



REPORT

Reducing the backlog in the Crown Court

Ministry of Justice and
HM Courts & Tribunals Service



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National Audit Office

Reducing the backlog in the Crown Court

**Ministry of Justice and
HM Courts & Tribunals Service**

Report by the Comptroller and Auditor General

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National Audit Act 1983 for presentation to the House
of Commons in accordance with Section 9 of the Act

**Gareth Davies
Comptroller and Auditor General
National Audit Office**

4 March 2025



Investigations

We conduct investigations to establish the underlying facts in circumstances where concerns have been raised with us, or in response to intelligence that we have gathered through our wider work.

We undertook this investigation in response to the Crown Court backlog reaching its highest ever level.

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Key facts

67,284	77%	16,456
the Crown Court outstanding caseload at the end of December 2023	increase in the Crown Court outstanding caseload since the end of 2019	cases on 31 December 2023 that had been in the Crown Court outstanding caseload for one year or more, 26% of the total

64,000	the Ministry of Justice’s (MoJ’s) most recent prediction of the Crown Court outstanding caseload by March 2025
695	days on average from offence to completion of the case in the Crown Court, for cases completed in the three months to December 2023
284	days on average from first listing of cases in magistrates’ courts to completion in the Crown Court in the three months to December 2023
107,000	expected number of Crown Court sitting days in 2023-24, up 31% since 2019-20
1,441	trials cancelled on the hearing day in 2023 because all legal professionals required were not available, up from 71 in 2019 (from 0.3% to 4.9% as a proportion of trials)
346%	increase in the number of adult rape cases in the Crown Court outstanding caseload (from 625 to 2,789) between 31 December 2019 and 31 December 2023, following the MoJ’s efforts to increase the number of rape cases heard
16,005	people remanded into prison and waiting for trial (two-thirds) or sentencing (one-third), with 2023 recording the highest level for at least 50 years

What this investigation is about

1 The Ministry of Justice (MoJ) is headed by the Lord Chancellor and is accountable to Parliament for the efficient and effective functioning of the courts. Its three priorities are: to protect the public from serious offenders and improve the safety and security of our prisons; reduce reoffending; and deliver swift access to justice. HM Courts & Tribunals Service (HMCTS), an executive agency of the MoJ, reports jointly to the Lord Chancellor, Lord Chief Justice and to the Senior President of Tribunals. It is responsible for supporting the independent judiciary in the administration of criminal courts, civil courts, family courts and tribunals in England and Wales, and non-devolved tribunals in Scotland and Northern Ireland. The judiciary, headed by the Lady Chief Justice, is constitutionally independent from the government.

2 Criminal cases are heard in magistrates' courts and the Crown Court. Cases enter the criminal justice system when a defendant is charged with an offence. The case is allocated a court date through the judicial process of listing. Cases generally go to magistrates' courts first, where over 90% of criminal cases are dealt with. The remaining cases, usually more serious and complex offences, transfer to the Crown Court.

3 The MoJ and HMCTS measure and report on the outstanding caseload in the Crown Court, including the number of cases awaiting trial and being tried, and those awaiting sentencing. The caseload is determined by the respective rates of cases coming to the Crown Court (receipts) and completed cases (disposals). When the rate of receipts exceeds the rate of disposals, the outstanding caseload increases. The MoJ and HMCTS do not specify a minimum or optimal caseload at which the Crown Court functions most efficiently – below which there is a risk that judges and courtrooms are available but do not have enough cases to try, and above which cases on average take longer from listing to completion – because the optimal level is dependent on the nature of cases and the capacity available to hear them, both of which vary. Therefore, the MoJ does not distinguish between cases that form part of the expected caseload and additional cases that constitute a backlog. Because the MoJ has not quantified its expected caseload, we cannot quantify the backlog separately. When we are presenting data, we refer to the total number of cases as the 'outstanding caseload'. Otherwise, we refer to it as the 'backlog'.

4 In April 2021, the MoJ produced the Criminal Justice Action Plan that recognised a need for a whole-system approach to responding to systemic issues within the criminal justice system. It brought together work already underway across the system, focusing on three priority areas: improving timeliness, improving victim engagement and reducing backlogs. In the October 2021 Spending Review, the MoJ was provided with £477 million over 2022-23 to 2024-25 for the criminal justice system's recovery from COVID-19, including reducing court backlogs, and a total budget settlement of £34.5 billion over the same period.

5 In October 2021, we published *Reducing the backlog in criminal courts*, which examined the reasons for the growth in the backlog in magistrates' courts and the Crown Court, both before and during the early phases of the COVID-19 pandemic.¹ We reported that HMCTS had responded quickly to the impact of the pandemic, launching a recovery programme in May 2020, and successfully increasing court capacity. We concluded that, while the backlog in magistrates' courts was expected to return to pre-pandemic levels swiftly, significant risks to reducing the backlog in the Crown Court remained, which were likely to persist beyond 2024.

Scope of this work

6 We undertook this investigation in response to the Crown Court backlog reaching its highest ever level. This report describes what action the MoJ, HMCTS and other parts of the criminal justice system have taken to address the backlog of cases in the Crown Court. It examines:

- the scale, nature and impact of the Crown Court backlog;
- the MoJ's and HMCTS's understanding of the impact of actions to reduce the Crown Court backlog; and
- how the MoJ and HMCTS are attempting to manage the Crown Court backlog.

7 We refer to, but did not examine in detail, the work of other parts of the criminal justice system, such as the judiciary, police, magistrates' courts and HM Prison and Probation Service, that are relevant to managing the Crown Court backlog. We do not comment on the wider reform programmes in the system such as the court reform programme, which is the focus of our 2023 report *Progress on the courts and tribunals reform programme*.² We do not comment on other major projects unless directly relevant to the Crown Court backlog. We do not seek to examine and report on value for money of the MoJ's and HMCTS's work to date to reduce the backlog.

¹ Comptroller and Auditor General, *Reducing the backlog in criminal courts*, Session 2021-22, HC 732, National Audit Office, October 2021.

² Comptroller and Auditor General, *Progress on the courts and tribunals reform programme*, Session 2022-23, HC 1130, National Audit Office, February 2023.

8 We conducted our fieldwork between January and March 2024. We reviewed relevant public documents and documentation provided by the MoJ and HMCTS. We interviewed officials from the MoJ and HMCTS, and representatives of other parts of the criminal justice system. We analysed data relating to the Crown Court backlog and other relevant areas of the criminal justice system. Our audit approach is described in Appendix One.

Summary

Key findings

Scale and impact of the backlog

9 By the end of 2023, the Crown Court outstanding caseload in England and Wales had increased to its highest ever level on record. The Crown Court outstanding caseload was 67,284 at the end of December 2023, 77% higher than at the end of 2019. The outstanding caseload began increasing in 2019, then rose sharply due to the COVID-19 pandemic. From summer 2021, the outstanding caseload began to decrease, before increasing over the period of the criminal defence barristers' industrial action in 2022. Between 31 March and 31 December 2022, the outstanding caseload increased by 4,581. Following the end of the industrial action, the outstanding caseload began to reduce. However, between 31 March and 31 December 2023, the outstanding caseload increased by over 5,000, caused principally by higher-than-expected levels of receipts (paragraphs 1.6, 1.14 and Figure 2).

10 In October 2021, the Ministry of Justice (MoJ) set a public ambition to reduce the Crown Court outstanding caseload to 53,000 by March 2025, but its modelling suggests this is no longer achievable. The MoJ set this ambition based on its modelling of future rates of receipts and disposals, which suggested a reduction to 53,000 was achievable. The MoJ regularly updates its modelling and projections of future caseload to reflect changes in its underlying assumptions. In April 2023, the MoJ and HM Courts & Tribunals Service (HMCTS) concluded that reducing the Crown Court outstanding caseload to 53,000 by March 2025 was still achievable, based on the lowest projection from three scenarios it modelled, which assumed a lower level of receipts than the other scenarios. While the MoJ confirmed publicly in April 2024 that it remained committed to the ambition, its most recent projection in September 2023 suggested that there could be 64,000 cases in March 2025, 11,000 higher than its projection in October 2021 when the ambition was set (paragraphs 1.8 and 1.11 to 1.13).

11 Victims, witnesses, and defendants are waiting longer for their cases to be heard in the Crown Court compared with before the pandemic. The average time taken from offence to case completion in the Crown Court has increased from 483 days in the last quarter of 2019 to 695 days for the three months to December 2023. Over the same period, the average time taken from first listing of cases in magistrates' courts to completion in the Crown Court increased from 157 days to 284 days. Since our 2021 report, the number of cases waiting for a year or more from initial listing has risen from 11,352 on 30 June 2021 (19% of the outstanding caseload) to 16,456 on 31 December 2023 (26% of the outstanding caseload). As waiting times increase, the risk that trials fail increases, for example, because victims and witnesses may withdraw from proceedings and their recollection of evidence declines over time. Long waits can lead to victims' mental wellbeing deteriorating, and defendants spending long periods awaiting trial (paragraphs 1.9 and 1.10).

12 The Crown Court backlog is contributing to acute prison population pressures. The number of people in prison on remand, awaiting a trial or sentencing, has risen sharply in recent years to the highest level in 2023 for at least 50 years, due to people remaining on remand for longer. On 31 December 2023, 16,005 people were remanded in prison while waiting for trial or sentencing, 65% higher than December 2019. Around two-thirds of people on remand are awaiting trial, while one-third are awaiting sentencing. Acute prison population pressures temporarily led to judges delaying sentencing in a small number of cases during October 2023. The MoJ regards pressure on prison capacity to be currently the most pressing consideration in relation to reducing the Crown Court backlog (paragraphs 3.4 and 3.5).

Causes of the backlog

13 Over 2021 to 2023, the level of receipts was consistently below the levels the MoJ projected in 2021, but the Crown Court also disposed of significantly fewer cases than the MoJ projected. From 2021 to the present, the level of receipts has been consistently below the levels MoJ projected at the time of the October 2021 Spending Review. The MoJ told us that in 2022 it believed it was on track to reduce the outstanding caseload to 53,000 by 2025, but progress was halted by the criminal defence barristers' industrial action in that year. The industrial action led to a reduction in the rate of disposals, and increased the proportion of the backlog that was more complex, because less complex cases were more likely to be disposed of during the industrial action. The MoJ told us that it estimates the reduction in disposals to have contributed to a growth in the backlog of around 7,500 over the period April to October 2022 (paragraphs 1.6, 1.13 to 1.15, 2.17 and 2.24, and Figure 5).

14 The number of ineffective trials – listed trials that do not go ahead on the day scheduled – has been increasing, lengthening case times and contributing to an increase in the backlog. The proportion of ineffective trials has increased from 16% in 2019 to 27% in 2023. The principal reasons for ineffective trials were witness and defendant unavailability, poor case preparation, over-listing of cases and unavailability of barristers. Some cases have started late or have been postponed because prisoner transport services have failed to get prisoners to court on time. The number of ineffective cases due to each of these reasons was significantly higher in 2023 compared with 2019 (paragraphs 2.18 and 2.19, and Figures 9 and 10).

15 The number of criminal law barristers and criminal law duty solicitors has been reducing since at least 2017-18. The number of criminal law barristers that completed any public criminal work decreased by 10% between 2016-17 and 2021-22, while the number of criminal law duty solicitors contracted by the government to provide criminal legal aid reduced by 25% between 2017 and 2023. In 2019, 71 trials were cancelled on the day planned because of unavailability of counsel (0.3% of all trials). In 2023, 1,441 trials were cancelled (4.9% of all trials). A series of Bar Council reports, published between 2022 and 2024, found that criminal law barristers often reported poor remuneration and stressful working conditions, lower levels of wellbeing and lower earnings than other areas of practice. In November 2021, the Independent Review of Criminal Legal Aid reported that the level of legal aid fees had reduced by one-third in real terms between 2008 and 2021. The government's real-term spending on criminal legal aid reduced by 43% between 2010-11 and 2022-23, in part due to falling case volumes. The MoJ increased most fees for criminal cases by 15% in September 2022. For solicitors, it committed to raising overall fees by 11%. The Bar Council told us that the increase in criminal legal aid funding likely prevented more barristers leaving criminal practice, which may otherwise have further added to the backlog (paragraphs 2.12 to 2.17 and Figure 8).

16 Hearings in the Crown Court are taking longer, reducing the rate at which cases are disposed of. From 2019 to 2023, the average length of hearings for all case types increased by 12%, from 3.4 hours to 3.8 hours. The increase in length of hearings has been caused by three main factors:

- A higher proportion of complex cases because only simpler cases could be heard during the COVID-19 pandemic and the criminal defence barristers' industrial action.
- A higher proportion of complex cases being received by the Crown Court. Publication of the government's end-to-end rape review in 2021 has resulted in more adult rape cases, which are often highly complex and take longer to conclude than other cases going to the Crown Court. The number of adult rape cases in the Crown Court outstanding caseload increased by 346%, from 625 on 31 December 2019 to 2,789 on 31 December 2023.

