, the Ministry expects to recover to pre-pandemic levels by November 2021 (paragraphs 3.2 to 3.4, and Figures 13 and 14).

13 The Ministry and HMCTS have a poor understanding of how the pandemic and recovery programme have affected vulnerable and ethnic minority users. Despite a series of commitments on supporting users who are vulnerable because of their age, mental disorders or a physical impairment, we found slow progress in collecting data and evaluating evidence on how vulnerable users have been affected by, for example, remote access to justice. We also found no evidence that the Ministry and HMCTS have any data on users' ethnicity to carry out meaningful analysis on whether ethnic minority groups have been disadvantaged by the pandemic or the recovery programme. The Ministry is therefore unable to assure itself that it is meeting its objective to "build back fairer" (paragraphs 3.19 to 3.22).

Risks to long-term recovery

14 The Ministry's progress with the ambitious long-term plan to support recovery in criminal courts hinges on securing funding and resources. In April 2021, with the support of the Cabinet Office's National Economic Recovery Taskforce, the Ministry led the production of a criminal justice action plan that recognises the need for a whole-system approach to recovery. The plan requires the resolution of significant systemic issues that the criminal justice system has been grappling with, including improving handovers between the police, CPS and courts, and issues around how different agencies categorise and record cases in their systems. The Ministry recognises that it still needs to assess the whole-system costs of the various proposed recovery initiatives, collect more evidence to understand what supports better case quality and court effectiveness, and to develop new data technology and recruit more analysts (paragraphs 3.5, 3.6, 3.17 and 3.18).

15 The Ministry and HMCTS are not yet working towards shared, strategic objectives for recovery in criminal courts. Without this clarity, it is difficult for the Ministry and its agencies to align their plans effectively or understand and measure performance at a system level. They are also less able to make informed strategic choices in managing demand across the criminal justice system. For example, the lack of a shared objective and clear trajectory for reducing the criminal court backlog makes planning and managing prison places more challenging. The Ministry did not set or share objectives for recovery until it led the development of the criminal justice action plan in April 2021. The plan's objectives to improve timeliness and victim engagement are still immature and not aligned with those set out in the Ministry's 2021-22 outcome delivery plan and HMCTS's 2021-22 business plan (paragraphs 3.8, 3.9, 3.14 and 3.15).

16 The Ministry has removed the limit on the number of Crown Court sitting days, but their use relies on courts having enough physical and judicial capacity. In April 2021, the then Lord Chancellor announced he was removing the funding cap on sitting days in 2021-22 to support reducing the Crown Court backlog. At the time, the Ministry's best-case scenario estimated using 111,500 judicial sitting days in 2021-22, but this was contingent on a range of assumptions, including 33 additional Nightingale courts. HM Treasury approved funding to extend the contracts of existing Nightingale Crown courtrooms until the end of 2021 but did not approve HMCTS's request for 33 additional courtrooms. The Ministry revised its forecasts in July 2021, and its 'ambition' scenario anticipated 103,500 sitting days in 2021-22. In July 2021, the Ministry announced that implementing COVID operating hours is at the discretion of local judges and subject to local consultation. HMCTS expects take-up locally to be very low. To use more sitting days, HMCTS is relying on part-time judges (recorders) agreeing to work more hours (paragraphs 2.16, 2.19 and 3.11 to 3.13).

17 Other significant risks remain to the Ministry and HMCTS's long-term efforts to reduce the backlog. These include:

- **funding uncertainty:** as part of the 2021 Spending Review, the Ministry is in discussions with HM Treasury over additional funding to deliver the criminal justice action plan. Estimates that the Ministry produced in April 2021 suggest the action plan would cost around an additional £500 million for criminal courts and £1.7 billion for legal aid, prisons and probation services. The Ministry estimates its 'ambition' scenario produced in July 2021 would require more than 4,000 additional prison places by the end of 2023, over and above the planned new places that HM Treasury has agreed to fund. The Ministry is continuing to update these estimates as it prepares for the 2021 Spending Review;
- **the availability of judges:** the Ministry and HMCTS recognise the challenge of securing enough judges, particularly in 2022-23 and 2023-24, despite their initiatives, which include recruitment; and
- **the capacity of other criminal justice agencies and support services:** the Ministry and HMCTS have a limited understanding of system capacity, including that of CPS and the legal professions. Without this, they cannot be confident of the robustness of their recovery planning or whether they can make full use of increased judicial and courtroom capacity (paragraphs 3.10 to 3.15).

18 Long-standing data limitations obscure the Ministry and HMCTS's understanding of future demand. In 2019, the HMCTS-commissioned report, *Digital Justice* set out wide-ranging findings on the extent of HMCTS's data limitations. HMCTS has yet to implement the recommendations in full. The pandemic has exacerbated these long-standing data challenges, bringing into focus the data the Ministry and HMCTS need to develop to better understand and manage flow through the system. This includes through more systematic working with the judiciary who have a strong understanding of how long cases are likely to take. The Ministry recognises that it will need substantial investment in analytical capability to resolve other data issues, including disjointed data across the system. It is aiming to publish, in autumn 2021, a new scorecard to make national performance more transparent (paragraphs 3.17 and 3.18).

Conclusion on value for money

19 The COVID-19 pandemic presented the criminal justice system with an unprecedented challenge. It has had an acute impact on criminal courts, which were already strained in the year leading up to the pandemic. HMCTS responded effectively to the crisis as it unfolded and to changing operational requirements, including the suspension of all jury trials, and their resumption when conditions allowed.

20 Despite the concerted efforts of HMCTS and the Ministry to increase capacity in criminal courts quickly and safely, the Crown Court backlog looks likely to be a pervasive issue beyond 2024. This means more victims, witnesses and defendants will continue to be severely affected. In their work to recover, the Ministry and HMCTS cannot afford to lose sight of the impact that both the backlog and their recovery programme have on court users, particularly those who are vulnerable or have traditionally faced discrimination, including ethnic minorities.

21 Given the complexity and interdependencies in the criminal justice system, the Ministry is right to take a whole-system view of recovery. But if sustainable recovery in criminal courts is to be effective, the Ministry will need to improve its leadership of the system, including by agreeing clear, shared objectives for recovery and significantly improving the quality of its data. Without this, there is a risk that further investment will not support long-term value for money, ensure timely access to justice, or improve the experiences of victims, witnesses and defendants.

Recommendations

The Ministry should:

- a** **agree with other criminal justice agencies a set of shared, published objectives for recovery in criminal courts** that explicitly consider the implications for the rest of the criminal justice system. It should use these shared objectives to:
 - align recovery funding, planning and reporting across criminal justice agencies; and
 - set reasonable expectations around waiting times by case type, acknowledging the responsibility of the judiciary.
- b** **develop a shared understanding of the capacity and capability of other parts of the criminal justice system**, including the CPS and the legal professions, to support recovery in criminal courts.

- c identify and obtain the data that it needs to understand the diversity of user experience**, including for vulnerable users and ethnic minorities. It should use this to:
 - inform how it implements the criminal court recovery programme and all key initiatives in the criminal justice action plan and capture this in their performance monitoring; and
 - identify learning, particularly for aspects of the recovery programme that will endure through the court reform programme.

- d support improvements in data it needs for recovery by:**
 - devising and implementing a plan to tackle the systemic barriers to collecting, using and sharing data effectively across the criminal justice system; and
 - strengthening its work with the judiciary and regional offices to capture local intelligence systematically and consistently.

Part One

Demand in criminal courts

1.1 This part of the report:

- provides an overview of how the criminal justice system works in England and Wales, alongside key responsibilities and accountabilities;
- examines the demand in criminal courts in the run-up to the COVID-19 pandemic and since its onset from March 2020; and
- sets out what impact the backlog in criminal courts has had on defendants, victims and witnesses.

The criminal justice system

1.2 The criminal justice system in England and Wales investigates, tries, punishes and rehabilitates people who are convicted or suspected of committing a crime. It is made up of police forces, the Crown Prosecution Service (CPS) and other bodies who can bring prosecutions, the judiciary, the courts, victims, witnesses, defendants, convicted offenders, victims and witness services, and prisons and probation services. The Ministry of Justice (the Ministry), headed by the Lord Chancellor as the Secretary of State for Justice, is accountable to Parliament overall for the effective functioning of the court system. Her Majesty's Courts & Tribunals Service (HMCTS) is an agency of the Ministry. It is responsible for supporting the independent judiciary in the administration of criminal, civil and family courts in England and Wales, and for non-devolved tribunals in Scotland and Northern Ireland. The Lord Chief Justice is head of the judiciary in England and Wales.

1.3 In the year to 30 June 2021, criminal courts dealt with 1.24 million cases, including more than 90,000 in the Crown Court. Cases enter the system when a defendant is charged with an offence and are allocated a court date through a process called 'listing', which is a judicial function. Cases progress according to the nature of the offence:

- the most serious (indictable) offences are tried in the Crown Court in front of a judge and jury;

- summary offences, which incur lower sanctions, are tried in the magistrates' courts; and
- 'either way' offences can be heard in the magistrates' courts or transferred to the Crown Court for all or part of the proceedings. The Crown Court also receives appeals against decisions of the magistrates' courts (**Figure 1**).

1.4 The effective running of the system relies on operational independence between the prosecution, defence and judiciary. The government and Parliament affect the system, for example, in creating new criminal offences and allocating funding, but they cannot intervene in the progress of an individual case. The judiciary is constitutionally independent of the executive branches of government.

1.5 An agreed framework between the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals sets out how HMCTS is governed and financed. This includes arrangements for agreeing the number of Crown Court 'sitting days' that the Lord Chancellor funds in a given financial year. Sitting days are one of the major constraints to how quickly criminal courts can hear cases.

Demand in criminal courts

Measuring the backlog

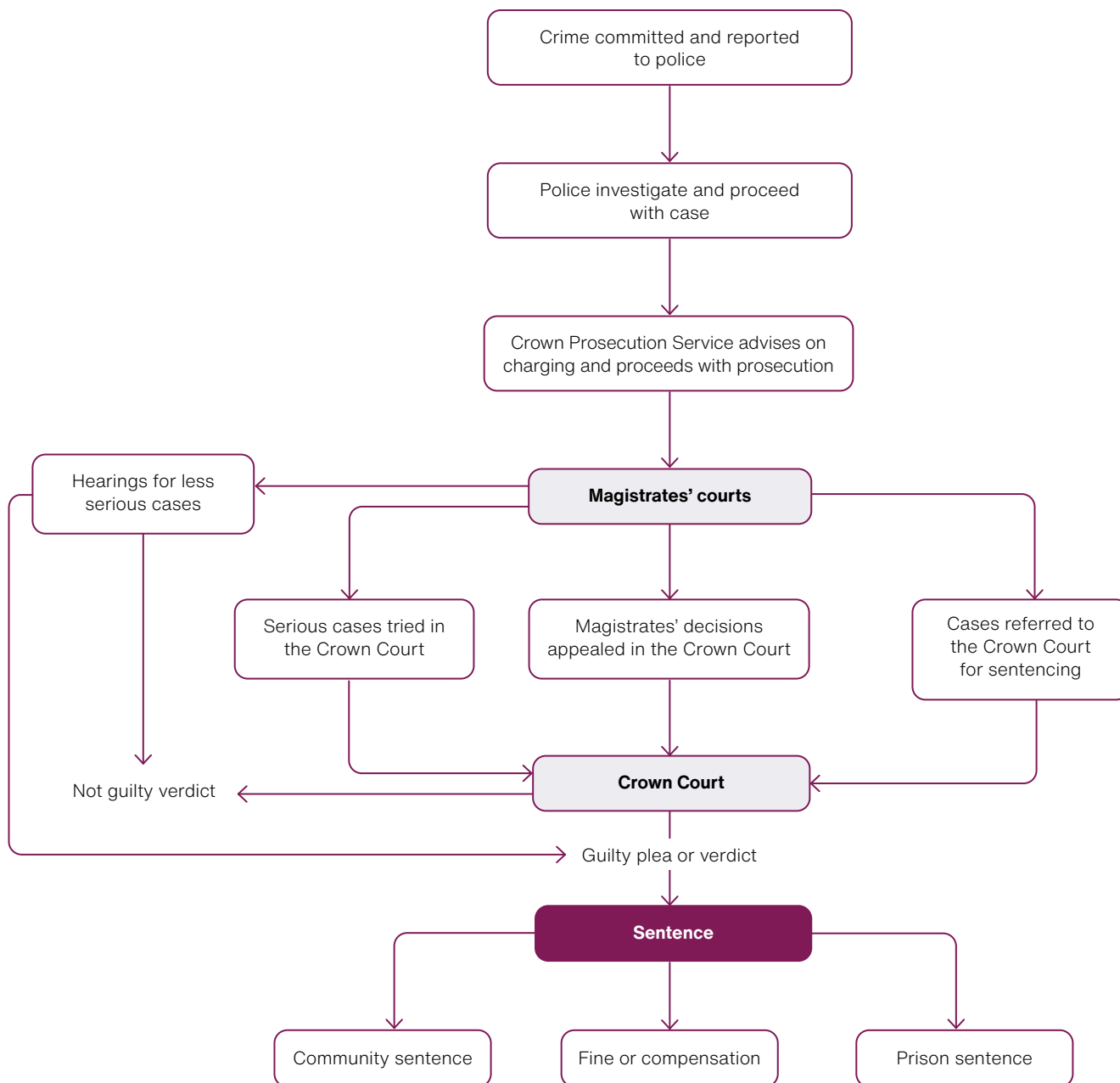
1.6 The Ministry and HMCTS measure and report the caseload in criminal courts, including cases awaiting trial, being tried and those awaiting sentencing. The caseload is affected by the flow of cases entering the court system (receipts), and the flow of cases dealt with in the courts (disposals), including guilty plea cases after sentencing and not guilty plea cases following a trial and, if necessary, sentencing.

