



REPORT

Reducing the backlog in the Crown Court

Ministry of Justice and
HM Courts & Tribunals Service

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.