- More cases where the defendant pleads not guilty or pleads guilty later in the court process. On average the hearing time for cases with a guilty plea takes 2 hours, compared with an average of 20 hours for cases with a not guilty plea. Defendants of some types of case are less likely to plead guilty compared with the average, for example, in 2023 only 38% of sexual offence cases involved guilty pleas, in contrast to 65% for all offences. Between January and December 2023, only 37% of guilty pleas were entered at the first hearing, down from 50% in 2019. In October 2023, the MoJ established an Early Guilty Plea Taskforce, to coordinate cross-system effort to encourage those who are going to plead guilty to do so early (paragraphs 2.24 to 2.26).

Managing the Crown Court backlog

17 Beginning in 2020, the MoJ has increased the number of courts, removed the cap on the number of sitting days and increased the number of judges, to increase capacity in the Crown Court to hear cases. Before 2019, the MoJ had been gradually reducing the number of courtrooms and sitting days in response to the reducing number of receipts to the Crown Court. Judicial capacity was managed in line with reducing demand. In response to the pandemic and the consequent rise in the backlog, the MoJ has taken the following actions:

- Removed the cap on sitting days, with the MoJ expecting the number to rise to around 107,000 sitting days in 2023-24, representing a 31% increase from 81,899 days in 2019-20.
- Increased the number of part-time fee-paid judges (recorders), from 874 in 2020 to 955 in 2023.
- Introduced temporary Nightingale courtrooms in 2020 to increase courtroom capacity. In March 2024, 20 Nightingale courtrooms remained in operation, down from a peak of 72 in March 2022. The MoJ recognises that the cost of temporary courtrooms is significantly higher than those from its own estate, with some Nightingale courtrooms costing almost six times the average. The MoJ monitors courtroom capacity but, due to varying levels of demand, does not know when temporary courtrooms will no longer be required.
- Expanded core courtroom capacity, for example, through converting existing courtrooms into large courtrooms allowing for trials with up to 12 defendants, and adding capacity through new-builds.
- Worked with the judiciary to make the best use of existing judicial capacity through, for example, flexible deployment of district judges (usually based in magistrates' courts) to sit in the Crown Court.
- Improved retention of judges, for example, through raising the mandatory retirement age of judges from 70 to 75, improving judicial pensions and extending 'sitting in retirement' arrangements to fee-paid judges.

Because spend on actions to address the backlog is spread over many different parts of the criminal justice system, with funding added to core budgets to increase core activity, it is not possible for the MoJ to put a figure on how much has been spent on addressing the backlog (paragraphs 1.8 and 2.5 to 2.11).

18 The Criminal Justice Board, which brings together representatives from across the criminal justice system, did not meet between July 2021 and July 2023, reducing oversight of recovery action.

The Criminal Justice Board (CJB) oversaw a governance structure comprising several boards and groups, bringing together representatives from across the criminal justice system. The CJB had the broadest representation, including the judiciary. It had responsibility for strategic oversight of the system and promoting a collaborative approach to addressing challenges. The CJB, through its Steering Committee, considered progress with the Criminal Justice Action Plan at its meetings in April and June 2021, but it did not convene between July 2021 and July 2023. Instead, the Criminal Justice Action Group (CJAG), chaired by the MoJ's Permanent Secretary, oversaw progress with the action plan. However, the CJAG did not have representation from the judiciary. Since July 2023, the CJB has been reconvened and action to reduce the backlog is now a standing agenda item at every meeting (paragraph 2.4 and Figure 6).

19 The MoJ and HMCTS, collaborating with criminal justice partners and the judiciary, are taking action to improve the efficiency of the court process.

The Crown Court Improvement Group, led by the judiciary, aims to promote better ways of working across the criminal justice system and reinforce effective case management. In January 2024, HMCTS introduced eight new case coordinators at seven Crown Courts, to promote better ways of working, improve case management and free-up judge time. In January 2024, the MoJ and HMCTS completed a project to understand what affects the efficiency of the Crown Court and what partners across the criminal justice system can do to improve efficiency. The project's findings covered seven themes concerning: the court estate, technology, case management practices, listing practices, ineffective trials, workforce and inter-agency working. It concluded that there is a need for a joint criminal justice system approach and more work to improve cross-system collaboration. The project's findings will feed into the work of the Crown Court Improvement Group and the CJB (paragraphs 2.3, 2.20, 2.21 and 3.7).

20 The MoJ recognises that the poor state of some of the buildings in the Crown Court estate, while not currently affecting disposals rates, risks contributing to the backlog in the future. The MoJ's analysis of factors affecting Crown Court efficiency found that *"maintenance issues can lead to hearing delays, case adjournments and courtroom closures. Although, maintenance issues in courtrooms are not currently impacting disposal rates, this may change as increased judicial capacity will require putting more rooms into service."* To address the poor state of the court and tribunal estate, the government has committed £220 million for essential maintenance and repair work of, and to replace, court and tribunal buildings over the two years to March 2025 (paragraphs 2.8 and 3.6).

21 The MoJ and HMCTS have improved the data and analysis on Crown Court services as part of their broader data strategies to improve data across the criminal justice system. In our 2021 report *Reducing the backlog in criminal courts* we concluded that sustainable recovery in the criminal courts required the MoJ and HMCTS to significantly improve the quality of their data and its analysis. Since 2018, HMCTS has produced a Crown Court dashboard that provides real-time data, for example, on the number of case receipts and disposals, and trial duration, to both national and local teams to help inform their operations. However, data gaps remain, for example, demographic data about service users, including age, gender and ethnicity. The MoJ has also developed a dashboard with data provided by the police, Crown Prosecution Service and HMCTS, which brings together a range of criminal justice data, starting at the point at which a crime is recorded by the police, through to completion in the Crown Court (paragraphs 2.22 and 2.23).

22 The MoJ has previously managed demand in the Crown Court by making policy changes to magistrates' sentencing powers. The rate of receipts is primarily driven by the level of crime, how much of this is caught by police, overall police resourcing and police priorities, as well as actions by the Crown Prosecution Service and magistrates' courts. The MoJ can make only small changes to legislative process that influence the rate of receipts to the Crown Court. In May 2022, the MoJ increased magistrates' sentencing powers for some offences, enabling them to sentence defendants to up to 12 months in prison, up from a maximum of six months. Consequently, some cases that would have gone to the Crown Court for sentencing were completed in magistrates' courts, which reduced the receipts to the Crown Court. The MoJ removed the increase in magistrates' sentencing powers in March 2023, in part due to capacity pressures in prisons. The MoJ is not exploring further options to reduce the flow of cases from magistrates' courts to the Crown Court (paragraphs 1.4, 1.5, 3.2 and 3.3).

Concluding remarks

23 The rise in the Crown Court backlog to its highest ever level can only have exacerbated the negative effects that waiting longer can have on victims, witnesses, and defendants. Lengthening cases can also add to the cost of administering justice. More accurate projections by the MoJ of the flow of cases to the Crown Court, including assessing the impact of changes elsewhere in the criminal justice system, would better support it to manage the Crown Court backlog. The MoJ must work closely with the other parts of the system to gather intelligence, understand how changes in policy and activity in one part of the system will affect other parts, and take coordinated and timely action in response. The CJB has recently reconvened after an absence of two years over which the backlog rose further. The CJB must use its strategic oversight of the criminal justice system to support the MoJ to improve the efficiency of the court process and reduce the backlog. It should consider how resilience and agility can be established within the system to ensure cases are not unduly held up, to the detriment of all participants, as they progress through the Crown Court.

Part One

Scale and impact of the backlog

1.1 This part of the report:

- provides an update on how the Crown Court backlog has changed since we reported in 2021;
- describes the Ministry of Justice's (MoJ's) aim to reduce the Crown Court backlog;
- sets out the impact of the backlog on victims, witnesses, and defendants; and
- describes the MoJ's modelling of the future Crown Court backlog.

Background

1.2 The MoJ, headed by the Lord Chancellor as the Secretary of State for Justice, is accountable to Parliament for the effective functioning of the court system. HM Courts & Tribunals Service (HMCTS) is an executive agency sponsored by the MoJ, reporting jointly to the Lord Chancellor, Lord Chief Justice and to the Senior president of Tribunals. 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 Lady Chief Justice is head of the judiciary in England and Wales.

1.3 The court system's ability to deliver justice effectively relies on operational independence between the prosecution, defence and judiciary. The government and Parliament create new criminal offences and allocate funding, but they cannot intervene in the progress of individual cases. The judiciary is constitutionally independent of the executive branches of government.

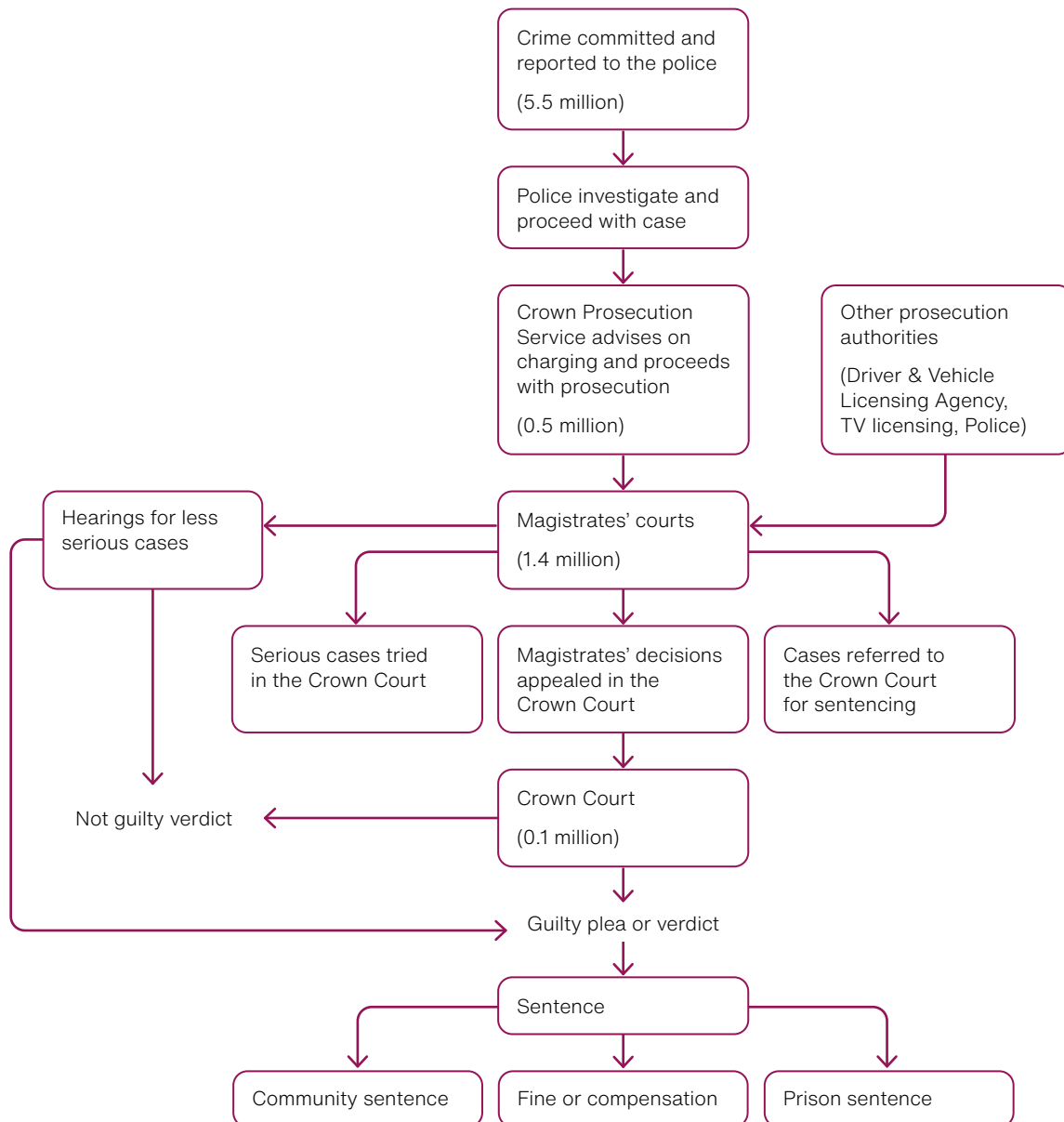
1.4 In 2023, criminal courts disposed of 1.4 million cases, including more than 102,000 (less than 10%) in the Crown Court. Cases enter the criminal justice system when a defendant is charged with an offence and is subsequently allocated a court date through a process called 'listing', which is a judicial function. Criminal cases generally start in magistrates' courts, with more serious and complex offences transferring to the Crown Court (**Figure 1**).

1.5 The Crown Court backlog is determined by the flow of cases entering the courts system (receipts), and the flow of cases out of the courts once completed (disposals). Both flows can be influenced by a wide range of cross-system factors.

Figure 1

How cases progress through the criminal justice system

Almost all criminal cases start in magistrates' courts, with a minority of cases transferring to the Crown Court

**Notes**

- 1 The number of crimes committed and reported to the police is based on the number of offences¹, not on the number of individuals who committed the crime. The numbers of cases for the Crown Prosecution Service, magistrates' courts and the Crown Court are based on the numbers of new cases received by them during the year.
- 2 The Crown Prosecution Service does not advise on charging in all cases. The magistrates' courts also hear cases sent directly by the Driver & Vehicle Licensing Agency, TV Licensing and other authorities.
- 3 The numbers of cases quoted in the figure are for the year ending December 2023.