1.7 The Ministry and HMCTS told us that there is a level of outstanding caseload required for criminal courts to function efficiently and effectively. Below this level, there would be a risk that judges and courtrooms are available but do not have enough cases to try. They have not quantified this caseload and therefore do not distinguish between an efficient and effective level of outstanding caseload and what they consider a 'genuine backlog' of cases.¹ Without this, they do not understand what caseload they should target to ensure criminal courts function efficiently and effectively, what to aim for in their plans to reduce the backlog, or how to align their pandemic recovery plans with other criminal justice stakeholders.

¹ For this report, we have defined the backlog as all cases waiting to be heard or completed. The Ministry and HMCTS refer to this as the outstanding caseload. We recognise there are limitations to our definition, as described in Appendix Two. The Ministry and HMCTS were unable to provide an alternative definition.

Figure 1
Progress of a case through the criminal justice system

All criminal cases start in the magistrates' courts, with the Crown Court hearing the most serious cases



Notes

- 1 The courts also hear cases sent directly by the Driver & Vehicle Licensing Agency, TV Licensing and other authorities.
- 2 The Crown Prosecution Service does not advise on charging in all cases.

Source: National Audit Office analysis of Ministry of Justice criminal justice system statistics, and the Institute for Government and Chartered Institute of Public Finance & Accountancy, *The criminal justice system: How government reforms and coronavirus will affect policing, courts and prisons*, April 2020

1.8 Instead, the Ministry and HMCTS have measured their progress in recovering from the pandemic by comparing the current backlog against pre-pandemic levels. Still, this pre-pandemic benchmark itself was considerably higher than 12 months earlier. They acknowledge that the backlog is a crude indicator and that they need to factor in other indicators – including capacity in the system, the complexity of cases, waiting times and the court time needed to hear them – to develop a more sophisticated understanding. The Ministry and HMCTS told us they are developing a portfolio of metrics to better understand the backlog and the flow through the courts, including a stronger focus on waiting times. However, they have a limited understanding of the nature of cases waiting to be heard. HMCTS is working with judges on predicting how long it takes for different types of cases to be heard, but this work is immature.

Demand before the pandemic

1.9 Until the end of the financial year 2018-19, the Crown Court backlog had been steadily declining, decreasing by 39% between 31 March 2015 and 31 March 2019. Over this time, there was a 19% fall in Crown Court receipts and relatively small reductions in annual sitting day allocations.

1.10 The Ministry used demand modelling analysis to determine the amount of Crown Court sitting days to fund in 2019-20. It allocated 16% fewer sitting days than it had done in 2018-19. Its analysis indicated this would be enough to meet demand, although with very little contingency, and deliver more savings, particularly in legal aid costs. The analysis also indicated the possibility of an increase in police funding in the next Spending Review – which did materialise in September 2019 – which would result in a long-term increase in demand above its forecasts.

1.11 The backlog in Crown Court cases began to grow from the start of 2019, increasing by 23% from 33,290 on 31 March 2019 to 41,045 on 31 March 2020. Insufficient sitting days to meet the increased demand contributed to this growing backlog. The Ministry acknowledged it needed more sitting days, and the then Lord Chancellor made two in-year adjustments to allocate 850 additional days to the 2019-20 total, still 15% fewer than in 2018-19 (see **Figure 2**).

1.12 The backlog in the magistrates' courts followed a similar trajectory but with more modest changes. The backlog declined by 12% between 31 March 2015 and 31 March 2019 and then increased by 13% between 31 March 2019 and 31 March 2020.

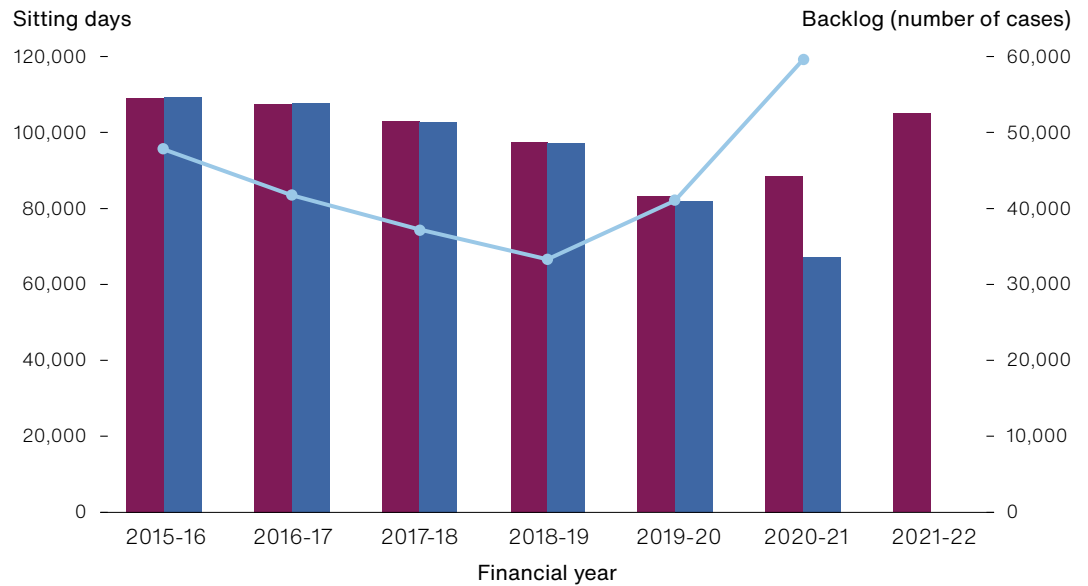
Regional variation

1.13 These national trends obscure significant variation regionally. Between 31 March 2019 and 31 March 2020, the Crown Court backlog increased by 38% in the South East and 37% in London, compared to only 9% in the North West. HMCTS did not anticipate an increase in case receipts in London in 2019-20 when the sitting day allocation also began to decrease (Figure 4 on page 20).

Figure 2

Crown Court sitting days and the level of backlog, 2015-16 to 2021-22

The Ministry of Justice (the Ministry) allocated 15% fewer sitting days for 2019-20 than for 2018-19 and oversaw a 9% increase in the backlog during this period



■ Sitting day allocation	109,000	107,500	103,000	97,400	83,150	88,600	105,000
■ Actual sitting days used	109,321	107,863	102,818	97,293	81,888	67,255	
— Backlog	47,756	41,742	37,214	33,290	41,045	59,942	

Notes

- 1 In 2019-20, the Ministry secured HM Treasury approval for two in-year adjustments to its sitting day allocation. We have presented the final allocation.
- 2 The Ministry allocated 88,600 sitting days in 2020-21. In April 2021, the then Lord Chancellor announced he was removing the funding cap on sitting days in 2021-22 to support reducing the Crown Court backlog.
- 3 This analysis does not include actuals or cases in the backlog for 2021-22. This report is published part-way through the financial year, so the data are incomplete.
- 4 The backlog of cases is measured as of the last day of each financial year.

Source: National Audit Office analysis of HM Courts & Tribunals Service data and Ministry of Justice criminal court statistics

Demand since the pandemic

1.14 The pandemic led to a significant increase in the criminal court backlog. During the first national lockdown, demand on the courts showed considerable decline. Between April and June 2020, police recorded crime declined by 15%, and new receipts into the CPS declined by 10% compared with the previous three months. However, the closure of most of the court system to keep people safe meant disposals from the magistrates' courts declined by 59% in those three months alone, and the magistrates' courts backlog increased by 29%, from 327,952 on 31 March 2020 to 422,182 on 30 June 2020.

1.15 Since then, the backlog in the magistrates' courts has begun to recover, falling to 364,122 by 30 June 2021. The number of disposals between October and December 2020 was 107% higher than between April and June 2020 and, for cases requiring a trial, exceeded the disposals for the same period in 2019. However, receipts into the magistrates' courts remain below pre-pandemic levels. The Ministry expects the recruitment of an additional 20,000 police officers, announced in October 2019, will start to affect court receipts from 2021-22 and will lead to an increase above historical levels, adding pressure to magistrates' courts and slowing the pace at which they can recover.² The Ministry reports significant uncertainty in how these additional officers will be used and how they will affect the mix of cases coming to court.

1.16 The slowing down in cases processed in the magistrates' courts initially led to a sharp fall in Crown Court receipts between April and June 2020, which tempered any immediate increase in the Crown Court backlog. The suspension of all jury trials between 23 March and 18 May 2020 meant the backlog soon grew rapidly. By the start of 2021, disposals in the Crown Court had returned to pre-pandemic levels and the backlog started levelling off between March and June 2021. However, it had reached 60,692 cases by 30 June 2021, up 48% from 41,045 on 31 March 2020 (**Figure 3**).

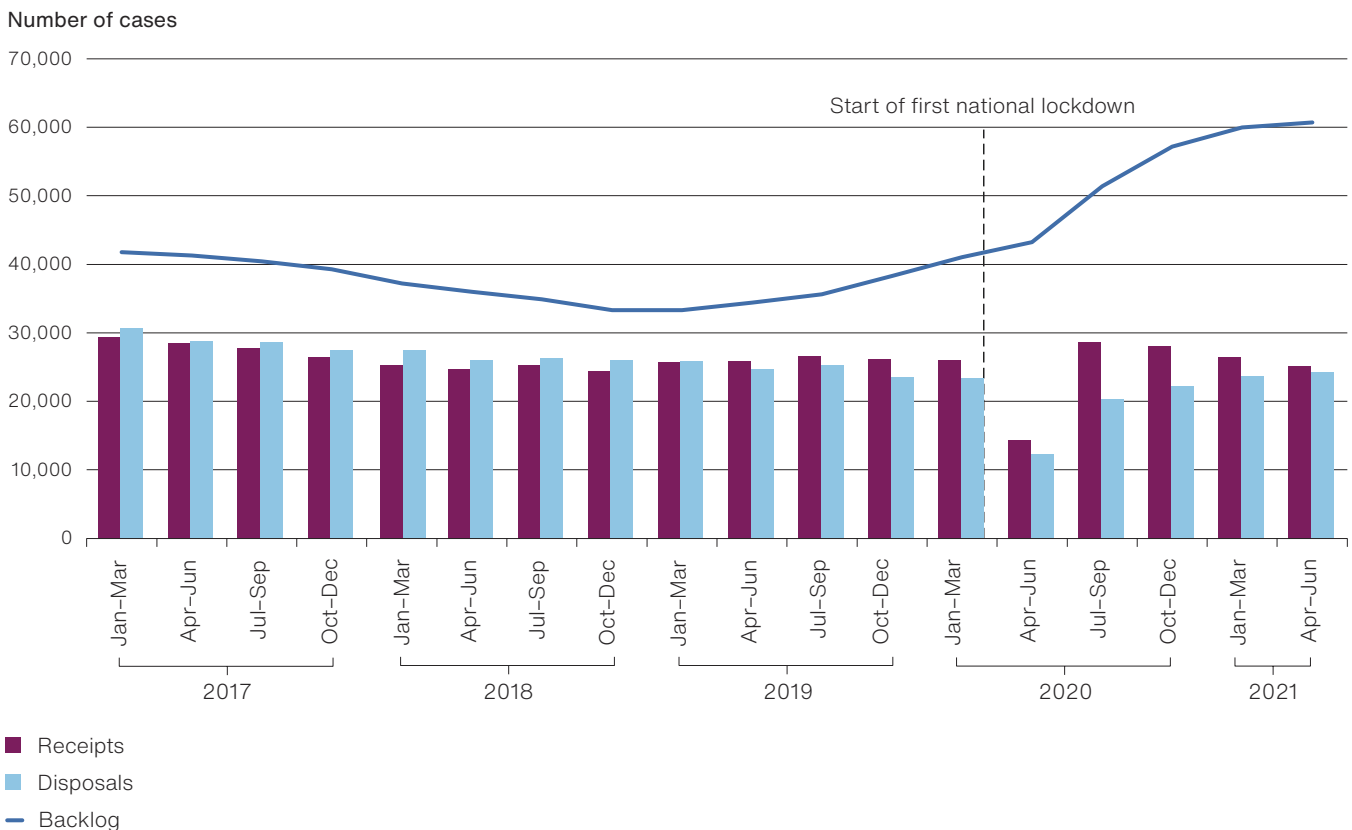
Regional variation

1.17 National trends obscure substantial regional variation (**Figure 4** on page 20). In April 2021, HMCTS analysed regional variation in demand and performance and highlighted a complex range of factors that underlie regional variation, including the size and composition of the court estate; estate facilities, such as socially distanced cells and docks; court efficiency; staffing; and the ability to be flexible in ways of working.

² The recruitment of 20,000 police officers is in addition to 3,000 additional police officers being recruited following an increase in police funding in 2019-20.

Figure 3
Caseload in the Crown Court, January 2017 to June 2021

Receipts outnumbering disposals has caused a substantial increase in the backlog since mid-2019



Notes

- 1 The backlog of cases is measured as of the last day of each period.
- 2 Based on data published on 30 September 2021, the latest available at the time of publication.
- 3 All jury trials were suspended between 23 March and 18 May 2020.
- 4 The UK entered its first national lockdown on 23 March 2020, before the end of the month.

Source: National Audit Office analysis of Ministry of Justice criminal court statistics

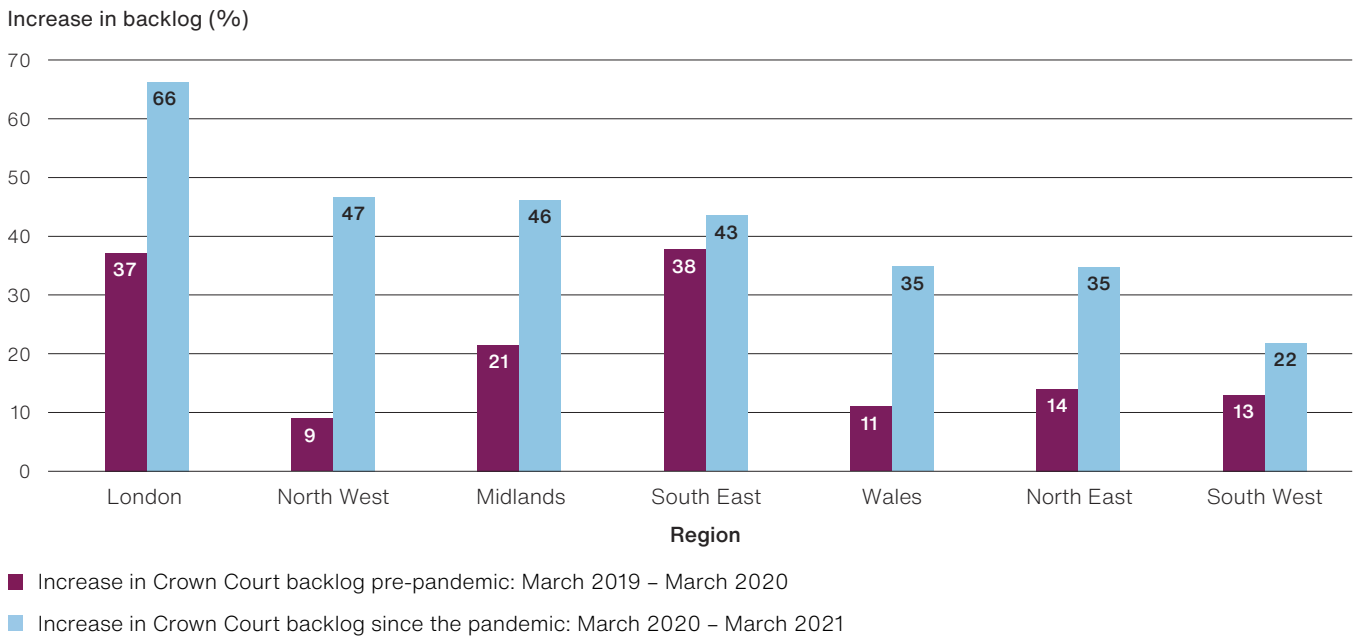
1.18 Between 31 March 2020 and 30 June 2021, London’s Crown Court backlog increased by 72% (from 9,319 to 16,021), compared with 18% in the South West (from 3,486 to 4,126). London has a higher proportion of large courthouses that were more affected by social distancing restrictions. It also has a higher proportion of complex jury trial cases involving multiple defendants and more cases requiring a trial because of low guilty plea rates. Comparatively, the South West has smaller courthouses on average and lower levels of caseload per court room. Waiting times for defendants, witnesses and victims in London have increased the most, with the average age of a case increasing 63% from 164 days on 31 March 2020 to 266 days on 30 June 2021.³ This is followed closely by the Midlands, where the average age of a case increased by 62% from 158 days on 31 March 2020 to 256 days on 30 June 2021.

³ The average ages are reported to the nearest whole number and so will result in a different percentage change to that included in the text.

Figure 4

Annual increase in regional backlogs in the Crown Court, 31 March 2019 to 31 March 2021

The Crown Court backlog has grown the fastest in London and the slowest in the South West



	London	North West	Midlands	South East	Wales	North East	South West
Crown Court backlog as at 31 March 2019	6,792	4,702	6,009	5,824	1,449	5,428	3,086
Crown Court backlog as at 31 March 2020	9,319	5,123	7,299	8,022	1,609	6,187	3,486
Crown Court backlog as at 31 March 2021	15,494	7,514	10,670	11,511	2,170	8,336	4,247
Crown Court backlog as at 30 June 2021	16,021	7,483	10,849	11,938	2,129	8,146	4,126

Notes

- 1 The backlog of cases is measured as of the last day of each period.
- 2 The latest available data covering the period April to June 2021 (published on 30 September 2021) have not been included in the figure because of the need to compare like with like time periods. However, they have been included in the table underneath the figure for reference.

Source: National Audit Office analysis of Ministry of Justice criminal court statistics

Impact on court users

1.19 As the backlog has grown, victims, witnesses and defendants have had to wait longer for their cases to be resolved. As of 30 June 2021, the average age of a case in the Crown Court backlog was 230 days, 84 days (57%) older than cases in the backlog as of 31 March 2020.⁴ In that time, the number of cases older than a year has increased by 302%, from 2,830 to 11,379 (**Figure 5** overleaf). This is in addition to the time it takes from the alleged offence to a charge and from charge to listing the case in court, which have also increased.⁵

1.20 Jury trials, where a defendant has pleaded not guilty, require more physical space to accommodate the jury, legal professionals, and at times, multiple defendants. They typically take much longer to complete in the courts than cases where a defendant has pleaded guilty. When social distancing restrictions were in place, they were challenging cases to try. Cases waiting for trial account for more than 90% of the increase in the Crown Court backlog since the start of the pandemic.⁶ The proportion of cases where the defendant pleaded not guilty fell from 19% in 2019-20 to 12% in cases between April 2020 and June 2021. HMCTS has not captured what impact this has on court effectiveness or the experience of victims, witnesses and defendants, but stakeholders told us of the following observed effects:

- **Impact on justice outcomes:** waiting longer to give evidence in trial is associated with more witnesses and victims withdrawing from the process, which may lead cases to collapse. It may also affect the accuracy of their accounts as memories fade. Judges we spoke to also told us that defendants were more likely to plead not guilty if a trial is delayed.
- **Impact on victims' experiences:** the longer victims wait for trial, the harder it can be for them to recover. For example, their lives may be put on hold as they wait for a trial date, while giving evidence may mean revisiting traumatic experiences.

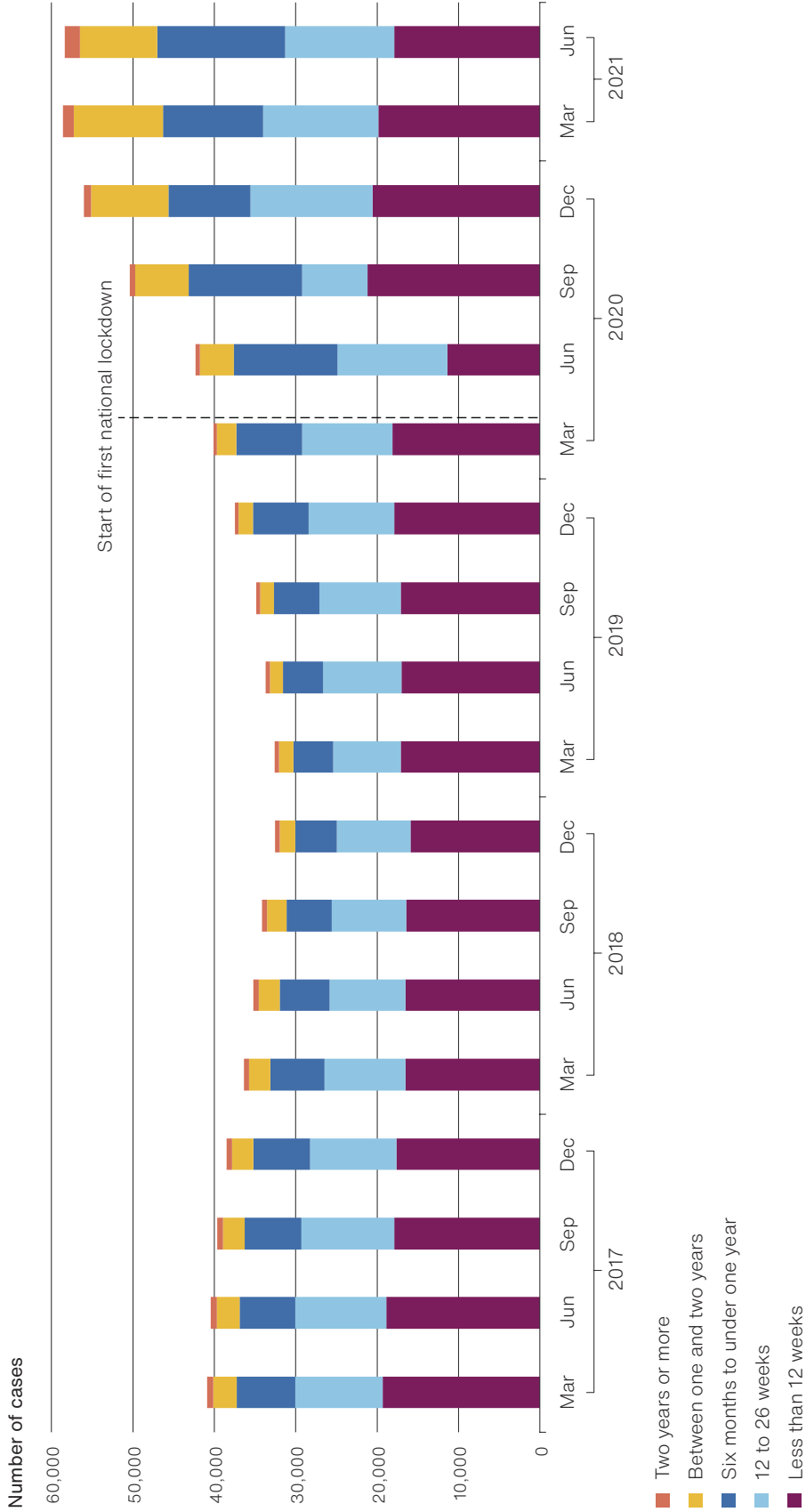
⁴ See footnote 3.

⁵ Data for waiting times from offence to first listing are not available until the case is disposed by the courts. Cases disposed by the Crown Court between April and June 2021 took an average of 382 days from offence to listing in the court, up from 322 days for cases disposed between January and March 2020.

⁶ Most cases awaiting trial will not result in a trial, as a defendant may subsequently plead guilty or the prosecution may drop the case ahead of a trial.

Figure 5
Age of cases in the Crown Court backlog, 31 March 2017 to 30 June 2021

Since the start of the pandemic, there has been a sharp increase in cases in the backlog for one year or more



Notes

- 1 Data for each case in the backlog are measured as the time between the receipt in the Crown Court and the last day of the month. Waiting times from offence to first listing are in addition to this and are not available until the case is disposed by the courts.
- 2 Data are not available for a small number of cases.
- 3 Based on data published on 30 September 2021, the latest available at the time of publication.
- 4 The UK entered its first national lockdown on 23 March 2020, before the end of the month.