Source: National Audit Office analysis of Ministry of Justice criminal justice system statistics, Office for National Statistics Crime Data, Crown Prosecution Service Quarterly Data, 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

Changes in the Crown Court backlog

1.6 In October 2021, we reported that the Crown Court backlog started to increase in 2019 and was further exacerbated by the COVID-19 pandemic.³ Between 31 December 2019 and 30 June 2021, the outstanding caseload rose by 60%, from 38,016 to 60,748. At the start of 2021, disposals in the Crown Court had returned to pre-pandemic levels, and between March and June 2021 the backlog levelled off. During the second half of 2021 and the first quarter of 2022, the backlog decreased. From April 2022, at the time of the criminal defence barristers' industrial action, the backlog started to increase, exceeding the 30 June 2021 peak by 30 September 2022. The backlog decreased up to 31 March 2023, before starting to increase again. Between 31 March and 31 December 2023, the outstanding caseload increased by over 5,000, caused principally by high levels of receipts. By 31 December 2023, it had reached a new record high of 67,284, 77% higher than at the end of 2019 and 11% higher than at the end of June 2021 when we last reported on the backlog (**Figure 2** on pages 18 and 19).

Regional variation

1.7 Our 2021 report described significant variation between regions in the growth of the Crown Court backlog between 31 March 2019 and 30 June 2021. As the case mix is different between regions, this does not allow for a direct comparison of regional performance but can indicate where the biggest challenges to recovery remain. Between 31 March 2019 and 30 June 2021, London experienced the largest increase of 139%, while the South West experienced the smallest increase of 34%. Since 30 June 2021, the backlog has increased in every region except London, from a low of 8% in the Midlands and a high of 30% in the South West. In London it has shrunk by 10%. All regions have experienced a significant increase in average time taken from receipt in the Crown Court to the start of hearing compared with pre-pandemic, with London experiencing the largest rise. In 2023, it rose to 30.5 weeks, compared with 14.1 weeks in 2019, an increase of 116%. The South East and the Midlands also experienced large increases of 110% and 81%, respectively. Increases in the other regions ranged from 42% to 60%.

³ Comptroller and Auditor General, *Reducing the backlog in criminal courts*, Session 2021-22, HC 732, National Audit Office, October 2021.

The Ministry of Justice's ambition

1.8 In October 2021, the MoJ set a public ambition in the 2021 Spending Review to reduce the Crown Court backlog in England and Wales from 60,000 (as it was then) to 53,000 by March 2025 through its recovery plan. In the Spending Review 2021 settlement, the MoJ secured an additional £477 million to support recovery across the criminal justice system, including helping reduce the Crown Court backlog, which had worsened over the COVID-19 pandemic. It also secured an additional £644 million a year by 2024-25 to expand capacity across the criminal justice system, including meeting increased demand from the recruitment of 20,000 extra police officers. Since then, the number of new cases has increased but is still lower than the average 10 years ago (Figure 2). In its September 2023 update, the MoJ projected that the backlog could increase to between 58,500 and 69,500 by March 2025, with 64,000 being the central estimate. In April 2024, the MoJ informed the Justice Committee that it remained committed to its public ambition of an outstanding caseload of 53,000 or fewer by March 2025. It is not possible for the MoJ to put a figure on how much has been spent on addressing the backlog because spend on actions to address the backlog is spread over many different parts of the criminal justice system, with funding added to core budgets to increase core activity and not separately monitored.

Impact of the backlog on court users

Waiting times

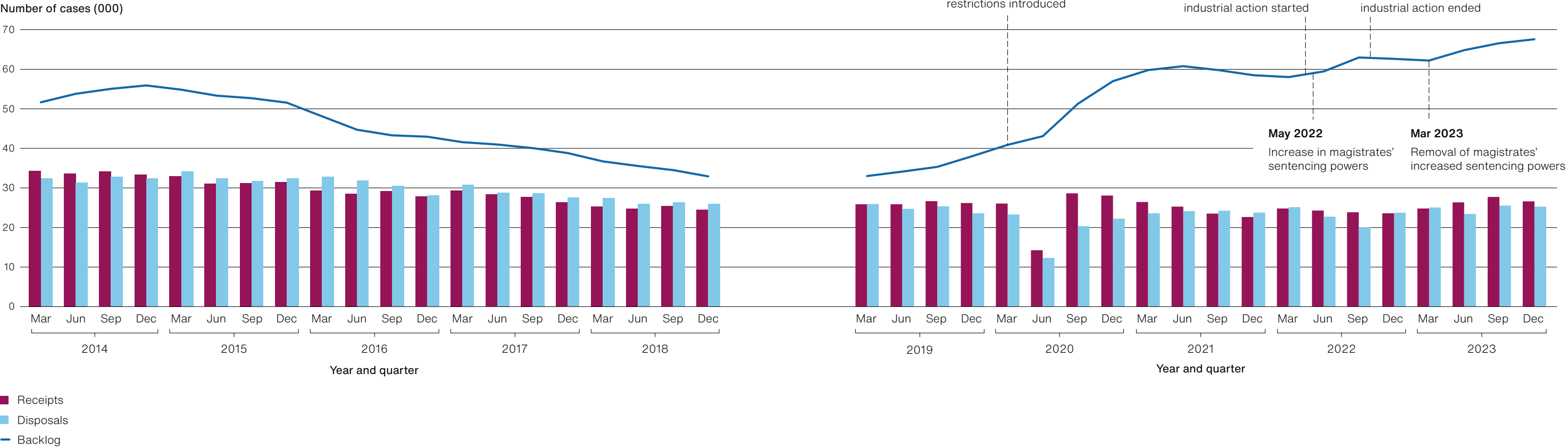
1.9 Victims, witnesses, and defendants are waiting increasingly longer for cases to reach completion.

- The time taken from offence to completion for the cases completed at the Crown Court has increased:
 - The mean average time has increased from 483 days in the last quarter of 2019, to a high of 707 days in the second quarter of 2023, before dropping to 695 days for the last quarter of 2023 (**Figure 3** on pages 20 and 21); and
 - the median average time has increased from 256 days in the last quarter of 2019, to 412 days in the first quarter of 2022, before dropping to 373 days for the last quarter of 2023.⁴

⁴ The average number of days is calculated as the mean for all cases completed in the Crown Court during the corresponding 3-month periods, for the different stages from offence to completion. The Ministry of Justice publishes both the mean and median averages, but lead on medians in its commentary as in its view these better reflect the 'typical' user experience. We have included median averages by way of comparison, but primarily present means as they better reflect the increased time the longer cases take to complete. A detailed explanation of the difference between mean and median is provided in our methodology appendix, paragraphs 10 and 11.

Figure 2
Crown Court backlog in England and Wales, March 2014 to December 2023

The Crown Court backlog reached a record high in December 2023



Notes

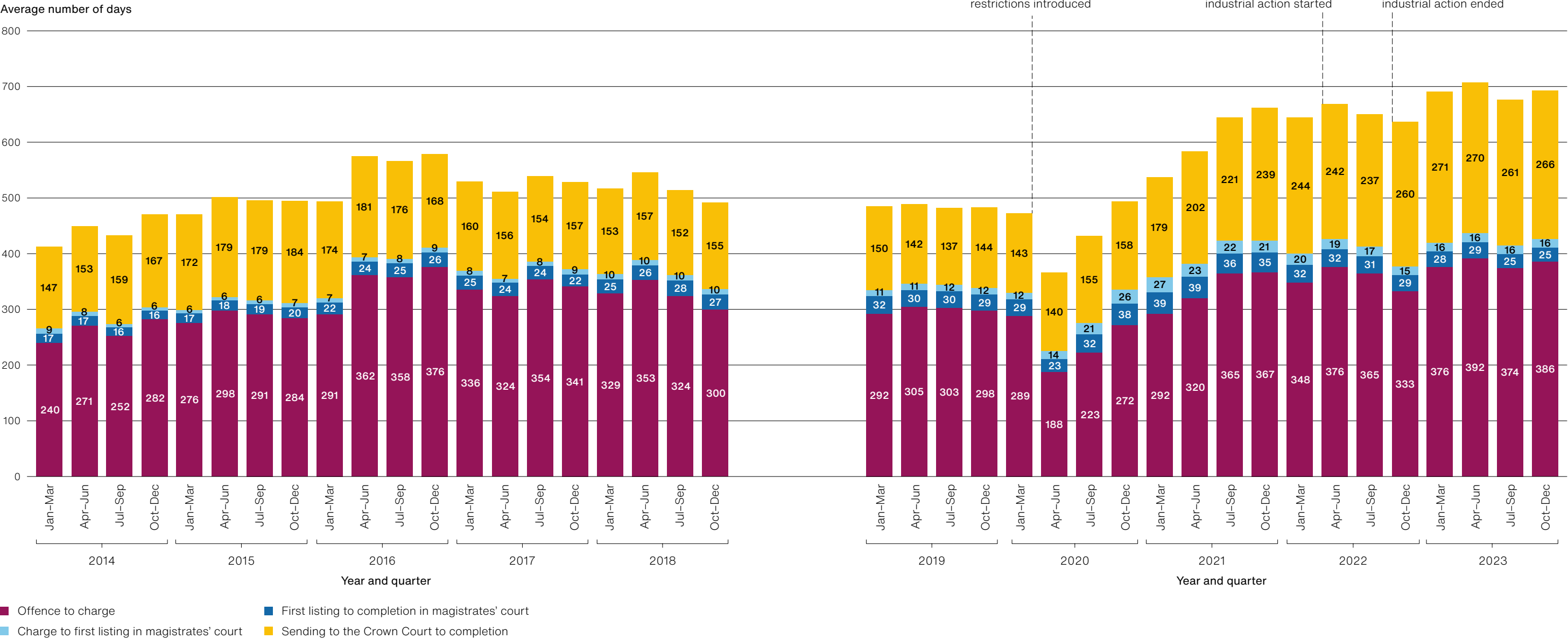
1 Receipts and disposals: the number of cases newly listed in the Crown Court and completed during each quarter ending in the months shown in the chart. The backlog of cases is measured on the last day of the month for each quarter: 31 March, 30 June, 30 September and 31 December.

2 Based on data published on 12 December 2024.

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

Figure 3
Average number of days from offence to completion for cases completed in the Crown Court in England and Wales, 2014 to 2023

The average time taken from a case being received at the Crown Court to completion has almost doubled since before COVID-19



Notes

1 The average number of days is calculated as the mean for all cases completed in the Crown Court during the corresponding 3-month periods, for the different stages from offence to completion. The Ministry of Justice publishes both the mean and median averages, and we have included median averages by way of comparison in paragraph 1.9. A detailed explanation of our preferred use of the mean instead of the median as a measure of average time is provided in Appendix One, paragraphs 10 and 11.

2 Different bodies are responsible for the progress and timeliness of cases at different stages through the criminal justice system. The Ministry of Justice is responsible from the point a case comes to court, but not for the earlier stages.

3 Based on data published on 12 December 2024.

- The time taken at court, from first listing at magistrates' courts to completion in the Crown Court, has increased:
 - The mean average time was 157 days in the last quarter of 2019, increasing to 287 days in the first quarter of 2023, before dropping to 284 days in the last quarter of 2023.
 - The median average time was 114 days in the last quarter of 2019, increasing to 197 days in the last quarter of 2021, before dropping to 173 days in the last quarter of 2023.
- The average age of cases in the Crown Court backlog has increased:
 - The mean average was 287 days on 30 December 2023, up 20% from 239 days on 30 June 2021 (when we last reported) and up 82% from 157 days in December 2019 (pre-pandemic) (**Figure 4** on pages 24 and 25).
- The number of older cases awaiting trial has increased sharply:
 - The number of cases waiting for a year or more for trial, since their initial listing, has increased by 45% from 11,352 on 30 June 2021, to 16,456 on 31 December 2023 (a seven times increase from 2,354 on 31 December 2019).
 - The number of cases waiting for two years or more has almost tripled from 2,108 on 30 June 2021 to 6,049 on 31 December 2023 (a more than 10 times increase from 592 on 31 December 2019).
 - As at 31 December 2023, 24% (16,456 of 67,284) of cases were more than one year old, an increase from 19% on 30 June 2021, and from 6% on 31 December 2019.

1.10 Long waiting times, as well as impacting justice outcomes, can be causes of distress for victims and witnesses. In 2023, advocacy charity Rape Crisis reported that *“since 2022, women in the Rape Crisis movement have increasingly cited the impact of delays and other issues in the Crown Court as their primary concern”*. It found that the protracted wait led to deteriorating mental wellbeing, suicide attempts, and survivors and their families feeling unable to plan for the future or move on from what had happened to them. Furthermore, the risks of trials failing grow as waiting times increase because victims or witnesses are more likely to withdraw from cases, their recollection of evidence declines over time, and defendants are increasingly likely to plead not guilty. The MoJ told us that victims may need more support as time lapses, and that it had increased its funding for victims' support as more people are waiting longer for their cases to be heard.