1.21 Delays to jury trials disproportionately affect victims of sexual offences, where approximately half the defendants plead not guilty compared with one-fifth of all Crown Court cases. Between 31 March 2020 and 30 June 2021, the number of sexual offence trial cases in the backlog increased 71% (from 3,606 to 6,173), with the number waiting longer than a year increasing 435% (from 246 to 1,316). There were similarly stark increases in robberies and weapon possession cases waiting longer than a year. Crown Court receipts for sexual offences in the 12 months ending 30 June 2021 increased 34% (to 8,028) compared with the previous year but were still 26% lower than in the 12 months ending 30 June 2016.⁷

1.22 Judges list cases with the view to ensuring justice is not delayed, including observing that defendants on remand in custody are not held beyond legally prescribed limits while awaiting trial. Between 28 September 2020 and 28 June 2021, the government temporarily extended the limit for indictable-only trials by 56 days, from 182 days to 238 days on remand in custody. As of 30 June 2021, defendants in the Crown Court backlog who were held on remand in custody have spent an average of 209 days from the time their case was received by the Crown Court to the end of the reporting period. This is up 86 days compared with 31 March 2020.⁸ Between 31 March 2020 and 30 June 2021, the number of people held on remand increased 27% from 10,043 to 12,727, at a time when the total prison population fell by 6%. The criminal justice joint inspectorates have reported that more time spent on remand is destabilising for defendants. Other stakeholders have noted that many go on to be acquitted or receive a non-custodial sentence.

7 In June 2021, the government committed to returning volumes of rape cases being referred by police, charged by CPS and going to court back to 2016 levels by March 2024. We have used the period of the 12 months ending June 2016 to aid comparability.

8 The Ministry of Justice does not publish data on the estimated total time spent by defendants on remand in custody. The estimate presented here and elsewhere in this report of the time defendants spend on remand in custody is a best estimate. It is calculated as the average number of days defendants who were on remand in custody at receipt or first hearing have spent on remand, from the time their case was received by the Crown Court until the end of the reporting period.

Part Two

Pandemic response and recovery

2.1 This part of the report examines the work of the Ministry of Justice (the Ministry) and Her Majesty's Courts & Tribunals Service (HMCTS):

- in the emergency response to the COVID-19 pandemic (March 2020 to mid-May 2020); and
- through the HMCTS recovery programme and the impact of this work on reducing the backlog of cases in criminal courts (from mid-May 2020 to September 2021).

HMCTS's emergency response (March to May 2020)

2.2 As with other government departments we have reported on, HMCTS's contingency plans were insufficient preparation for the COVID-19 pandemic.⁹ Notwithstanding this, HMCTS responded quickly in the early stages of the pandemic. A week before the first national lockdown, it introduced emergency governance structures and worked with the judiciary to agree plans for prioritising time-critical or urgent court cases, including those relating to national security. The Lord Chief Justice suspended jury trials on 23 March 2020 and HMCTS worked rapidly to extend the use of audio and video technology to enable cases to be heard remotely (**Figure 6** on pages 26 and 27).

Governance

2.3 The scale and development of the pandemic required government to take a proportionate approach to how it governed its emergency response. HMCTS's evolving governance structures helped it respond quickly and effectively to the operational risks in criminal courts. Its initial emergency command structure, put in place in March 2020, gave senior leaders authority to make rapid decisions as government advice and regulations changed. Regional staff and Citizens Advice Witness Service told us the arrangements also brought partners together effectively and provided a clear route for managing issues within HMCTS. HMCTS changed its operational governance from May 2020 so it could plan better for recovery.

⁹ Comptroller and Auditor General, *Initial learning from the government's response to the COVID-19 pandemic*, Session 2021-22, HC 66, National Audit Office, May 2021.

2.4 HMCTS also used other forums to strengthen its joint working with stakeholders. For example, the judiciary-chaired Jury Trial Restart Working Group was attended by a wide range of stakeholders from the criminal justice system and was instrumental in restarting jury trials by May 2020.

Overview of HMCTS's recovery programme

2.5 HMCTS started its recovery programme for criminal courts in mid-May 2020 as part of a larger court recovery programme for criminal, civil and family courts and tribunals. It updated the programme to reflect changes in the situation and in policy, and lessons learned as it went along.

2.6 In a published update of its pandemic response in September 2020, HMCTS set out an overall objective for the recovery programme: to sustainably return the backlog to pre-pandemic levels.¹⁰ This objective was not informed by an understanding of what good looks like for the effective operation of criminal courts, as we set out in paragraph 1.7. It was also not a shared objective across the criminal justice system (see Part Three).

2.7 Before the pandemic, court capacity was not a constraint to progressing cases through criminal courts. Indeed, HMCTS's court reform programme, which started in 2016, included a programme of court closures. The pandemic and social distancing requirements meant HMCTS could not safely use large parts of its court estate without modifications, and courtroom space quickly became a significant consideration in the Crown Court. Physical capacity in the magistrates' court has been less challenging as fewer people are typically required in a hearing, and more hearings can be held remotely. HMCTS centred its recovery programme on increasing Crown Court capacity, including through:

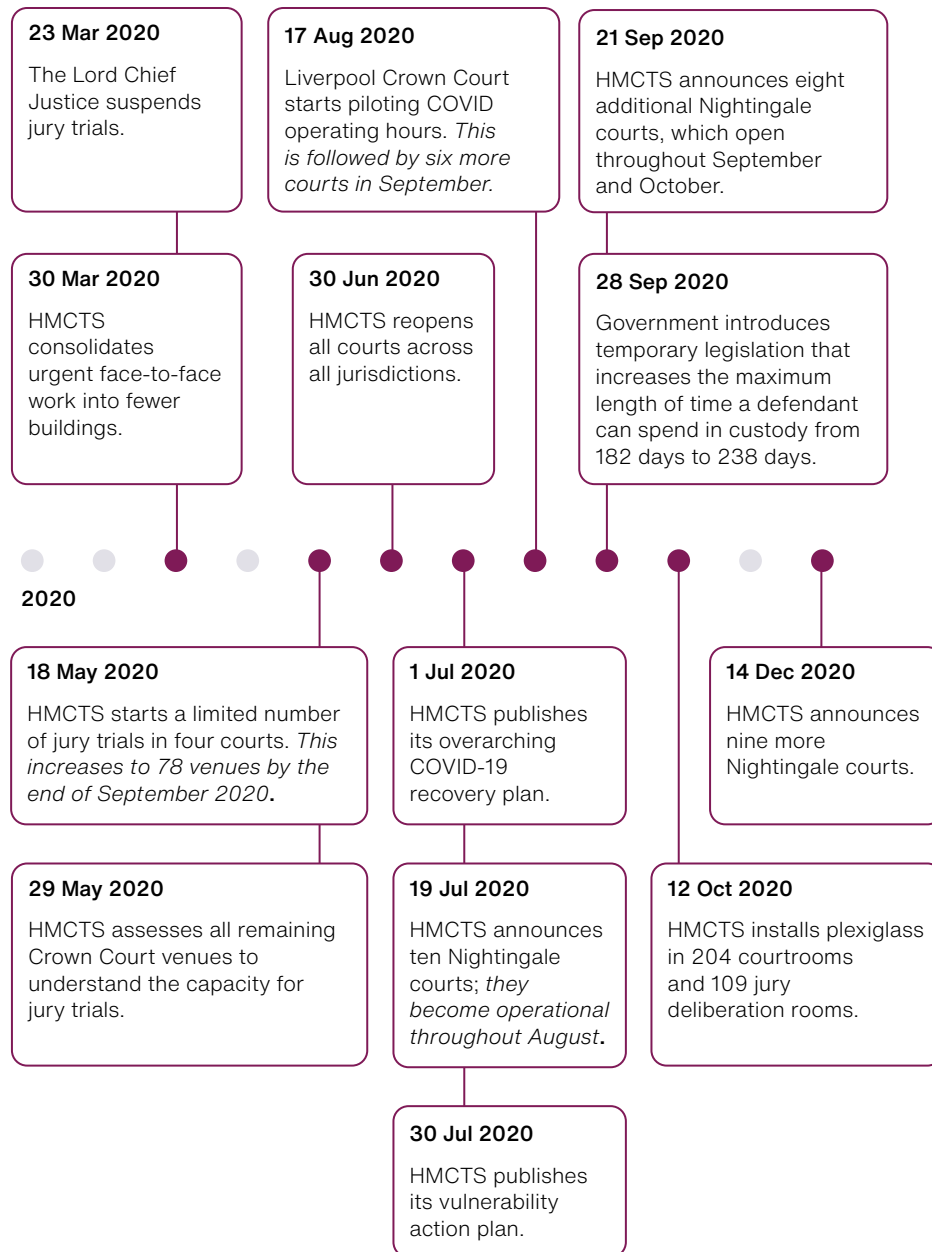
- maximising courtroom capacity by installing plexiglass, modifying the layout of some courtrooms and opening Nightingale courts. It also increased the capacity to hear cases involving multiple defendants;
- trialling the extension of court operating hours in the Crown Court;
- increasing judicial capacity; and
- rolling out audio-video technology to support remote hearings (**Figure 7** on page 28).

¹⁰ For this report, we have defined the backlog as all cases waiting to be heard or completed. The Ministry and HMCTS refer to this as the outstanding caseload. We recognise there are limitations to our definition, as described in Appendix Two. The Ministry and HMCTS were unable to provide an alternative definition.

Figure 6

Key activities to respond to and recover from the COVID-19 pandemic in criminal courts, March 2020 to September 2021

HM Courts & Tribunals Service (HMCTS) responded quickly in the early stages of the pandemic



Notes

- 1 All jurisdictions include criminal, civil and family courts and tribunals in England and Wales.
- 2 HMCTS set up Nightingale courts in additional venues, such as conference centres and theatres, as a temporary measure to increase capacity.
- 3 COVID operating hours temporarily extend court opening hours to allow courts to hear more cases.

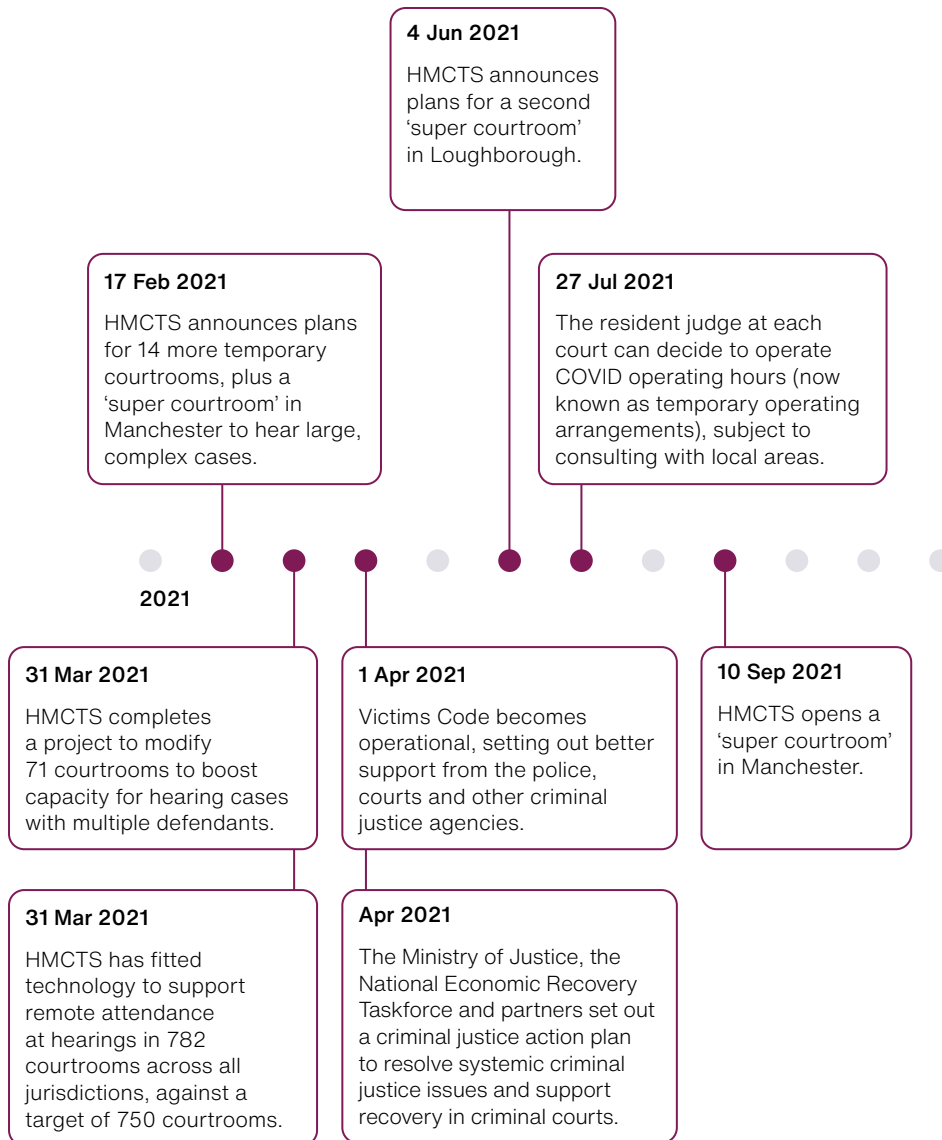


Figure 7
Overview of the COVID-19 recovery programme in criminal courts

HM Courts & Tribunals Service (HMCTS) started a recovery programme in May 2020 to return the backlog in the criminal courts to pre-pandemic levels by focusing on increasing the physical capacity of the estate and increasing staffing

Activities	Status	Summary of progress against activities. HMCTS:
Physical capacity		
1 Making use of existing capacity in the estate		
Modifying Crown Court rooms to make it is safe to resume jury trials	Work complete	had met its target of 290 rooms by December 2020.
Modifying Crown Court rooms to support trials involving three or more defendants	Work complete	modified 71 courtrooms to enable cases with multiple defendants to be heard.
Extending court operating hours	In progress	has created a new 'super courtroom' in Manchester to enable cases with up to 12 defendants to be heard. It expects to open a second one in Loughborough in autumn 2021. piloted temporarily extending court operating hours in seven Crown Court rooms. From July 2021, resident judges within the Crown Court have discretion over whether to adopt temporary operating arrangements (previously known as COVID operating hours).
2 Expanding temporary capacity		
Commissioning temporary Nightingale courtrooms ¹	In progress	opened 72 Nightingale courtrooms, 38 (53%) hearing Crown Court cases. While it has closed some of these, HMCTS has secured funding to extend the contracts or find replacements for all 32 Crown Court Nightingale rooms.
3 Using technology to support remote or video hearings		
Installing technology in courtrooms to support video and remote hearings	Work complete	fitted a total of 782 courtrooms across all jurisdictions with the technology needed for remote hearings, exceeding its target of 750 courtrooms.
Staffing		
4 Increasing court staffing		
Recruiting new staff	In progress	struggled to recruit all of the additional staff needed to support pandemic response and recovery. As at 31 August 2021, it had filled 870 (90%) of the 966 extra positions across all jurisdictions.
5 Increasing judicial capacity		
Extending the pool of part-time and full-time judges	In progress	secured 121 part-time judges and 53 circuit judges in 2020-21. ²

■ Work complete ■ In progress

Notes

- 1 Nightingale courts have been set up in additional venues, such as conference centres and university campuses, as a temporary measure to increase capacity.
- 2 Circuit judges are appointed to one of seven court regions in England and Wales and sit in the Crown and County Courts within their region.

Source: National Audit Office analysis of HM Courts & Tribunals Service documents and data

2.8 HMCTS spent £63 million on its response and recovery work in criminal courts in 2020-21, in addition to that spent on expected operational activities (**Figure 8** overleaf). It spent £995,800 on bringing three courts back into use which it had closed under its court reform programme, only one of which was brought back in for Crown Court trials.

Recovery programme performance

2.9 HMCTS introduced weekly performance reporting in April 2020. It began reporting on progress against its recovery programme targets and future risks in August 2020, but gaps remain. Our review of HMCTS's performance reporting found that it:

- produced various performance reports to meet the needs of different stakeholders, including ministers. There now exists a complex cycle of regular reporting for HMCTS teams to keep updated, and for officials to monitor to maintain a comprehensive picture of pandemic recovery in HMCTS;
- needs to improve the readability and user-friendliness of its reports on pandemic recovery; and
- only completed comprehensive regional-level analysis in April 2021, more than a year into the pandemic.

Securing more courtroom capacity

2.10 HMCTS collected limited data on court capacity in the early stages of the pandemic, between March 2020 to August 2020, despite this being a key constraint in its recovery programme. Senior decision-makers were therefore without complete information on courtroom capacity to inform their decisions. Nevertheless, between September 2020 and July 2021, HMCTS increased Crown Court room capacity by 30% and by 7% in the magistrates' courts (**Figure 9** on page 31).

Expanding capacity for large trials

2.11 At the start of the pandemic, most Crown Court courtrooms did not have enough space in the docks or the well of the court to allow for social distancing to be in place for cases with multiple defendants. As a result, the number of cases involving three or more defendants awaiting trial increased by 53%, from 1,114 trials in July 2020 to 1,705 trials in February 2021. Larger cases with seven or more defendants are concentrated in London, the North West and the Midlands. By 31 March 2021, HMCTS had modified 71 courtrooms and increased capacity to hear cases with multiple defendants by 28% through a concerted project to safely and securely reconfigure courtrooms and modify docks and other areas (**Figure 10** on page 32). HMCTS demonstrated good practice in managing this project.

Figure 8
Total outturn versus funding allocated for COVID-19 court recovery, as at April 2021

HM Courts & Tribunals Service (HMCTS) spent £63 million on recovery in the criminal courts in 2020-21, in addition to that spent on expected operational activities

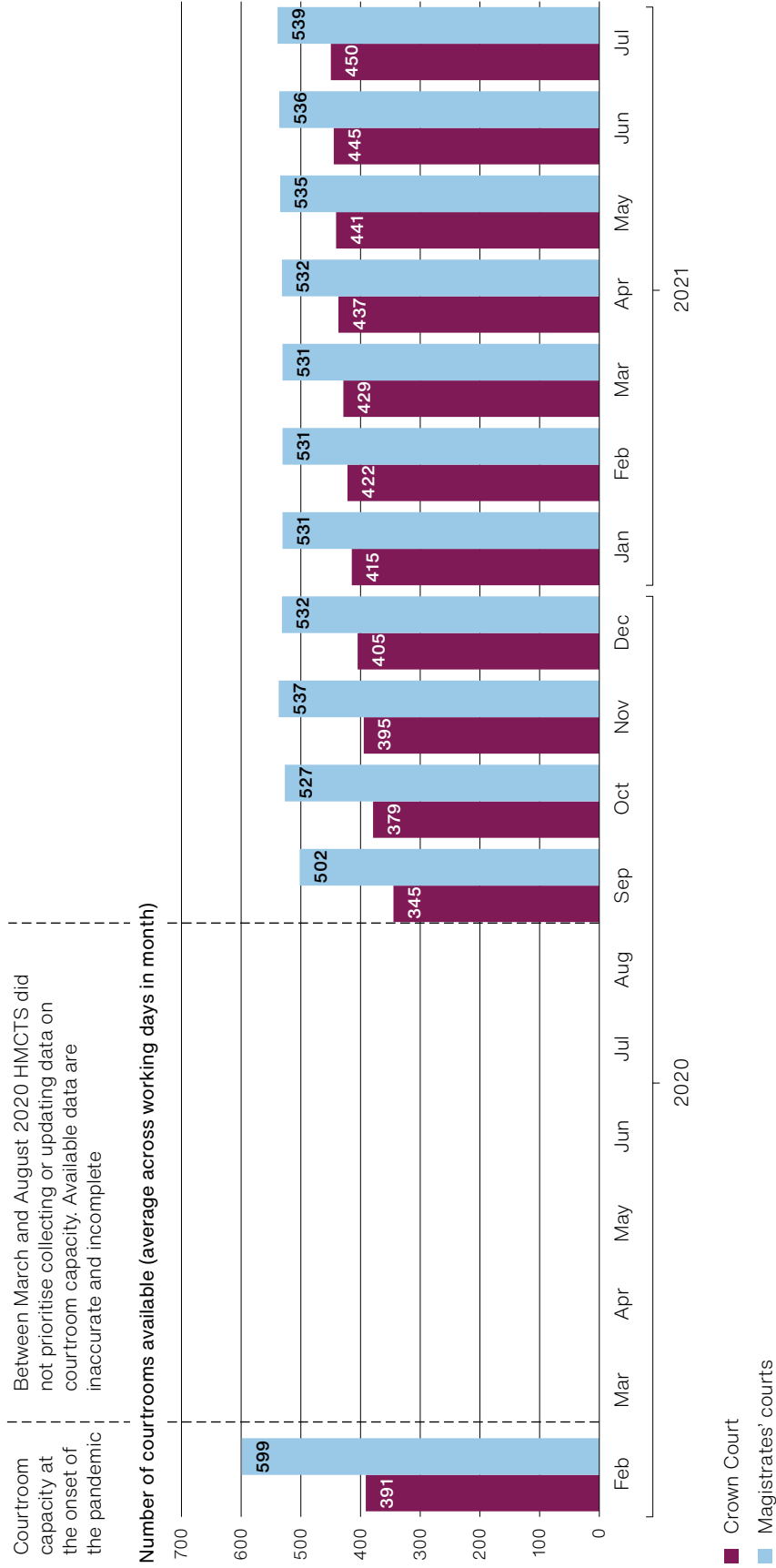


Notes

- 1 Data includes resource and capital spending.
- 2 Spending on criminal courts recovery does not include spending on multi-jurisdictional recovery activities or HMCTS headquarters.
- 3 The additional courts and tribunals programme includes activities to increase capacity (for example temporary Nightingale courts) and make courts safe under social distancing arrangements (for example through installing plexiglass screens).
- 4 Figures may not sum to totals due to rounding.
- 5 HMCTS remained within its judicial cost allocation for the Crown Courts in 2020-21, so did not incur any additional expenses as part of the recovery programme.

Figure 9
Available courtrooms in the Crown and magistrates' courts in February 2020, and between September 2020 to July 2021

Between September 2020 and July 2021, the period for which complete data are available, the number of available courtrooms increased by 30% in the Crown Court and by 7% in the magistrates' courts



Courtroom capacity at the onset of the pandemic

Between March and August 2020 HMCTS did not prioritise collecting or updating data on courtroom capacity. Available data are inaccurate and incomplete

Number of courtrooms available (average across working days in month)

Notes

- 1 Prior to the pandemic, HM Courts & Tribunals Service (HMCTS) collected data on available sessions each day within each courthouse, which accounted for rooms temporarily unavailable, for instance due to maintenance work or use for other court jurisdictions.
- 2 The COVID-19 pandemic affected data collection between March and August 2020.
- 3 From September 2020, HMCTS has used a new system to capture data on room availability, which is not comparable to data prior to the pandemic.

Source: National Audit Office analysis of HM Courts & Tribunals Service data on courtroom capacity

Figure 10

Example of dock modifications in a Crown Court

These modifications were part of a project to reconfigure courtrooms to safely accommodate cases with multiple defendants



Source: HM Courts & Tribunals Service

Remote hearings

2.12 Although it remains a judicial decision whether to hear a case remotely, HMCTS considered remote hearings critical to freeing up physical courtrooms and rolled out the technology to conduct more work online. By May 2021, more than 220,000 hearings in the magistrates' courts and more than 130,000 hearings in the Crown Court were conducted mainly via video. By March 2021, HMCTS had fitted 782 courtrooms, across all jurisdictions, with the required software and hardware, surpassing its target of 750 courtrooms. In 2020-21, it spent £40.9 million on audio-video and telephone running costs (including £10.9 million in criminal courts).

2.13 Regional court staff we interviewed considered remote hearings helpful in progressing cases in most jurisdictions, albeit to a lesser extent in the Crown Court. They suggested that HMCTS needed to better understand how remote hearings impact victims and witnesses and which cases were best suited to remote hearings. Judges and legal professionals we spoke to said remote hearings were helpful for administrative casework but raised concerns over their impact on case outcomes and the quality of interactions between court users. We set out HMCTS's work to evaluate remote hearings in paragraph 3.21.

Nightingale courts

2.14 In July 2020, HMCTS began setting up Nightingale courts – satellites of existing courts in additional venues such as conference centres and theatres – as a temporary measure to quickly increase court capacity. HMCTS opened a total of 72 Nightingale courtrooms between July 2020 and July 2021 across all jurisdictions, 38 of which (53%) handled Crown Court work (**Figure 11** and **Figure 12** overleaf).¹¹ HMCTS estimates that without Nightingale courts, the Crown Court backlog would have been 4,470 cases higher by the end of April 2021. In 2020-21, it spent £17.4 million on Nightingale courts across all jurisdictions, including £8.1 million on Nightingale Crown Courts, with an estimated average daily running cost of £11,510.¹²

2.15 Judges and legal professionals we spoke to considered that Nightingale courts had freed up space in main court buildings for more serious cases requiring secure facilities, such as murder trials. Regional court staff also reflected positively on the role of Nightingale courts for tackling the backlog, despite the challenges in setting them up, and were keen to use them in the long term.

2.16 HM Treasury has agreed to fund contract extensions or replacement of 32 existing Nightingale courtrooms until the end of March 2022. As of September 2021, HM Treasury had not agreed to fund an additional 33 new Nightingale courtrooms (see paragraph 3.12).