Modelling future backlog

1.11 The MoJ regularly models projections of the size of the Crown Court outstanding caseload. It has used projections from the modelling to inform decision making on policy development, planning of resources and capacity requirements.

1.12 The model assesses different scenarios to account for assumptions made across a range of factors, including:

- Incoming demand and case complexity: The impact of policies introduced across the criminal justice system, for example, increasing police numbers and changes to magistrates' sentencing powers.
- Court capacity: For example, courtroom availability, judicial capacity and sitting days.
- Court efficiency and productivity: For example, the impact of the court reform programme.

1.13 The MoJ's ambition to reduce the backlog of cases to 53,000 by March 2025 was based on its demand modelling at the time of the 2021 Spending Review. The MoJ told us that its April 2023 modelling update indicated the ambition to reduce the backlog to 53,000 by March 2025 was achievable, on the basis of the lowest projection of the three scenarios considered. However, between April and September 2023, a total of 54,082 new cases were received at the Crown Court, 4,414 (9%) higher than the 49,668 in the lowest scenario on which it based its projection.

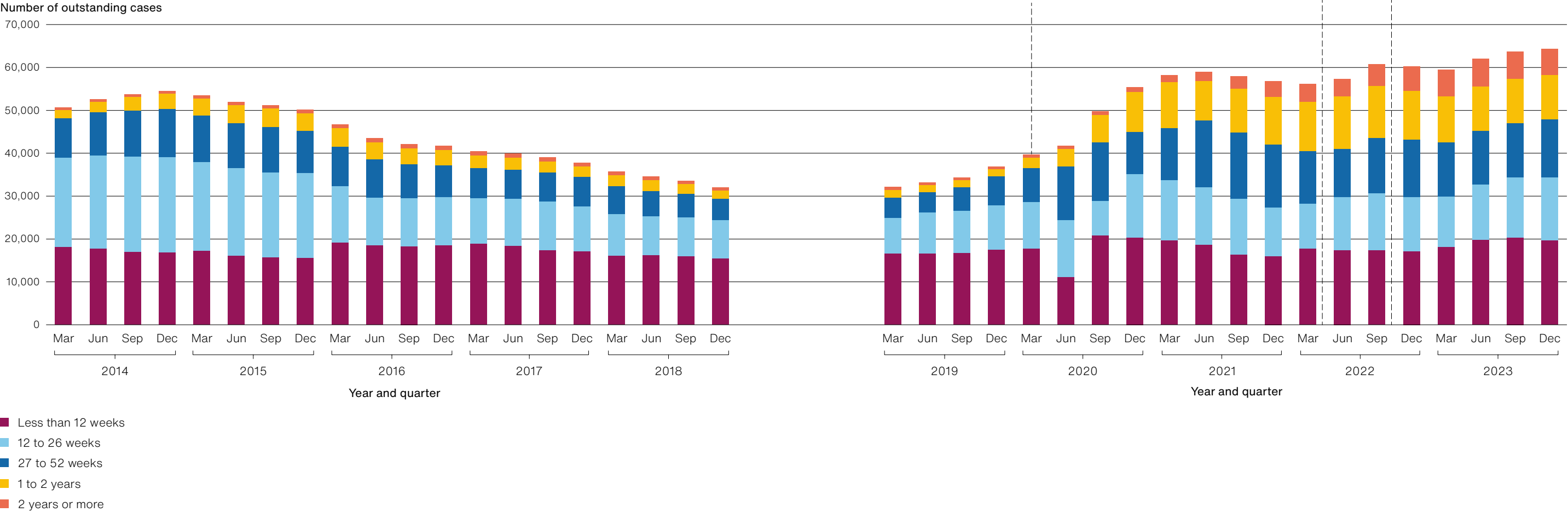
1.14 In its September 2023 update, the MoJ projected the backlog could increase to between 58,500 and 69,500 by March 2025, with 64,000 being the central estimate. The increases in the projected backlog accounted for:

- a reduction in disposals during the criminal defence barristers' industrial action between April and October 2022, which was not anticipated at the time of the 2021 Spending Review when the projection was made. The outstanding caseload increased by 4,591 between 31 March and 31 December 2022. The MoJ told us that it estimates the reduction in disposals to have contributed to a growth of around 7,500 in the backlog; and
- more recently, a higher rate of receipts in 2023, driven mainly by the removal of the extension to magistrates' sentencing powers and, to a lesser extent, an earlier-than-expected increase in underlying demand.

1.15 The actual level of receipts in 2023-24, when there was a significant increase, was nevertheless less than the 2021 planning assumptions. The increase in the projected backlog is mainly due to disposals being around 20% less than the MoJ projected in 2021 (**Figure 5** on page 26). The MoJ has told us that the choice of modelling scenarios did not affect its operations, aimed at disposing of the maximum number of cases within the current capacity.

Figure 4
The number of Crown Court cases by age of case, March 2014 to December 2023

There has been a marked increase in the number of cases that have been waiting two years or more for trial



Notes

1 Age of case is the time between receipt in the Crown Court and the last day of the quarter.

2 The number of outstanding cases is as at the end of each quarter. Data are not available for a small number of cases (<5%).

3 Based on data published on 12 December 2024.

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

Figure 5

Projected and actual levels of Crown Court receipts and disposals in England and Wales, 2021-22 to 2024-25

The actual levels of receipts and disposals have been consistently lower than the 2021 Spending Review projections, but more so for disposals



Notes

- 1 The actual number of receipts and disposals for 2023-24 are extrapolated from the actual data for March to December 2023.
- 2 'Disposals' refers to the numbers of cases dealt with and removed from the caseload in a particular reporting period. 'Receipts' refers to the numbers of new cases received by the Crown Court in a particular reporting period.

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

Part Two

Understanding and managing the backlog

2.1 This part of the report sets out:

- the governance arrangements and plans for reducing the backlog; and
- the Ministry of Justice's (MoJ's) and HM Courts & Tribunals Service's (HMCTS's) understanding of how capacity, efficiency and productivity in the Crown Court is affecting the backlog, and their actions to increase capacity, efficiency and productivity.

Governance and oversight arrangements

2.2 In April 2021, the National Economic and Recovery Taskforce, established by the Cabinet Office, attended by the MoJ and partner organisations, set out a Criminal Justice Action Plan (the action plan) to resolve systemic criminal justice issues, including supporting recovery in criminal courts. Reducing the Crown Court outstanding caseload to below 50,000 by the end of the Parliament was one of the three priority areas in the action plan. Actions aimed at reducing the backlog included:

- increasing the number of sitting days;
- increasing judicial capacity; and
- retaining and expanding Nightingale courts.

2.3 The action plan, and other actions to improve the functioning of the criminal justice system, were supported by a governance structure comprising several boards and groups of representatives from across the criminal justice system (**Figure 6** on pages 28 and 29). These forums, and others within the criminal justice system, continue to support and oversee the ongoing work to reduce the backlog.

Figure 6
Oversight of Crown Court operations and actions to reduce the backlog

The Criminal Justice Board did not convene for two years between July 2021 and July 2023

Board or group	Time period
Criminal Justice Board (CJB)	
Chaired by the Lord Chancellor and Secretary of State for Justice. Senior cross-system membership, including HM Courts & Tribunals Service (HMCTS), the Senior Presiding Judge, the President of the King's Bench Division, the Home Office, the Crown Prosecution Service (CPS), the National Police Chiefs' Council (NPCC), HM Prisons and Probation Service (HMPPS), the Victims' Commissioner, and the Youth Justice Board. Responsible for oversight of the system and promoting a collaborative approach to addressing its challenges.	Met from December 2015 to July 2021 and then from July 2023 onwards.
Criminal Justice Board Steering Committee	
Chaired by the Lord Chancellor and Secretary of State for Justice. Senior cross-system membership including the Home Office, the CPS, the Attorney General's Office (AGO), and the NPCC. Established to provide strategic direction to cross-system recovery and reform.	Met in April and June 2021.
Criminal Justice Task and Finish Group	
Chaired by the Parliamentary Under Secretary of State, Ministry of Justice (MoJ). Established to focus on specific problems, for example, early guilty pleas.	Met in February and November 2023.
Criminal Justice Action Group (CJAG)	
Chaired by the MoJ's Permanent Secretary. Cross-system membership, including equivalent senior representatives from the Home Office, CPS, AGO, NPCC and HMCTS, with senior judiciary by invitation. Supported by director general-led and director-led groups. Established to convene senior leaders from across the system to progress work, shape the longer-term strategic vision for the system and deliver cross-system outcomes: improving timeliness and the quality of justice and increasing victim engagement.	Established in March 2021. Met eight times in 2021, six times in 2022 and five times in 2023. Currently meets quarterly.
Court and Tribunal Recovery Oversight Group	
Chaired by the MoJ's Director of the Courts and Tribunal Recovery Unit. Membership includes directors from the MoJ and HMCTS, and the Judicial Office Chief Executive. Established to develop, oversee and assure delivery of a plan for recovery from the impacts of COVID-19 across the crime, civil, family and tribunal courts.	Met monthly from May 2021 to May 2023.

Crown Court Improvement Group	
Chaired by the Senior Presiding Judge. Membership from the MoJ, HMCTS, the police, the CPS, HMPPS, the Legal Aid Agency and the legal profession. Aims to improve the performance of the Crown Court in England, including promoting better ways of working, and reinforcing effective case management and adherence to Better Case Management principles. ¹	Met monthly from September 2021 onwards.
Criminal Legal Aid Advisory Board	
Chaired by a retired senior judge. Membership from representative bodies from the legal profession and MoJ officials. Set up following the 2021 Independent Review of Criminal Legal Aid recommendation to establish an independent advisory board for a wider view and more joined-up approach to criminal legal aid. ²	Met quarterly from October 2022 onwards.
Crime Business Authority	
Chaired by the HMCTS deputy director for crime and crime service owner. Director and deputy director, senior judiciary and MoJ policy membership. Reports to the HMCTS Board and the Finance and Performance Committee. Responsible for ensuring effective and efficient service of magistrates' courts and the Crown Court to criminal justice partners and the people who use the criminal courts.	Met bi-monthly from January 2021 onwards.

Notes
1 Judiciary of England and Wales, *The Better Case Management Revival Handbook*, January 2023.
2 Sir Christopher Bellamy, *Independent Review of Criminal Legal Aid*, November 2021.

Source: National Audit Office analysis of Ministry of Justice documents

2.4 The action plan set out how the Criminal Justice Board Steering Committee (CJB-SC), supported by the Criminal Justice Action Group (CJAG), would oversee work to develop and implement the plan. Progress with the plan was reported to CJB-SC in April and June 2021. Aspects of the plan, such as increasing the number of sitting days, were overseen by the CJAG from April 2021 to December 2022. The CJB did not convene for two years between July 2021 and July 2023. The MoJ told us that over this period progress with actions in the plan relating to the outstanding caseload were monitored and discussed by relevant governance forums, with CJAG taking a strategic oversight role. The CJB reconvened in July 2023, and in December 2023, to identify and tackle systemic issues, it made strategic consideration of the Crown Court outstanding caseload a standing agenda item at its meetings. The MoJ recognised at that point that there was no one place where the work across the system to reduce the backlog, including through the Crown Court Improvement Group and the CJAG, came together and was monitored against a single action plan. The MoJ presented information on the ongoing work to tackle the Crown Court backlog from across the criminal justice system, gathered from the governance groups, to the CJB at its meeting in April 2024.

Managing capacity in the Crown Court

2.5 Since the COVID-19 pandemic, the MoJ has focused on reducing the backlog in three main ways:

- Maximising physical and judicial capacity in the courts.
- Managing demand coming into the courts to ensure it goes to the right place – magistrates’ courts or the Crown Court.
- Initiatives to improve the efficiency of the courts.