Figure 11

Nightingale courtrooms opened between July 2020 and July 2021

Of 72 Nightingale courtrooms, 38 (53%) served the Crown Court

Jurisdiction	Nightingale courtrooms opened ^{1,2}			Total
	Phase 1 (July to August 2020)	Phase 2 (September 2020 to January 2021)	Phase 3 (February to June 2021)	
Crown Court	5	6	27	38
Magistrates' courts	0	2	2	4
Other ³	14	11	5	30
All jurisdictions	19	19	34	72

Notes

- 1 Nightingale courts have been set up in additional venues, such as conference centres and university campuses, as a temporary measure to increase capacity. Data exclude additional capacity created in existing courthouses.
- 2 Of these, HM Courts & Tribunals Service had closed 18 of the 72 courtrooms, as at 21 July 2021, in line with venue licenses. Between July 2020 and July 2021, a maximum of 60 courtrooms were open at any one time.
- 3 Other jurisdictions cover civil and family courts and tribunals.

Source: National Audit Office analysis of HM Courts & Tribunals Service management information

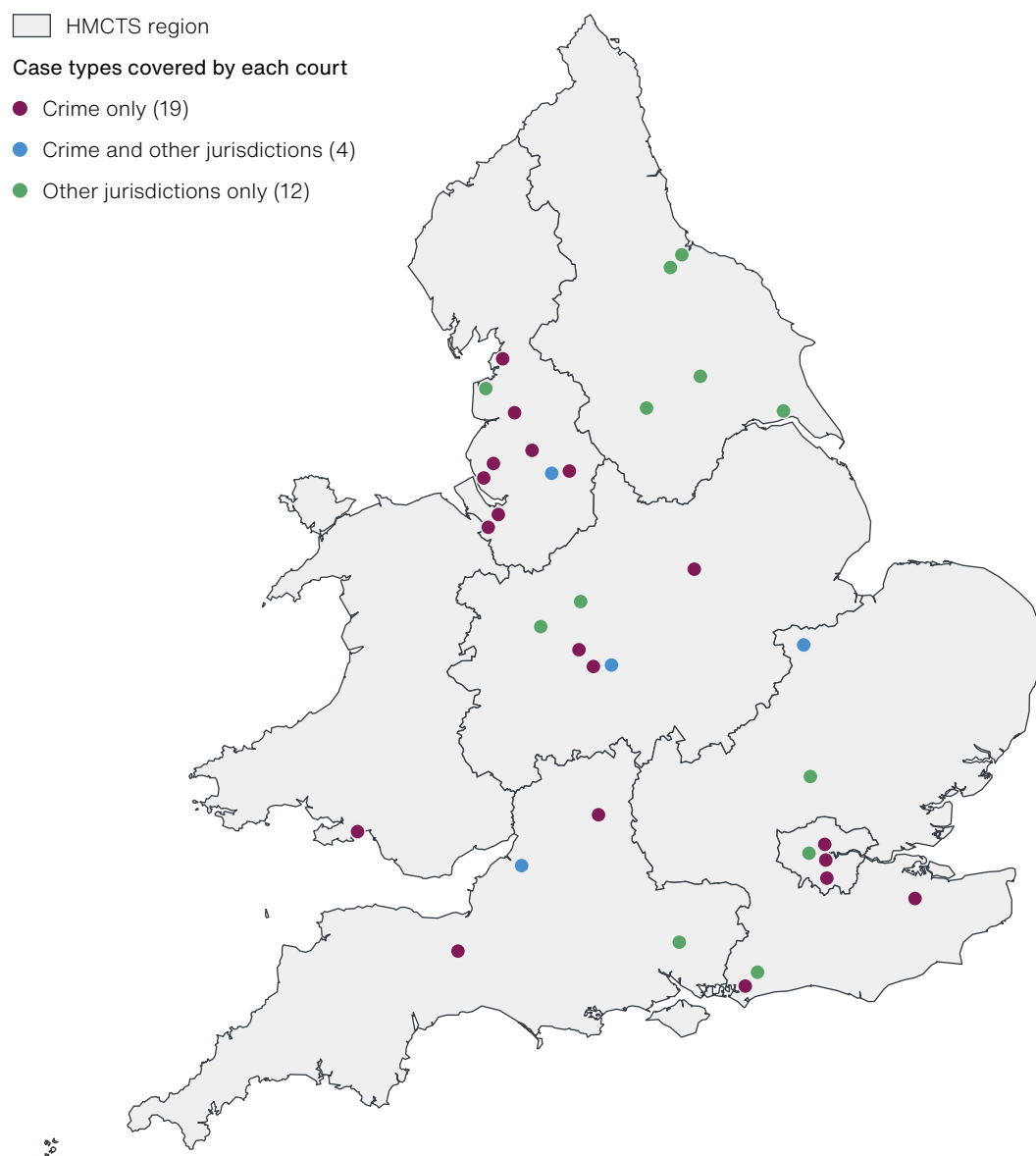
¹¹ As at July 2021, HMCTS had closed 18 of these courtrooms, in line with venue licenses. Between July 2020 and July 2021, a maximum of 60 courtrooms were open at any one time.

¹² This excludes the costs of multi-jurisdictional Nightingale courts.

Figure 12

Locations of Nightingale courts opened between July 2020 and July 2021

HM Courts & Tribunals Service (HMCTS) opened Nightingale courts in every HMCTS region



Notes

- 1 We have adjusted some court locations by up to several millimetres to prevent exact overlaps and improve visual clarity.
- 2 Some courts accommodate more than one courtroom. The 35 courts shown here accommodate 72 courtrooms.
- 3 Some Nightingale courts have since closed. Between July 2020 and July 2021, a maximum of 60 courtrooms were open at any one time.
- 4 Other jurisdictions cover civil and family courts and tribunals.
- 5 Regional boundaries were constructed using information supplied by HMCTS.

Source: National Audit Office analysis of HM Courts & Tribunals Service management information; Office for National Statistics licensed under the Open Government Licence v.3.0 Contains OS data © Crown copyright and database right 2021

COVID operating hours

2.17 Between August and October 2020, HMCTS piloted temporarily extending court operating hours in seven courts, splitting the day into two shorter courtroom sessions to provide two extra hours of court time. HMCTS's evaluation of the pilot found it was an effective way of increasing capacity: on average, and with the same case mix, courtrooms working on COVID operating hours disposed of 3.5 trials per room per week, compared with 2.5 trials per room per week in standard hour courtrooms, a 40% increase. However, HMCTS also found that it was a less efficient use of judges' time, as each shorter courtroom session uses up a whole sitting day.

2.18 Local staff we spoke to considered that COVID operating hours were potentially appropriate for some cases, such as low-level assaults, but had concerns, including about contractual issues arising from longer operating hours. HMCTS's evaluation found it puts more pressure on court staff. Bodies representing the legal professions have argued that COVID operating hours could discriminate against staff and court users with caring responsibilities. HMCTS has also acknowledged this issue and outlined mitigations to tackle it but has not sought to understand the preferences of defendants, witnesses and victims with caring responsibilities as part of the pilots.

2.19 In April 2021, the Ministry considered that implementing COVID operating hours for six months was central to achieving its best-case recovery scenario (see Part Three). Noting significant opposition from legal professionals and the potential equality impacts, in July 2021 the Ministry announced that the resident judge within each Crown Court would decide whether to adopt COVID operating hours, now known as temporary operating arrangements, following consultation with local court users. HMCTS expects take-up locally to be very low, freeing up 318 sitting days compared with 1,500 that it originally forecast.

Staffing

HMCTS staffing

2.20 To support increased criminal court capacity, HMCTS has needed additional staff to ensure it can operate physical hearings safely and support remote hearings. As of 31 August 2021, it had filled 870 (90%) of the 966 extra positions it had identified it needed across all jurisdictions. HMCTS ran national recruitment campaigns, but has struggled to compete with local labour markets, including against better-paying government departments. Regional court staff that we spoke to said that while funding for additional staff had helped, staff shortages were ongoing, caused by long-standing issues with recruiting and retaining staff.

Part Three

Risks to long-term recovery

3.1 In this part, we set out:

- the Ministry of Justice's (the Ministry) and HM Courts & Tribunals Service's (HMCTS) forecasts for backlogs in criminal courts up to November 2024;
- the Ministry-led criminal justice action plan to support long-term recovery; and
- the risks that the Ministry and HMCTS must manage to achieve and sustain long-term recovery.

The Ministry's modelling for recovery

3.2 To support its funding bid to HM Treasury as part of the 2021 Spending Review, the Ministry developed scenarios to estimate the trajectory of the backlog in the Crown Court and magistrates' courts to November 2024, given a certain level of sitting days.¹³ In July 2021, the Ministry developed two initial scenarios that it termed 'ambition' and 'cautious'. Under both scenarios, the Ministry assumed a considerable expansion of Nightingale courts alongside a substantial uplift in sitting days each year to 2023-24 (**Figure 13** on page 38). Based on these assumptions, the Ministry forecasts a backlog under its 'ambition' scenario of 48,000 by November 2024, 17% above pre-pandemic levels, and a backlog of 52,000 cases under its 'cautious' scenario, a 27% increase over pre-pandemic levels. The Ministry later developed a worst-case scenario it called 'the counterfactual' based on maintaining funding agreed in the 2020 spending round. In this scenario, the Ministry forecasts a backlog in the Crown Court of 72,000 cases by November 2024, 74% above pre-pandemic levels (**Figure 14** on page 38). The Ministry is continuing to develop its forecasts against several different scenarios as part of its preparations for the 2021 Spending Review.

¹³ For this report, we have defined the backlog as all cases waiting to be heard or completed. The Ministry and HMCTS refer to this as the outstanding caseload. We recognise there are limitations to our definition, as described in Appendix Two. The Ministry and HMCTS were unable to provide an alternative definition.

3.3 Like any model, the forecasts depend on the structure of the model and the assumptions the Ministry makes around key parameters, both within courts (such as Crown Court sitting days) and the wider criminal justice system (such as police charging rates). We observed the following limitations of the Ministry's modelling approach:

- Both scenarios that the Ministry produced in July 2021 have an impact on the backlog broadly comparable to that of its previous best-case scenario produced in April 2021 (Figure 13 overleaf). The similarity between the projections of the two scenarios produced in July 2021 limits the ability of decision-makers to understand a reasonable range of outcomes resulting from their funding decisions and other strategic decisions, including around the pace of recovery and knock-on impacts on other parts of the criminal justice system.
- Despite the Ministry recognising the challenges of securing part-time judges (recorders) its 'cautious' scenario anticipates part-time judges committing to more sitting days than at any point previously. The Ministry's assumptions on average part-time judge availability under its 'ambition' scenario are even higher.
- The Ministry acknowledges that there is considerable uncertainty in the demand flowing into the courts following the COVID-19 pandemic and the recruitment and deployment of new police officers. However, the scenarios that the Ministry produced in both April 2021 and July 2021 are only differentiated by the expectations of sitting day allocations and of additional courtrooms and judicial staff, rather than showing a full range of reasonable outcomes that factor in differing levels of demand (Figure 14 overleaf). The Ministry's modelling to date therefore does not help decision-makers identify and manage risks if its demand projections prove inaccurate, although the Ministry is planning to set this out as part of its preparations for the 2021 Spending Review.

3.4 In the magistrates' courts, the Ministry's models predict a return to pre-pandemic backlog levels by November 2021. It recognises that faster recovery in magistrates' courts will increase demand on the Crown Court as trial cases pass through. Across all scenarios, it assumes that Crown Court judges can return cases to the magistrates' court where appropriate. The Ministry estimates that this would free up around 400 Crown Court sitting days annually.

The Ministry's long-term recovery plan

3.5 In April 2021, the National Economic and Recovery Taskforce, established by the Cabinet Office, the Ministry and partner organisations, set out an action plan to resolve systemic criminal justice issues and support recovery in criminal courts. The plan includes a specific focus on tackling rape and serious sexual offences.

Figure 13

Crown Court backlog forecasts under the Ministry of Justice's (the Ministry's) demand model

The Ministry's two scenarios in July 2021 have an impact on the backlog broadly similar to that of its previous best-case scenario produced in April 2021

Scenarios modelled in April 2021	Estimate of Crown Court backlog by March 2024	Scenarios modelled in July 2021	Estimate of Crown Court backlog by November 2024
Best-case	52,000	'Ambition'	48,000
Central	66,000	'Cautious'	52,000
Worst-case	75,000	'Counterfactual' ²	72,000

Notes

- 1 The Ministry's assumptions underpinning the scenarios changed between April and July 2021. For example, the July 2021 scenarios assume social distancing ends on a later date and that fewer sitting days are available between 2021-22 and 2023-24. The Ministry also reviewed and updated assumptions to account for the latest data on how courts were operating.
- 2 The Ministry developed the counterfactual scenario in September 2021 to support its discussions with HM Treasury as part of the 2021 Spending Review.

Source: National Audit Office analysis of Ministry of Justice demand modelling updates, April, July and September 2021

Figure 14

Assumptions underpinning the Ministry of Justice's (the Ministry's) scenarios for modelling demand in the Crown Court, July 2021

The Ministry's two scenarios set out different expectations on three variables

Variable	'Ambition' scenario	'Cautious' scenario
Allocated sitting days		
2021-22	103,500	100,000
2022-23	112,000	105,000
2023-24	119,500	114,000
2024-25	119,500	114,000
Number of additional courtrooms¹		
2022-23	33	0
2023-24	67	42
Average number of days worked by part-time judges (recorders)		
2022-23	43	34
2023-24	40	34

Notes

- 1 These are in addition to 32 Nightingale courts funded for 2021-22 across both scenarios.
- 2 Other assumptions are consistent across both scenarios, including the average number of days worked by full-time judges and the impact of HM Courts & Tribunals Service's court reform programme.

Source: National Audit Office analysis of Ministry of Justice demand modelling update, July 2021

3.6 The Ministry's plan recognises the need to take a whole-system approach, including monitoring how initiatives in one part of the system impact other areas and agencies, buy-in from all criminal justice agencies, and an effective governance structure to support it. At the time of our review, the plan was immature. For example, it:

- does not yet include an assessment of whole-system costs of the various recovery initiatives or a whole-system view on performance including by region and crime type;
- needs more evidence to understand what supports better case quality, court effectiveness and improved handovers between agencies, including the police and Crown Prosecution Service (CPS);
- includes wide-ranging actions to support its three priorities, but many were exploratory, unfunded and require consultation, new data technology and additional recruitment; and
- needs to develop further its planned impacts as many lacked clear targets or sufficiently defined outcomes.

Risks to long-term recovery

3.7 We reviewed the Ministry's long-term recovery plans against our framework for improving operational management in government.¹⁴ The remainder of this part sets out the risks that the Ministry and HMCTS will need to actively manage to achieve long-term value for money (**Figure 15** overleaf). Many of these risks follow on from uncertainties tied to the scale and nature of the pandemic. Others, including those relating to data quality and understanding user needs, are longstanding areas of concern on which we and others have reported.

Shared objectives

3.8 Until the development of the criminal justice action plan in April 2021, the Ministry did not set or share objectives for recovery in criminal courts, associated trajectories for reducing the backlog or the time taken for cases to be heard. Even after setting three objectives in the action plan – to improve timeliness, improve victim engagement, and reduce the backlog – we found notable inconsistencies between these three priorities and descriptions elsewhere of system or organisational priorities. For instance, while the need to reduce the backlog features strongly in both the Ministry's 2021-22 outcome delivery plan and HMCTS's 2021-22 business plan, neither explicitly mentions the need to monitor or improve timeliness.¹⁵ HMCTS's business plan does not mention victims either, only court users more generally.

¹⁴ National Audit Office, *Improving operational delivery in government: A good practice guide for senior leaders*, March 2021.

¹⁵ Outcome delivery plans set out each government department's priority outcomes, the department's strategy for achieving them, and the metrics they will use to track performance.

Figure 15

Risks to long-term recovery in criminal courts

Key operational risks to the recovery in criminal courts include a lack of shared objectives and limitations in data

Features of successful operational delivery ¹	Risks
Aligning objectives, funding, governance and accountability	<ul style="list-style-type: none"> ● Lack of shared objectives ● Uncertainty over future funding
Taking an end-to-end service perspective	<ul style="list-style-type: none"> ● Understanding system capacity ● Balancing demand across the system ● Alignment with major programmes
Building technical and leadership capacity	<ul style="list-style-type: none"> ● Data limitations to understanding future demand and performance
Meeting the diversity of user needs	<ul style="list-style-type: none"> ● Limited understanding of users' needs

Note

1 Another feature of successful operational delivery set out in the NAO's March 2021 report cited below, but not listed here: closing the gap between policy design and service reality.

Source: National Audit Office analysis. Features of successful operational delivery taken from National Audit Office, *Improving operational delivery in government: A good practice guide for senior leaders*, March 2021

3.9 Without this clarity on shared objectives, the Ministry and its agencies risk planning and producing ineffective whole-system outcomes. They will also struggle to accurately understand and measure performance and success. It also makes it more challenging for Parliament and others to hold the Ministry accountable for its performance.

Uncertainty of future funding

3.10 The Ministry estimated in April 2021 that its activities to reduce the Crown Court backlog to below 50,000 by 2024 will cost around £500 million between 2021-22 and 2023-24, in addition to £1.7 billion from increased demand on legal aid, prisons and probation services. As part of the 2021 Spending Review, the Ministry is in discussions with HM Treasury over additional funding to deliver the criminal justice action plan.

Understanding system capacity

3.11 The Ministry considers that the two main constraints to reducing the backlog are physical and judicial capacity. To reduce the backlog, in April 2021, the then Lord Chancellor removed the cap on the number of sitting days in the Crown Court for 2021-22. At the time, the Ministry's best-case scenario estimated using 111,500 judicial sitting days in 2021-22, but this was contingent on a range of assumptions, including 33 additional Nightingale courts that would start operating from the beginning of July 2021, and implementing COVID operating hours, which would have freed up around 1,500 sitting days.

3.12 Government delayed the easing of social distancing requirements from 21 June to 19 July 2021. By July 2021, HM Treasury had refused to fund the additional Nightingale courts the Ministry requested, and the Ministry scaled back plans to implement COVID operating hours (see paragraph 2.19). It therefore updated in July 2021 its estimate of sitting days under its 'ambition' scenario to 103,500 sitting days in 2021-22, 112,000 days in 2022-23, and 119,500 days in 2023-24.

3.13 The Ministry and HMCTS have recognised that securing enough judges will be challenging. In 2021-22, they are relying on a number of recorders (part-time judges) agreeing to work more hours, alongside additional sitting days from high court judges. HMCTS believes it will be more challenging to secure enough judges in 2022-23 and 2023-24. Recruiting new judges is a protracted process that takes about two years. The Ministry and HMCTS have attracted lower than expected numbers of judges into criminal court postings and expect a shortfall. In the short term, they have focused on recruiting fee-paid judges and recorders. They have also extended the mandatory retirement age for judges from 70 to 75 years.

3.14 The Ministry and HMCTS have a limited understanding of the capacity of other partners in the criminal justice system, including the CPS and the legal professions. Aside from judicial capacity, the Ministry's modelling does not account for these other potential constraints to recovery. Without this, the Ministry and HMCTS cannot be confident that their recovery planning is robust or can utilise increased judicial and courtroom capacity. Additionally, the Ministry will lack a system-view of funded and unfunded costs.

Balancing demand across the system

3.15 In deciding the pace of criminal court recovery and to make informed strategic trade-offs in managing demand across the system, the Ministry and HM Treasury must consider the knock-on impacts on other parts of the system. Two main considerations within the Ministry's remit are:

- **courts:** quicker recovery in magistrates' courts will create additional demands, and a larger backlog, in the Crown Court. Also, shifting resources and capacity to criminal courts may slow recovery in other court jurisdictions (such as family courts); and
- **prisons:** the Ministry estimated in July 2021 that higher convictions resulting from the criminal justice action plan will result in a shortfall of around 4,000 prison places by the end of 2023. The Ministry has a new prison building programme underway, but it takes several years to build and adequately staff a new prison, as we set out in our 2020 report on *Improving the prison estate*.¹⁶ Any delays in the Ministry's prison building programme would increase the size of the shortfall further.

Alignment with other major programmes

3.16 The pandemic has also had an impact on HMCTS's court reform programme by delaying some parts of the programme and accelerating others. HMCTS has confirmed it does not plan to dispose of any more court buildings as it needs to maximise courtroom capacity to support recovery. HMCTS estimates that increased efficiency through the reform programme will free up 13,700 sitting days and considers its reform programme as important to enabling recovery. There are several risks that HMCTS will need to manage in delivering recovery and reform programmes, including increased capacity pressure on HMCTS management and front-line staff, and the roll-out of its Common Platform.¹⁷

Data limitations to understanding future demand and performance

3.17 Our initial learning from the government's response to COVID-19 highlights the importance of accurate, complete and interoperable data for service delivery.¹⁸ In 2019, the HMCTS-commissioned report *Digital Justice: HMCTS data strategy* set out the extent of HMCTS's data limitations, including in collection, storage and publication of data and poor visibility regarding the data that HMCTS holds.¹⁹ HMCTS accepted the report's recommendations in a progress update published in October 2020 but has not yet provided a full strategy. It is due to publish a further update on progress in autumn 2021.

¹⁶ Comptroller and Auditor General, *Improving the prison estate*, Session 2019-20, HC 41, National Audit Office, February 2020.

¹⁷ The Common Platform is intended to integrate case management across criminal justice agencies.

¹⁸ Comptroller and Auditor General, *Initial learning from the government's response to the COVID-19 pandemic*, Session 2021-22, HC 66, National Audit Office, May 2021.

¹⁹ The Legal Education Foundation, *Digital Justice: HMCTS data strategy and delivering access to justice*, October 2019.

3.18 The pandemic has exacerbated these long-standing data challenges.

The Ministry and HMCTS recognise that structural improvements to data infrastructure and management across the criminal justice system require a substantial effort, funding and analytical capability. The Ministry has not yet quantified associated costs. The immediate data challenges include:

- **missing data:** since the pandemic, the Ministry and HMCTS have worked together to source data on court capacity and utilisation with mixed success. They also face difficulties factoring in behavioural impacts resulting from the pandemic that may affect future demand, such as the rate of guilty and not guilty pleas and judicial prioritisation decisions. They do not systematically collect or codify data from the judiciary, even though the judiciary has a strong understanding of how long cases are likely to take – a key factor in assessing expected flows through the system;
- **disjointed data:** data across the system are fragmented and incomplete. Agencies categorise, count and record cases in different ways with no common identifier, preventing a complete end-to-end view of demand. Performance reports deal with each part of the system in turn, with the lack of join-up between datasets hampering the understanding of flows through the system. The Ministry recognises the limitations in its reporting and proposes significant investment to reconcile data and achieve a joined-up view. This will support new public scorecards to make national and regional performance comparable and transparent. The Ministry aims to publish the first national scorecard in autumn 2021; and
- **disruptions to data:** changes to the volume, mix and delivery of cases has disrupted long-term trends and limited the comparability of data before and after the pandemic. HMCTS, therefore, cannot rely on some of its standard performance metrics to track the effectiveness of criminal courts.²⁰

Understanding users' needs

Supporting vulnerable users

3.19 The Ministry has taken a range of actions to improve how it supports vulnerable victims, including providing £71 million additional funding for victim and witness support services as a result of the pandemic, improving the data that it collects on demand for these services, and launching a new Victims Code in April 2021 that sets out victims' rights and entitlements. HMCTS has committed to collating evidence and identifying the impact of its pandemic recovery programme on court users. In July 2020, it published a vulnerability action plan setting out how it intends to support vulnerable users.

²⁰ HMCTS routinely monitor the proportion of trials that: go ahead as planned (effective trials); are not ready on the day and are relisted for another day (ineffective trials); are withdrawn on the day they are due to start and are not relisted, most commonly because of a late guilty plea (cracked trials); and are removed from the list before they are due to start (vacated trials).

3.20 We found the Ministry and HMCTS have a limited understanding of how the recovery programme, including remote access to justice, has affected users and outcomes. Parliament’s Committee of Public Accounts has repeatedly pressed the Ministry and HMCTS to evaluate its long-running court reform programme, particularly the impact of remote hearings on users and outcomes. Still, the Ministry only published its evaluation plan in May 2021 and is working to complete its formal evaluation of remote hearings. HMCTS told us that this will include analysis of how different user groups have been affected by remote hearings. Meanwhile, there is a growing body of research, including by the Equality and Human Rights Commission (EHRC), that indicates remote forms of justice can negatively affect some user groups, including by undermining the effective participation of individuals with certain disabilities, and may impact due process and justice outcomes. In its inquiry, the EHRC reported that telephone and video hearings can greatly affect communication and understanding of criminal proceedings for individuals with cognitive impairments, mental health conditions and neuro-diverse conditions. HMCTS acknowledges it cannot remove all the barriers to participation for disabled people. Judges make the final decision on whether a remote hearing is appropriate after assessing participants’ suitability.

3.21 HMCTS has completed two limited evaluations of remote hearings since the start of the pandemic covering all jurisdictions, meaning most findings are not specific to criminal courts. HMCTS reported a mixed set of findings in its first-stage evaluation in June 2020. For example, while the technology had introduced efficiency gains by enabling hearings to start more quickly, issues with connectivity and audio-visual quality negatively affected users’ experiences and slowed down the volume of hearings a judge could process.