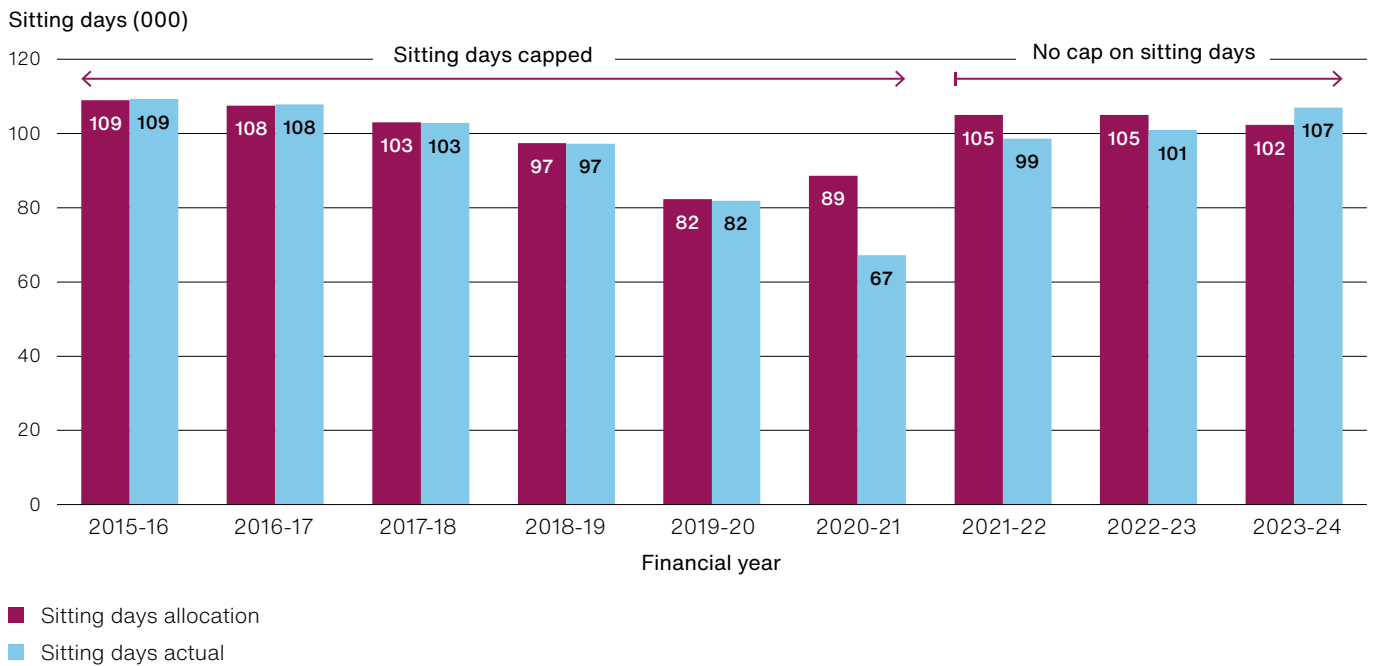
The MoJ considers that its focus on increasing capacity has resulted in a 1% increase in disposals between the first and last quarters of 2023, but receipts increased by 7% over the same period (Figure 2).

Sitting days

2.6 Each financial year, the Lord Chancellor decides to fund a certain number of sitting days in the Crown Court – often referred to as the ‘cap’ – to ensure the efficient and effective operation of the courts. In April 2021, following two years over which the backlog rose, the Lord Chancellor removed the cap on sitting days for 2021-22, and subsequently removed the cap for the following two years. As a result, the number of sitting days in each year rose, from 81,899 in 2019-20 to 100,950 in 2022-23. The MoJ set an initial budget for 102,300 sitting days in 2023-24, but it now expects there will be 107,000 sitting days, representing a 31% increase from 2019-20 (**Figure 7**).

Figure 7

Crown Court sitting days in England and Wales, 2015-16 to 2023-24

Fewer sitting days took place in 2023-24 than in 2015-16 or 2016-17 despite the cap on sitting days being lifted in 2021-22**Notes**

- 1 Each financial year the Lord Chancellor decides to fund a certain number of sitting days in the Crown Court with funding capped. From April 2021, the funding cap on sitting days was removed to support reducing the Crown Court backlog, although an initial indicative allocation of sitting days is still set for each year.
- 2 Data on allocated sitting days is from HM Courts & Tribunals Service's (HMCTS's) internal management information.
- 3 Data on actual sitting days to 2022-23 are published by HMCTS.
- 4 The number of expected sitting days for 2023-24 is extrapolated from data published by HMCTS.

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

Court capacity

2.7 At the time of our 2021 report, the MoJ considered the two main constraints to reducing the backlog to be the number of courtrooms and judicial capacity. Before 2019, the MoJ had been reducing the number of courtrooms in response to lower receipts coming into the Crown Court. In 2020, in response to the pandemic and the introduction of social-distancing measures, the MoJ introduced Nightingale courtrooms. Nightingale courtrooms are provided at a significantly higher cost than the £280,000 average courtroom cost per year from HMCTS's core estate – HMCTS provided us with costs for a Nightingale courtroom in four locations that ranged from £440,000 per year to £1.6 million per year. The Nightingale Courts programme delivered 60 courtrooms by the end of March 2021, reaching 72 by July 2021. Total spending on Nightingale courts up to December 2023 was £78 million. In March 2022, the MoJ announced that 30 of the 72 original Nightingale courtrooms would remain in use until March 2023, with most subsequently remaining in use beyond that date. By March 2024, nine Nightingale courts remained open, comprising 20 courtrooms, six of which are currently scheduled to close in 2024, and the other 14 remaining open until March 2025. The MoJ monitors courtroom capacity but, due to varying levels of demand, does not know when temporary courtrooms will no longer be required. The MoJ no longer considers courtroom capacity to be a constraint on case disposals.

2.8 The MoJ has taken several measures to increase its core courtroom capacity, including:

- converting two existing courtrooms into two 'super courtrooms' – large courtrooms allowing for trials with up to 12 defendants – in Manchester and Loughborough in 2021 to maximise the physical capacity of the estate;
- £220 million up to March 2025, as committed by the government, for essential maintenance and repair work to keep as many courtrooms open as possible;⁵ and
- adding additional capacity through 'new builds' such as the 18-room court on Fleet Street, which will provide 10 additional courtrooms.

⁵ The £220 million funding is provided for essential maintenance, repair and to deliver replacement court and tribunal buildings for both court and tribunal services.

Judicial capacity

2.9 In an evidence session in December 2021, HMCTS told the Committee of Public Accounts that judicial capacity was the constraint most affecting the Crown Court at that time. Previous recruitment for judges to the Crown Court (circuit judges) had failed to fill all the vacancies. HMCTS told us that circuit judge vacancies remained hard to fill, in part due to terms and conditions for fee-paid judges (recorders) becoming more attractive relative to salaried judges, making fee-paid judges easier to recruit. Judges are recruited from the pool of existing lawyers and, unlike fee-paid judges, salaried judges cannot practise as a lawyer after appointment as a salaried judge. Regional gaps were also apparent, with recruitment in London and the Midlands proving particularly challenging.

2.10 The MoJ has taken several actions to help improve recruitment and retention of judges, and worked with the judiciary to maximise existing capacity, including:

- increasing judges' basic pay;
- improving the pension scheme for the judiciary;
- increasing the mandatory retirement age from 70 to 75;
- allowing retired pensioned judges to sit as fee-paid judges when there is a business need; and
- working with the judiciary to support the flexible deployment of district judges (magistrates' courts) to sit in the Crown Court.

2.11 The number of circuit judges has remained at similar levels, from 669 in 2020 to 664 in 2023, but the number of recorders (fee-paid judges) increased from 874 to 955. Filling salaried vacancies in London and the South East remains a challenge, and fee-paid judges (recorders) are being increasingly used to fill vacancies and meet regional capacity shortfalls. The MoJ told us that its 2022-23 recruitment exercise went better than planned (92 recommended for appointment against 80 planned) and, by 2023-24, it expected the number of circuit judges and recorders sitting in the Crown Court to have increased so that judicial capacity will not be a constraint on court performance. However, judges are recruited from the pool of existing lawyers – largely barristers – a shortage of which is now constraining the disposal of cases.

Legal professionals' capacity

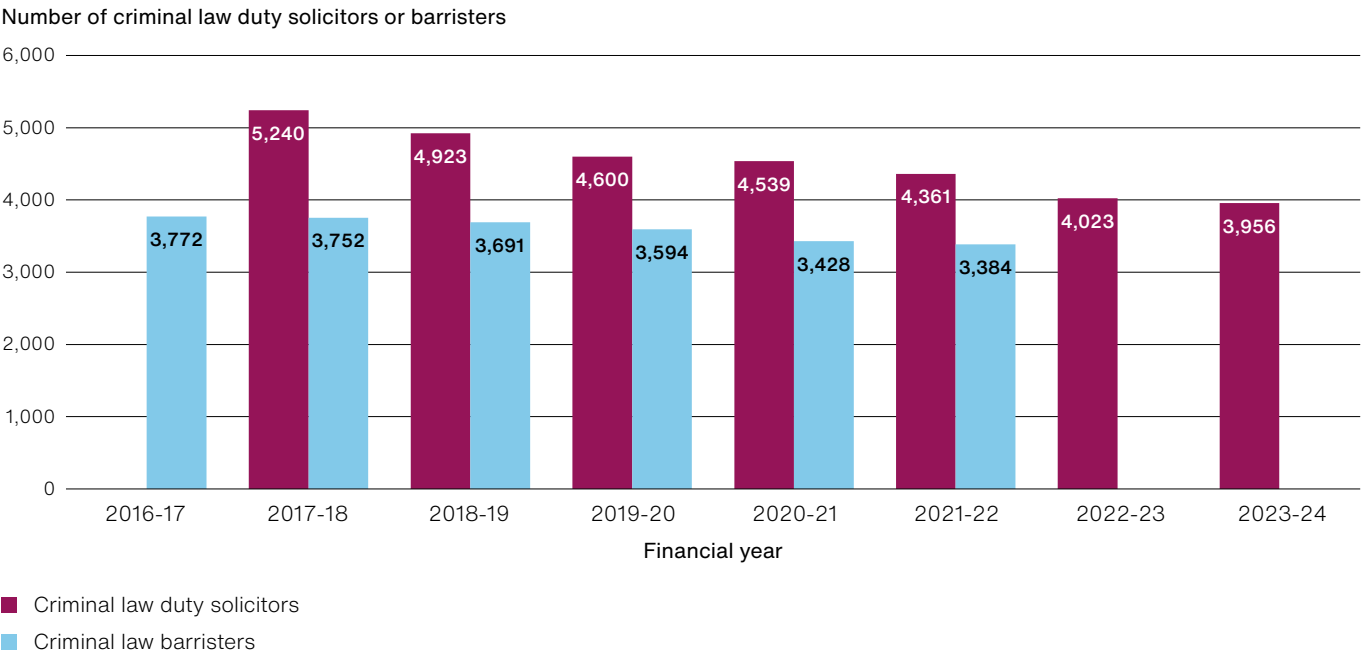
2.12 The judiciary and legal professionals told us that the main current constraint to further increasing throughput in the Crown Court is the shortage of criminal barristers. The number of trials that could not go ahead due to a lack of defence or prosecution barristers on the day a trial was planned increased from 71 (0.3% of all trials) in 2019 to 1,441 (4.9% of all trials) in 2023.⁶

⁶ During 2022, criminal defence barristers took industrial action. The number of trials that could not go ahead due to a lack of defence or prosecution barristers was 4,136 in 2022.

2.13 The number of lawyers practising in the criminal law area has declined significantly in recent years (**Figure 8**). The number of duty solicitors contracted by the government to provide criminal legal aid reduced from 5,240 in October 2017 to 3,956 in October 2023 (25% reduction). The number of criminal barristers that completed any public criminal work in year decreased from 3,772 in 2016-17 to 3,384 in 2021-22 (10% reduction).

Figure 8
The number of criminal law duty solicitors and barristers working in criminal law in England and Wales, 2016-17 to 2023-24

The numbers of criminal law duty solicitors and barristers have decreased each year since 2017-18



Notes

- 1 The number of criminal law duty solicitors is based on data collected in October each year, except for 2022-23 when the data were collected in January 2023. The criminal law duty solicitors' data reported here are based on the number of solicitors that were matched by the Ministry of Justice (MoJ) and the Law Society as part of their data sharing project. It is smaller than the actual number of solicitors working in the criminal legal market, but represents more than 95% of the market.
- 2 The number of criminal law barristers reported here is based on the number of criminal law barristers that completed any public criminal work in each financial year. The MoJ also monitors the number of barristers who self-report to the Bar Council that at least 80% of their gross fee income comes from criminal work. We have used the former measure as it better represents the criminal legal market that is potentially available to the MoJ.
- 3 No comparable data is available for criminal barristers for 2022-23 to 2023-24 and for criminal duty solicitors for 2016-17.

Source: National Audit Office analysis of Legal Aid Agency data

2.14 The fall in the number of criminal lawyers is concentrated in younger age groups, potentially exacerbating shortages in the future. The proportion of criminal law duty solicitors aged under 35 has decreased from 14% in 2017 to 9% in 2023, while those aged 55 and above increased from 24% to 34% over the same period. The proportion of barristers aged under 45 also went down to 34% in 2021-22, from 38% in 2017-18.

2.15 Organisations representing legal professionals told us that criminal lawyers have been diversifying their practices away from criminal work, because of a combination of declining demand before COVID-19, reduction in legal aid fees, increasing levels of stress and poor working conditions. Many of these views were supported by the Independent Review of Criminal Legal Aid, which published its final report in November 2021. The report highlighted the difficulties in attracting young lawyers to work in criminal defence work.