Understanding the experiences of ethnic minorities

3.22 In 2017, David Lammy MP published a review into the treatment of and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system. He recommended that the Ministry collect and analyse data on ethnicity. Despite accepting these recommendations, we found no evidence that the Ministry and HMCTS have any data on users’ ethnicity to carry out any meaningful analysis on whether particular groups are more likely to be disadvantaged by the pandemic or the court recovery programme or consider this as part of senior officials’ decision-making. The Ministry, therefore, cannot know whether it is achieving its objective of ensuring the justice system works for those who need it most or whether it is “building back fairer”.

Appendix One

Our audit approach

1 This report assesses the Ministry of Justice's (the Ministry's) and HM Courts & Tribunals Service's (HMCTS's) plans and progress in reducing the backlog in criminal courts in response to the COVID-19 pandemic. Our report reviewed:

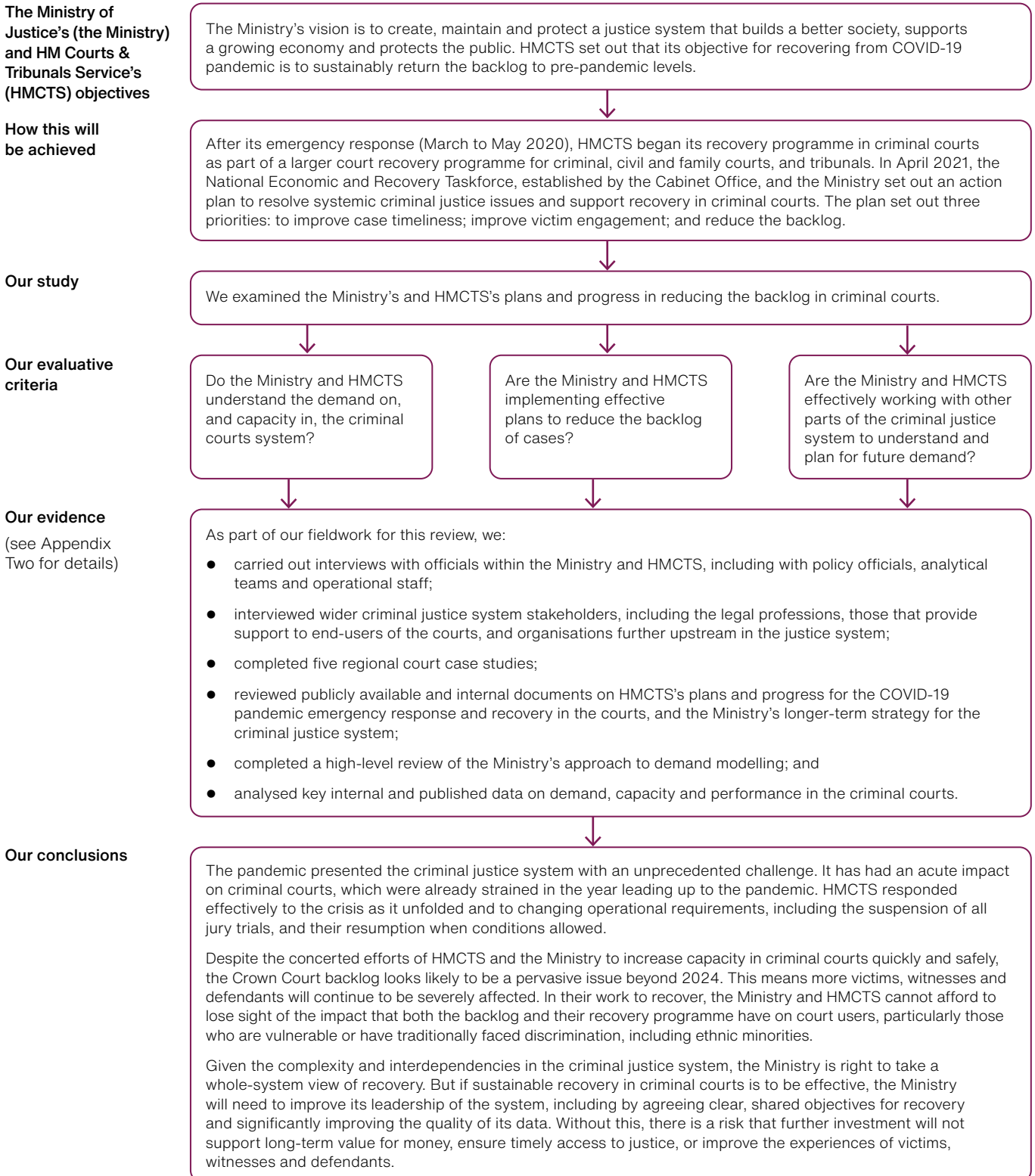
- trends in the backlog up to and since the onset of the pandemic and the impact on victims, witnesses and defendants;
- HMCTS's emergency response and pandemic recovery programme; and
- the Ministry's forecasts for the backlog, the long-term action plan to address it and the risks to achieving long-term recovery.

2 For this report, we have defined the backlog as all cases waiting to be heard or completed. We recognise the limitations to our definition which we set out in Appendix Two. The balance of our report focuses mainly on the Crown Court as the backlog is acute; it is where more serious and complex trials take place; and it is the subject of Parliamentary and public interest.

3 This report looks at efforts to increase capacity in criminal courts as this was the focus of HMCTS's recovery programme. It does not consider HMCTS's court reform programme or examine in detail the work of other criminal justice agencies, such as the Crown Prosecution Service and the police. We do not look in detail at work within HMCTS or other agencies to improve the efficiency of cases flowing through the courts, partly because changes to the volume, mix and delivery of cases since the onset of the pandemic has disrupted long-term trends in measures of efficiency. We also do not examine in detail the government's work to respond to related reviews, including its 2021 End-to-End Rape Review Report on Findings and Actions, the 2019 Digital Justice: HMCTS data strategy and delivering access report or the 2017 Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the criminal justice system.

4 Our audit approach is summarised in **Figure 16** overleaf. Our evidence base is described in Appendix Two.

Figure 16
Our audit approach



Appendix Two

Our evidence base

- 1** Our independent conclusions on the Ministry of Justice's (the Ministry's) and HM Courts & Tribunals Service's (HMCTS's) plans and progress in reducing the backlog in criminal courts were reached following analysis of evidence collected between February and September 2021. Our audit approach is outlined in Appendix One.
- 2** We focused mainly on the period from May 2020, as HMCTS began to develop its planning for recovering from the COVID-19 pandemic and as the Ministry-led work to develop a long-term action plan (from April 2021). Our report also comments on demand and capacity in the criminal courts before the pandemic and HMCTS's initial emergency response. For this report we have taken 31 March 2020 as the pre-pandemic baseline. We recognise that this does not neatly align with the date of first national lockdown in response to the pandemic (23 March 2020), but 31 March 2020 was the closest timepoint available given when criminal court statistics are published.
- 3** For this report, we have defined the backlog as all cases waiting to be heard or completed. We recognise that there are limitations to our definition. The Ministry and HMCTS were unable to provide an alternative definition (see paragraphs 2 and 1.7). Key limitations are:
 - it does not distinguish between the level of outstanding caseload that HMCTS says is required for the criminal courts to function efficiently and effectively, and cases that exceed this caseload; and
 - it does not provide a more nuanced understanding of cases awaiting trial which would be better provided by a portfolio of metrics, including on case timeliness and case type. How long different types of cases take to be heard affects the effectiveness of the justice process.
- 4** We interviewed officials in the Ministry and HMCTS. In the Ministry, this included those responsible for:
 - criminal justice strategy, policy and governance;
 - the criminal justice system demand model;
 - criminal justice system statistics; and
 - Spending Review preparations.

HMCTS staff we interviewed included those responsible for:

- planning and leading HMCTS's emergency response and recovery in the criminal courts;
- analysis, modelling and performance reporting;
- understanding user experiences and insights;
- judicial recruitment;
- HMCTS's estate's strategy; and
- spending review preparations.

5 We interviewed wider stakeholders in the criminal justice system, including other government departments and public agencies, legal professions, and independent justice commentators. While our questions were tailored to reflect each stakeholder's role, our questions aligned with our overall audit questions. We sought their views on demand and capacity pressures in the criminal courts (pre-pandemic and since the pandemic), the Ministry's and HMCTS's emergency response and recovery plans, and the long-term risks to recovery. We interviewed:

- HM Treasury;
- Cabinet Office;
- the Crown Prosecution Service;
- the Senior Presiding Judge for England and Wales and three resident judges;
- the Bar Council;
- the Law Society;
- HM Crown Prosecution Service Inspectorate;
- the Victim's Commissioner for England and Wales;
- the Equalities and Human Rights Commission;
- Transform Justice; and
- Dr Natalie Byrom (The Legal Education Foundation).

6 We carried out five regional case studies between April and June 2021.

We used the case studies to understand how caseload was being managed regionally; how regional demand and resourcing pressures were playing out; and how HMCTS's emergency response and recovery programme was being experienced in different ways. Each case study comprised of interviews with the regional delivery director, the head of crime and with one or more cluster managers.

We purposively selected case studies to capture diversity on key criteria of interest. The primary sampling criteria was region. We then sampled court clusters within these regions based on trends in disposal rates and the number of Nightingale courtrooms.

Overall, we achieved good diversity across the primary sampling criteria. Our case studies included: London, the Midlands (Staffordshire and West Mercia, and West Midlands and Warwickshire clusters), the North West (Greater Manchester cluster), the South East (Thames Valley cluster), and Wales.

7 We reviewed published and unpublished documents from the Ministry and HMCTS. We used this information to understand the Ministry's and HMCTS's emergency response, pandemic recovery plans, and long-term forecasts and recovery strategy for the criminal justice system. These documents included material relating to:

- the Ministry's criminal justice system strategy and governance;
- HMCTS's contingency planning;
- HMCTS's evolving plans for criminal courts recovery, such as delivery plans and ministerial submissions;
- the Ministry's and HMCTS's analysis of user impacts, such as evaluation reports and Public Sector Equality Duty assessments; and
- HMCTS's plans for supporting vulnerable users.

We reviewed and qualitatively assessed each document against our overarching audit questions to inform audit findings and further lines of enquiry with the Ministry and HMCTS.

We also reviewed documents on HMCTS's recovery programme against aspects of the National Audit Office's (NAO's) framework to review programmes. This audit framework includes 18 questions – covering programme purpose, value, set-up and delivery – we may ask as part of our work. We considered those aspects of the framework most relevant to the programme, when developing our detailed audit questions.

8 We carried out a high-level review of the Ministry's approach to forecasting demand in the criminal courts. We examined the outputs between September 2020 and July 2021 from the Ministry's criminal justice demand model, which models demand from charging crimes through the courts and the resulting impact on the demand for prison places; within this, we focused on those elements related to the throughput of cases and capacity in the criminal courts. We looked at governance arrangements surrounding the model, assumptions on key variables, and the range of forecast outputs. Through interviews with HMCTS and Ministry officials, we examined how HMCTS feeds data into the model and how the Ministry and HMCTS test the assumptions underlying the model. In September 2021, we reviewed the output of the Ministry's "counterfactual" scenario which it prepared to support its discussions with HM Treasury ahead of the 2021 Spending Review.

9 We analysed financial data, published data and management information produced by the Ministry and HMCTS. This included:

- financial analysis underpinning HMCTS's recovery plans;
- key published datasets on trends in the overall and regional-level backlogs, trends in waiting times (including for those held on remand in custody), trends in incoming demand, and trends in the mix of cases being tried and completed in the criminal courts. Data on the age of cases waiting in the backlog are published by the Ministry as experimental statistics only;
- HMCTS data on sitting day allocations and utilisation;²¹
- internal HMCTS data on courtroom capacity; and
- HMCTS's evolving published and unpublished performance data, including associated performance reports.

Our analysis on trends in receipts, disposals and backlogs in the magistrates' courts and Crown Court is based on the Ministry's quarterly criminal court statistics. HMCTS also publishes monthly and, since the start of the pandemic, weekly management information on these trends. While the HMCTS management information provides more recent and regular data, the Ministry's criminal court statistics provides a longer-term view and it goes through a more comprehensive quality assurance and analysis process to ensure quality and coherence. There are also some differences in the types of case included within each dataset.

10 We reviewed wider literature for information about our key audit questions. This included:

- reports in the NAO's back catalogue;
- reports by independent commentators, such as reports by the Institute for Government, the Equalities and Human Rights Commission and Crest Advisory;
- Justice Select Committee evidence submissions; and
- independent reviews relating to the criminal justice system, such as the *Lammy Review* and the *End-to-End Rape Review*.

²¹ The Ministry, in agreement with the judiciary, submits a funding bid to HM Treasury based on the number of Crown Court sitting days it expects will be needed to meet demand levels in the forthcoming financial year.

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