- **Demand:** Up to 2019, the fall in the number of cases entering the criminal justice system reduced the need for criminal legal professionals.
- **Fees:** In cash terms, until the uplift in 2022, criminal legal aid rates had not increased since 1998. The review reported that the level of legal aid fees had reduced by one-third in real terms since 2008. Our February 2024 report *Government's management of legal aid* found that the government's real-term spending on criminal legal aid reduced by 43% between 2010-11 and 2022-23, in part, due to falling volumes of criminal legal aid cases over the period.⁷
- **Working conditions:** A survey of law students in May 2021 found that they referred to the low pay and difficult working conditions of criminal work. A later series of reports, published by the Bar Council between 2022 and 2024, found that criminal law barristers often reported poor remuneration and stressful working conditions, with lower levels of wellbeing and earnings than all other practices.⁸

2.16 In November 2021, the Independent Review of Criminal Legal Aid recommended that the funding for criminal legal aid should be increased overall for solicitors and barristers as soon as possible to an annual level of at least 15% above present levels. The MoJ implemented a 15% increase to most fees for criminal cases in September 2022, but it only committed to raising overall fees for solicitors by 11%. The Law Society was granted a judicial review against the Lord Chancellor over the legal aid fees for solicitors and, on 31 January 2024, a judgment was handed down. The Law Society was successful on two of their four grounds of challenge and the government is currently considering its response.

⁷ Comptroller and Auditor General, *Government's management of legal aid*, Session 2023-24, HC 514, National Audit Office, February 2024.

⁸ The Bar Council, *Access denied: The state of the justice system in England and Wales in 2022*, November 2022. The Bar Council, *Gross earnings by sex and practice area at the self-employed Bar*, November 2023. The Bar Council, *Barrister Wellbeing (BWB) analysis*, January 2024.

2.17 In 2022, following a ballot of members of the Criminal Bar Association (CBA), criminal defence barristers took industrial action in protest over the levels of legal aid fees paid for their work. From April 2022, CBA members adopted a ‘no returns’ policy, whereby barristers refused to ‘return’ to a case where another advocate is or was listed as trial advocate, a long-running accepted practice within the Crown Court. The action escalated throughout the summer of 2022, with criminal barristers stopping attending court. On 29 September, the government announced it would apply the proposed 15% uplift to the Advocates Graduate Fee Scheme to the vast majority of existing cases. On 30 September 2022, the government raised most fees paid for criminal legal aid work by 15%, and CBA members voted to suspend action on 10 October 2022. The MoJ told us that it believed it had been on track to reduce the outstanding caseload to 53,000 by 2025, and that the criminal defence barristers’ industrial action has been the main reason for the increase in the backlog after COVID-19. The CBA attributes the rise in the outstanding caseload since the suspension of the industrial action in part to an increase in the number of ineffective trials due to a shortage of legal professionals, in particular criminal barristers. The Bar Council told us that the increase in criminal legal aid funding likely prevented more barristers leaving criminal practice, which may otherwise have further added to the backlog.

Efficiency and productivity in the Crown Court

2.18 The effective trial rate is a measure used to determine what proportion of cases in the Crown Court go ahead as planned on their listing date. The MoJ contrasts effective trials with three other trial outcomes:

- **Ineffective:** The case is not ready to go ahead on its planned date and will be relisted to a later date.
- **‘Cracked’:** A trial is withdrawn when the defendant offers acceptable pleas, or the prosecution offers no evidence, on the day of trial. The case is not relisted but the preparation work and time allocated may be wasted.
- **Vacated:** A case is removed from the list in advance of its planned date when it is unlikely to go ahead. The court may be able to use the time to hear other cases.

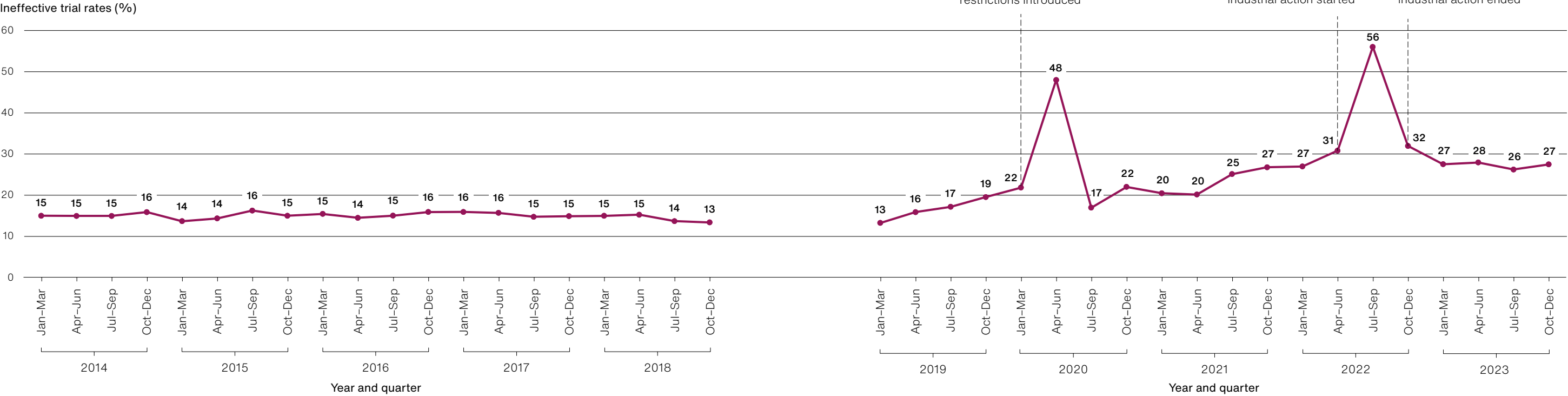
2.19 Ineffective trials can result in allocated court time and resources not being used to hear cases. The proportion of trials which are ineffective has increased from 16% in 2019 to 27% in 2023 (**Figure 9** on pages 38 and 39). The principal reasons for ineffective trials are (**Figure 10** on pages 40 and 41):

- Witness and defendant unavailability (2,351 in 2023): this was the main reason across the five years from 2019 to 2023, except for 2022, when ‘Counsel unavailability’ was the main reason, due to the criminal defence barristers’ industrial action. ‘Witness and defendant unavailability’ was the cause of the largest number of ineffective trials in 2023. Organisations representing legal professionals told us that some of these cases are due to prisoner transport services failing to get prisoners to court in time for their trial, in part due to a shortage of prison staff, meaning some prisoners cannot be held in prisons close to the courts and have further to travel.
- Poor case preparation (1,920 cases in 2023): the number of trials declared ineffective due to poor case preparation by either the prosecution (including by the police and the Crown Prosecution Service) and by the defence. The number of ineffective trials due to poor case preparation has been rising since 2021.
- Over-listing of cases (1,698 cases in 2023): can occur due to other trials over-running or judges attempting to sit as many cases as possible.
- Unavailability of counsel (1,441 cases in 2023): covered in paragraph 2.12.

2.20 In January 2024, the MoJ and HMCTS completed a project to understand what affects the efficiency of the Crown Court from the perspective of partners across the criminal justice system. The findings covered seven themes concerning: the court estate, technology, case management practices, listing practices, ineffective trials, workforce, and inter-agency working. It concluded that there is a need to improve cross-system collaboration, as presently there are often trade-offs between desirable outcomes, for example, remote hearings may benefit some system partners but create challenges for the judiciary and HMCTS staff. To enable collective consideration of where best to focus efforts, work is underway to map initiatives across the system that aim to reduce the backlog. The MoJ expects the findings will help it to understand variations in efficiency in the Crown Court and the roles that partners within the criminal justice system can play in improving efficiency. The MoJ, in partnership with HMCTS and the judiciary, intend to develop next steps to improve the operation of the criminal justice system, which will feed into the work of the Crown Court Improvement Group and the CJB.

Figure 9
Quarterly ineffective Crown Court trial rates, 2014 to 2023

The ineffective trial rate has not recovered to pre-2020 levels

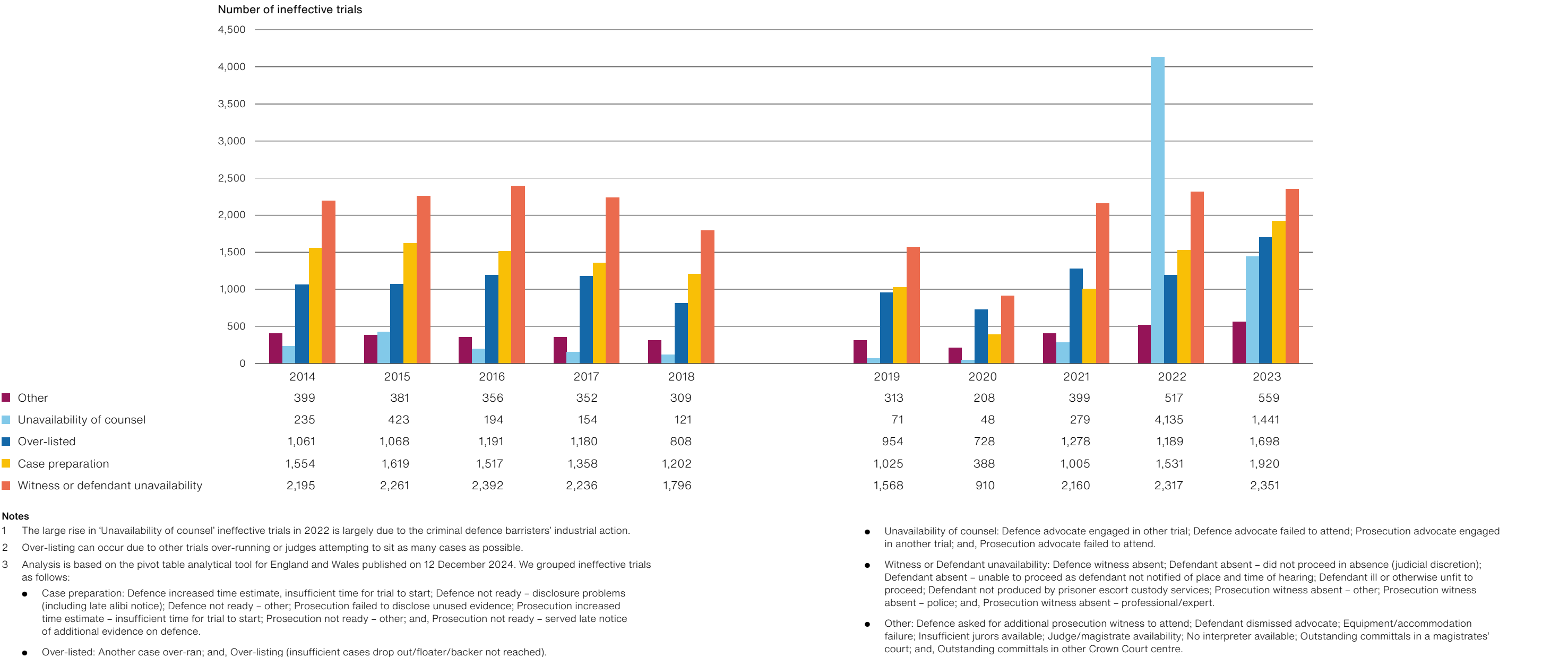


Note
1 Ineffective trials occur when a case is not ready on the day it is due to start and is relisted for a later date. The ineffective trial rate is calculated as the total number of ineffective trials for a quarter out of the total number of trials listed for the quarter.

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

Figure 10
Number of ineffective trials in England and Wales by category, 2014 to 2023

The number of trials declared ineffective has increased in all four main categories since 2019



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

2.21 In December 2023, the MoJ informed the CJB that its options to increase capacity further were limited with regards to the levers that the MoJ and HMCTS have more direct control over, for example, judicial capacity and the court estate. It said that it would continue to maximise capacity where possible but must focus on how to make best use of existing capacity and improve efficiency of the court process. The MoJ suggested developing a cross-system criminal court action plan to drive down the backlog by including short-, medium- and long-term actions to improve the efficiency of the courts and the wider system. It proposed that the CJB, as a cross-system governance group, should oversee and regularly monitor delivery of the action plan through a subgroup. However, the CJB's preference expressed at its December 2023 meeting was to include strategic consideration of the backlog as a standing agenda item, and to bring together all cross-criminal justice system governance groups' actions to reduce the backlog.

Data and analysis on the Crown Court

2.22 In our 2021 report *Reducing the backlog in criminal courts* we concluded that sustainable recovery in criminal courts required the MoJ and HMCTS to significantly improve the quality of their data and analysis.⁹ HMCTS in 2021, and the MoJ in 2022, published their respective data strategies, which aim to improve use of the wide range of data collected across the justice system to help improve its services, including the Crown Court. HMCTS has developed a Crown Court dashboard, first introduced in 2018, which brings together data from the Common Platform, a new digital case management system currently being rolled out across the criminal justice system, and several legacy data platforms. These data include case receipts and disposals, case type, and trial effectiveness and duration, at national, regional, and local levels. There are some data gaps, for example, data on service users' age, gender and ethnicity, and data on early pleas. There are also some issues with data quality, which HMCTS is working on. The dashboard has started to provide real-time data and insights to support the work of national and local teams. It has also provided insights and analysis to support cross-system groups, for example, the Crown Court Improvement Group, in their efforts to improve court efficiencies.

2.23 The MoJ, supported by the CJAG, has developed a publicly available Criminal Justice System Delivery Data Dashboard, which brings together existing information across the police, Crown Prosecution Service and court support services. The dashboard provides an overview of the justice system from the point a crime is recorded by the police, to when a case is completed in the Crown Court. The dashboard focuses on the three priority areas of improving timeliness, increasing victim engagement, and improving quality of justice.

⁹ Comptroller and Auditor General, *Reducing the backlog in criminal courts*, Session 2021-22, HC 732, National Audit Office, October 2021.

Case complexity

2.24 The MoJ and HMCTS told us that a growing proportion of the Crown Court backlog comprises complex cases,¹⁰ because:

- only simpler cases could be heard during and immediately after the COVID-19 pandemic and during the criminal defence barristers' industrial action; and
- the increasing length of cases can be a self-perpetuating effect as, for example, incentives to plead guilty (and to plead guilty at earlier stages) diminish, complainants and witnesses can withdraw, and evidence can turn stale over time.

2.25 Cases in the Crown Court comprise three different types of case:

- cases for trial (58.6% of the total of cases completed in the final quarter of 2023);
- committals for sentence, which are cases found guilty in magistrates' courts and sent to the Crown Court for sentencing (35.5%); and
- appeals to overturn or reconsider a decision determined at a previous trial (5.6%).

The average hearing time of all completed cases increased from 3.4 hours in 2019 to 3.8 hours in 2023. The average hearing time for all cases for trial in 2023 was 5.8 hours. Defendants can be further divided into those with a guilty plea (59% of the total cases completed in 2023), those with a not-guilty plea (19%), those where a case is ultimately dropped (14%) and those where no plea is entered (8%). The amount of court time and resource required varies widely between these case types. In 2023, trials with a guilty plea took an average of 2.0 hours, but those with a not-guilty plea took an average of 20.0 hours.

2.26 The percentage of defendants pleading not guilty has slightly increased since 2014. In the first quarter of 2014, the guilty plea rate was 72%, compared with 64% in the final quarter of 2023. More significantly, guilty pleas are occurring increasingly late in the process, such that several hearings may already have taken place. Between January and December 2023, 37% of guilty pleas were entered at their first hearing, down from 50% in 2019. In October 2023, the MoJ established an Early Guilty Plea Taskforce to coordinate cross-system effort to increase early guilty pleas and prepare an action plan.

¹⁰ Complex cases are those which require more court hearing time and other resources compared with the average case in the outstanding caseload. For example, a complex case may involve multiple defendants or be one in which defendants plead guilty late in the process. By this definition, the complexity of a case will also increase with its time in the backlog.

2.27 Currently, 15% of cases awaiting trial are sexual offences, up from 9% on 31 December 2019, before the COVID-19 pandemic (**Figure 11**). Cases involving violence against the person have also risen slightly from 24% to 28% over the same period. Sexual offences have lower guilty plea rates than most other offences. In 2023, the guilty plea rate for sexual offences was 38% compared with the average of all offences at 65%. As a result, sexual offences are more likely to go to trial. Consequently, a larger proportion of cases within the backlog are expected to require a trial due to the defendant pleading not guilty.

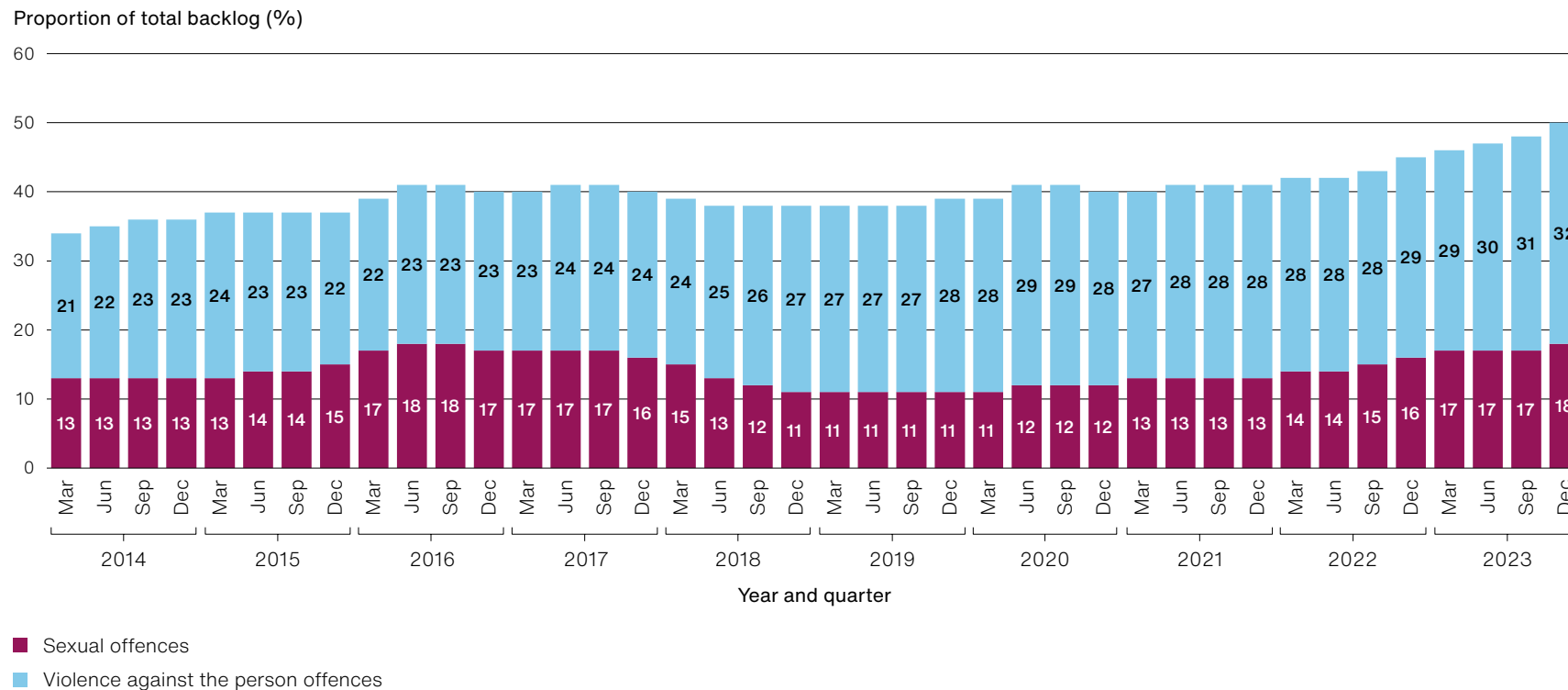
2.28 Of sexual offences, adult rape cases are particularly complex, with a guilty plea rate of 16%. When adult rape cases go to trial, they are also among the trials that take longest to hear – 16.1 hours on average in 2023 compared with 3.8 hours for all offences – largely due to the evidence that is required when the focus of the trial is on consent. Following publication of *The end-to-end rape review* in 2021, the government committed to more than doubling the number of adult rape cases going to court, compared with 2019, when the review was first commissioned.¹¹ The number of adult rape cases increased by 346% between 31 December 2019 and 31 December 2023, from 625 (1.6% of all cases) to 2,789 (4.2% of all cases). In the final quarter of 2023, the average mean time from receipt to completion for adult rape cases was 396 days compared with 266 for all offences.

¹¹ HM Government, *The end-to-end rape review report on findings and actions*, CP 437, June 2021.

Figure 11

Proportion of cases awaiting trial involving violence against the person offences and sexual offences, England and Wales, March 2014 to December 2023

Violence against the person offences and sexual offences comprise a rising proportion of the backlog



Notes

- 1 Data are not available for a small number of cases.
- 2 Based on data published on 28 March 2024.
- 3 'Violence against the person' and 'sexual offences' are two of the 12 groups into which all offences are classified in Criminal Justice Quarterly statistics data. Each category comprises a range of offences. 'Violence against the person' includes, for example: murder, manslaughter, grievous bodily harm and common assault. 'Sexual offences' includes, for example: adult rape, child rape, exposure and soliciting prostitution.

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

Part Three

Challenges to tackling the backlog

3.1 This part of the report sets out:

- the Ministry of Justice's (MoJ's) and HM Courts & Tribunals Service's (HMCTS's) initiatives to manage demand in the Crown Court;
- the impact of the backlog on the wider criminal justice system; and
- the MoJ's and HMCTS's future plans for reducing the backlog.

Receipts to the Crown Court

3.2 The rate of receipts is, at source, affected by the level of crime in society and how much of this is caught by the police, which in turn is affected by overall police resourcing and police priorities. In September 2019, the government committed to recruiting 20,000 new police officers (headcount) in England and Wales over three years. The total number of police officers has increased since 2019 – between September 2018 and September 2023 the number increased by nearly 24,700 (full-time equivalent) (**Figure 12**).

3.3 The MoJ is able to make small changes to legislative process that influence the rate of receipts to the Crown Court. In May 2022, the MoJ introduced legislation extending magistrates' sentencing powers from a maximum of six months to 12 months for a single 'triable either way' case.¹² It intended this as an efficiency measure to stop some cases from needing to go to the Crown Court for sentencing, thereby releasing time for other cases. The MoJ indefinitely paused the extension of magistrates' sentencing powers on 30 March 2023, in response to pressure on the prison system. At this time, police cells were being used to provide additional prison capacity supporting movement of prisoners across the prison estate. The MoJ is not currently exploring further options to reduce demand through changes in magistrates' courts.

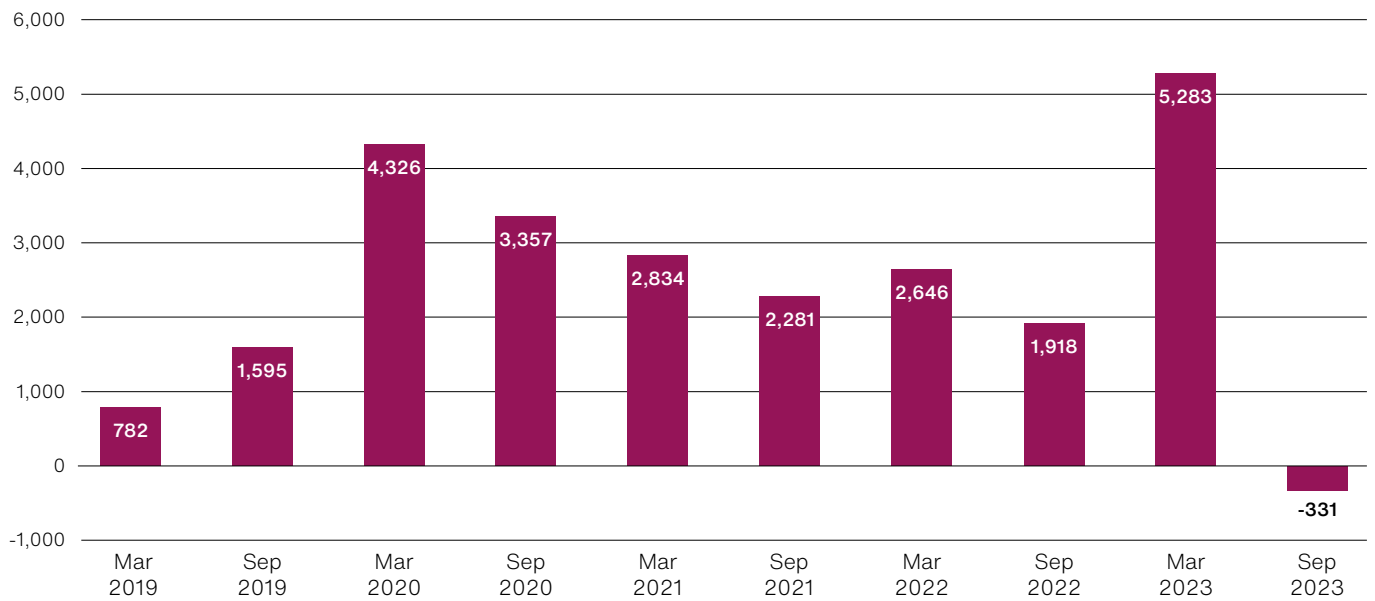
¹² 'Triable either way' offences can be heard in magistrates' courts or transferred to the Crown Court for all or part of the proceedings.

Figure 12

Change in the number of full-time equivalent (FTE) police officers compared with the previous six months, England and Wales, March 2019 to September 2023

The total number of police officers has increased since 2019

Change in number of FTE police officers compared with the previous six months

**Notes**

- 1 Excludes British Transport Police and secondments to central services.
- 2 Each bar represents the change in the number of FTE police officers compared with the previous six months. For example, the first bar dated March 2019 shows the change in FTE compared with September 2018.

Source: National Audit Office analysis of Home Office police workforce statistics

Impact of the backlog on the prison system

3.4 The MoJ's most recent published prison population projections suggest that the total prison population will reach its highest ever level in 2024, and will continue to rise. The number of people on remand in prison awaiting trial or sentencing has risen sharply in recent years, contributing to the overall prison population. The remand population reached the highest level for at least 50 years in 2023. At 16,005 on 31 December 2023, it is 65% higher than December 2019 before the COVID-19 pandemic (**Figure 13**). This growth is a consequence of disposals in the courts not keeping pace with demand, and people spending longer on remand. Nearly two-thirds of people on remand are awaiting trial, while the remaining third are awaiting sentencing. In 2022, 35% of those remanded in custody awaiting trial did not ultimately receive a custodial sentence, including 13% who were acquitted entirely. People are increasingly being held beyond the custody time limit of six months. In response to a parliamentary question published on 25 November 2022, the MoJ reported that, as of 30 September 2022, 4,582 people (32% of the remand population) were being held beyond the custody time limit, and 770 (5% of the remand population) of them had been on remand for more than two years. In response to more recent parliamentary questions, the MoJ has responded that it no longer centrally holds information relating to time spent on custodial remand.

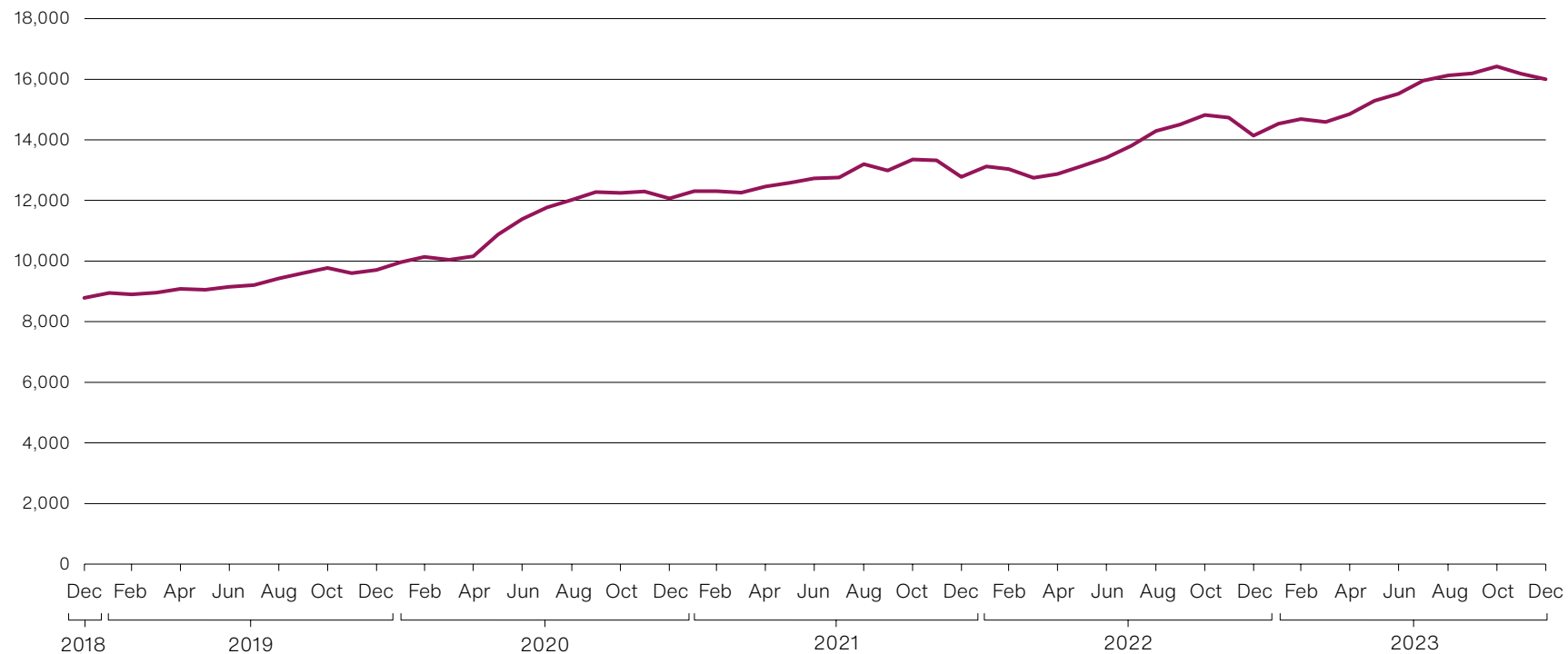
3.5 In October 2023, acute prison population pressures led the Senior Presiding Judge to brief resident judges and suggest that slight postponements to certain sentencing work may be sensible in the interests of justice, for example, those people currently convicted but on bail. To further relieve population pressures, the End of Custody Supervised Licence scheme was implemented on 17 October 2023, allowing for certain categories of prisoner to be released 18 days before the end of their sentence. On 11 March 2024, it was announced that the scheme would be extended to up to 60 days. In April 2024, the MoJ reported to the Criminal Justice Board (CJB) that currently the most pressing consideration in relation to reducing the Crown Court backlog is the pressure on prison capacity, which has become more acute in recent months, including as a result of increases in the remand population.

Figure 13

People in prison on remand in England and Wales, December 2018 to December 2023

The number of people on remand has risen sharply in the past five years, and is now at a record high

Remand population



Notes

- 1 People on remand include those awaiting trial, and those who have been convicted and are awaiting sentence.
- 2 The population figures are snapshots from the last day of each month.

Source: National Audit Office analysis of Ministry of Justice offender management statistics

The Ministry of Justice's future plans for the Crown Court

3.6 There is consensus between the MoJ and legal professionals that much of the court estate is dilapidated due to long-term under-investment, which means that courtrooms are frequently taken out of action due to, for example, leaks or heating failures. In 2022, the MoJ estimated that 50% of Crown Court courtrooms were at risk of closure at any time. While not currently affecting the rate of disposals, maintenance problems are expected to become more critical rather than less in the coming years. The MoJ's analysis of factors affecting Crown Court efficiency (paragraph 2.20) explains: *"Maintenance issues can lead to hearing delays, case adjournments and courtroom closures. Although, maintenance issues in courtrooms are not currently impacting disposal rates, this may change as increased judicial capacity will require putting more rooms into service."* In August 2023, the government committed £220 million for the court and tribunal estate for essential maintenance and repair work of, and to replace, court and tribunal buildings, although this was a small fraction of what the HMCTS estimated in January 2024 was a £1 billion backlog of maintenance and repair issues.

3.7 In January 2024, HMCTS introduced eight new case coordinators across seven Crown Courts. Case coordinators work with listing officers, the Crown Prosecution Service and defence practitioners to promote better ways of working and improve case management, including maintaining timetables and ensuring parties' readiness for hearings. With judicial approval, they also have additional powers intended to free up judge time. From April 2024, three more case coordinators will be introduced in Greater Manchester.

Appendix One

Our investigative approach

Scope

1 We undertook this investigation in response to the Crown Court backlog reaching 65,000 in August 2023, the highest ever level at that time. This report is an update to our 2021 report *Reducing the backlog in criminal courts* and examines what action the Ministry of Justice (MoJ) has taken and whether it and the HM Courts & Tribunals Service (HMCTS) are well placed to address the backlog of cases in the Crown Court. We examined:

- the scale, nature and impact of the Crown Court backlog;
- the MoJ's and HMCTS's understanding of the impact of actions to reduce the Crown Court backlog since we last reported; and
- how the MoJ and HMCTS are attempting to manage the Crown Court backlog.

2 We refer to, but did not examine in detail, the work of other parts of the criminal justice system, such as the judiciary, police, magistrates' courts and HM Prison and Probation Service relevant to managing the Crown Court backlog. We do not comment on the wider reform programmes in the system such as the court reform programme, which is the focus of our 2023 report *Progress on the courts and tribunals reform programme*. We do not comment on other major projects unless directly relevant to the Crown Court backlog. We do not seek to examine and report on value for money of the MoJ's and HMCTS's work to date to reduce the backlog.

3 For this report, we have defined the backlog as all cases waiting to be heard or completed. This definition is consistent with our 2021 report on the topic. We recognise that this definition does not distinguish between the level of outstanding caseload that HMCTS considers as required for the criminal courts to function efficiently and effectively, and cases that exceed this caseload. However, when we discuss a specific number of cases, we have referred to it as the outstanding caseload.

4 We conducted our fieldwork between January and March 2024.

Methods

Interviews

5 We interviewed, both online and face-to-face, officials in the MoJ and HMCTS. This included those responsible for:

- criminal justice strategy, policy and governance;
- the criminal justice system demand model;
- MoJ criminal justice system statistics, insights and Criminal Justice System Delivery Data Dashboard;
- HMCTS analysis, insights and performance reporting, including the Crown Court Dashboard;
- understanding user experiences and insights, in particular, those responsible for sexual offences;
- judicial recruitment;
- spending review preparation and progress monitoring; and
- regional/local operations.

The main topics were:

- government policies and strategies on the Crown Court backlog since 2021, including governance arrangement across the criminal justice system, strategies for Crown Court recovery both from the pandemic and for the longer-term;
- governance arrangement set up to help reduce the Crown Court backlog – both within the MoJ group and across the criminal justice system;
- understanding of the scale, nature and impact of the Crown Court backlog, including data systems put in place;
- understanding by the MoJ on the progress made in its efforts to reduce the backlog, and the impact of measures it has taken to date, challenges faced by the system, drivers of the backlog and future risks; and
- modelling of demand and the future backlog.

6 We interviewed wider stakeholders in the criminal justice system, including other government departments and public agencies and legal professions. While our questions were tailored to reflect each stakeholder's role, our questions aligned with our overall audit question. We sought their views on the nature and drivers of the backlog, progress made to date, and challenges and risks faced by the criminal justice system to reduce the backlog in the long-term, in particular, the capacity of the criminal law legal profession. We interviewed the:

- Crown Prosecution Service;
- Senior Presiding Judge for England and Wales;
- Legal Aid Agency;
- Bar Council;
- Law Society; and
- Institute for Government.

Document review

7 We reviewed MoJ and HMCTS documents for context and information about our key questions. We reviewed these documents to establish facts, including the MoJ's and HMCTS's analysis and understanding of the backlog and what is driving it, governance arrangements, and actions taken and planned relating to managing the backlog. The main types of documents we reviewed were relating to:

- strategy and governance arrangements for bodies within the MoJ group and across the criminal justice system;
- progress monitoring and reporting, including board minutes from both the MoJ and HMCTS;
- the MoJ's and HMCTS's delivery plans and ministerial submissions;
- data systems set up by the MoJ and HMCTS to support Crown Court operations and monitor progress;
- analysis by the MoJ and HMCTS of the nature of the Crown Court backlog, impact on service users and other parts of the criminal justice system;
- modelling demand and the future backlog; and
- efforts to improve court capacity (courtrooms, maintenance, judges and legal professionals) and efficiency.

8 We also reviewed wider literature for context and information about our key questions. This includes:

- reports in the National Audit Office's back catalogue;
- reports published or shared with us by stakeholders we interviewed, for example, the Bar Council, the Law Society and the Legal Aid Agency;
- reports or publications by independent commentators, such as the Institute for Government's report on Criminal courts performance and the Victims' Commissioner's statement on the Crown Court backlog; and
- Justice Select Committee and Committee of Public Accounts reports and evidence submissions; and independent reviews relating to the criminal justice system, for example, Lord Bellamy's Independent Review of Criminal Legal Aid and the Judiciary report by Lord Justice Singh and Mr Justice Jay: *Law Society v Lord Chancellor*.

Quantitative analysis

9 We analysed financial data, published criminal justice statistics and data contained in the management information produced by the MoJ and HMCTS. We have taken these data at their face value and have not audited the accuracy or completeness of the data used. The datasets we accessed and/or analysed included:

- internal financial data on Crown Court spending in general and funding provided specifically for COVID-19 recovery;
- criminal court statistics published quarterly by the MoJ on trends in the Crown Court, including trends in the size and age of outstanding cases, ineffective trials and waiting times;
- criminal justice system delivery data dashboard data on waiting times across the criminal justice system;
- HMCTS internal and published data on sitting day allocations and utilisation;
- prison and probation statistics on the probation population;
- HMCTS administrative data on court maintenance and lost sitting days;
- internal MoJ data from its regular demand modelling exercise;
- Home Office police workforce statistics;
- Legal Aid Agency data on criminal law legal professionals; and
- MoJ data on Diversity of the Judiciary: Legal Professions, new appointments and current post-holders.

10 We report on the average time cases take to go through stages in the criminal justice system, from offence to completion. There are two different measures for average time: mean and median.

- The mean average is calculated, for all cases completed at the Crown Court during a three-month period, by dividing the sum of the number of days from offence to completion by the number of cases completed. The same is done to calculate the mean average for the different stages as a case progresses through the criminal justice system.
- The median average is the number of days from offence to completion for the case at the 50th percentile during the period, when ordered by the number of days taken from offence to completion. The same is done to calculate the median average for the different stages as a case progresses through the criminal justice system.

11 The mean average incorporates the length of all cases, but can be overly influenced by small numbers of cases which take a disproportionately long time to complete (outliers). For example, the mean average time from offence to charge by police is significantly higher than the median average, as it is influenced by a small number of offences which often take many years after the offences have been committed before the victims report the cases to the police. The median, however, is not influenced by small numbers of cases at either end of the range, so is usually the better indicator to use to represent average time for a typical case. However, in the situation we analyse for the Crown Court, the increase in the time taken for a case since COVID-19 has disproportionately affected a significant proportion of cases which would already take longer to complete (see Figure 4). The disproportionate increase in time for these cases would not be well represented by the median, as these cases are above the median value and towards the end of the distribution. To better reflect the increasing time experienced by the people involved in these cases, we principally use the mean average in our report. For comparison, we also present the median in the relevant sections.

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