

HOUSE OF LORDS

Select Committee on the Constitution

22nd Report of Session 2019–21

COVID-19 and the Courts

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Select Committee on the Constitution

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Committee staff

The current staff of the committee are Michael Torrance (Clerk), Ava Mayer (Policy Analyst) and Dan Weedon (Committee Assistant). Professor Stephen Tierney and Professor Jeff King are the legal advisers to the Committee.

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

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Evidence is published online at <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

SUMMARY

The justice system is fundamental to the relationship between the state and its citizens. It is the source of redress and of punishment. Its quality must not be compromised, even when major challenges threaten its usual modes of operation.

There has been a monumental effort by all working in courts and tribunals to maintain a functioning system despite the COVID-19 pandemic. Hearings rapidly moved online, new temporary court rooms were opened and buildings were adapted to facilitate social distancing. But recognition of these significant efforts should not obscure the scale of the challenges now facing our courts and tribunals.

The sudden shift to remote hearings has stretched limited court resources and risks excluding court users. The backlog of cases, which predated the pandemic, has reached record levels. The impact of virtual hearings across the justice system remains fundamentally unclear in a number of respects, as insufficient data is being collected and analysed by Her Majesty's Courts and Tribunals Service (HMCTS).

A system under strain

The justice system should be sufficiently resilient to function well when confronted with external threats. Yet justice in England and Wales was placed under significant strain in the decade preceding the pandemic. As a result, our courts and tribunals were not well placed to respond to the unprecedented challenges posed by COVID-19.

When the first UK-wide lockdown was announced, courts and tribunals in England and Wales were already facing a number of significant and long-standing challenges. Government funding had fallen significantly (by 21% in real terms in less than a decade), legal aid budgets had been radically reduced (by nearly 40% in less than a decade), court buildings had been closed, sitting days had been reduced, and fewer staff were employed by HMCTS.

Actions that might have been capable of alleviating the effects of the pandemic had not been taken. A programme of reform to the courts service, intended to modernise court technology and processes (the HMCTS reform programme), was behind schedule and struggling to deliver the improvements sought. Neither the Government nor HMCTS had conducted the necessary risk assessments to prepare the courts service for the devastating impact of COVID-19.

Reduced funding for the justice system in the preceding decade left our courts and tribunals in a vulnerable condition going into this period of crisis. Without adequate resources, technology or guidance, our much cherished justice system remains at risk.

The move to remote justice

Remote hearings for cases were, and continue to be, necessary to maintain the operation of the justice system, and to tackle the backlog of cases in the short to medium-term. In the longer term, remote hearings for some types of cases will be the best way to deliver justice, speeding up court processes and improving transparency. We recommend that the Government sets out a revised timetable

within three months for completing the HMCTS reform programme, including when it will provide the resources required to deliver it.

Some of the new technology introduced to the courts service in recent months has not been fully embraced by court users. Use of the Cloud Video Platform, a new IT platform developed for use in the criminal courts, has started to decline since its introduction, and police have recently withdrawn support for video remand hearings on the Platform. This represents a missed opportunity to use technology to ease pressures on the court system. We recommend that the Government sets out what lessons it has learned from the uneven adoption of new technologies during the pandemic and how it plans to support public bodies in making full and effective use of digitised court services.

The sudden shift to remote hearings has stretched limited court resources, created new barriers to communication between lawyers and their clients, and risks excluding court users. Limited IT access, home distractions, and the more tiring nature of remote hearings all threaten to undermine effective participation. To ensure access to justice is sustained during virtual hearings, we recommend that the Government ensures clear guidance on their use is made available to all court users, judges and court staff. This will aid preparation, enhance public perceptions of fairness and help to secure procedural justice.

The interruption to the normal operation of the courts has had a detrimental impact on the publicly funded and legally aided sectors of the legal profession. The reduction in legal aid funding over the preceding decade has exacerbated barriers for accessing legal representation. We recommend that the Government increases the legal aid budget to meet the new challenges for access to justice that have arisen during the pandemic.

The backlog of cases

The backlog of cases in the Crown Court, unacceptably high before the pandemic, has now reached crisis levels. Not only are victims and defendants waiting several years for their cases to be heard, but the quality of justice is increasingly at risk as witness memories fade over time.

The backlog has also led to an increase in the number of people held on remand awaiting trial. In December 2020, 8,000 men and women, and 130 children, were being held in custody awaiting trial. Innocent until proven otherwise, but in the meantime deprived of their liberty and their ability to access justice. Justice depends on the Government setting out a clear timeframe for solving the unacceptably high backlog and for reducing the numbers of adults and children held in custody awaiting trial.

Delays to trials have made it necessary for the Crown Prosecution Service to carefully select which cases can proceed, with the result that fewer prosecutions and convictions are taking place. Backlogs in family, employment and housing possession cases are also placing a strain on the justice system. Measures to address the backlog must be effective, well-funded and implemented urgently. We recommend that the Government provides the assistance and funding necessary to ensure that all criminal cases can be tried within specified targets. The Government should also report to Parliament annually on the actions taken to reduce the backlog in the criminal courts.

In response to the growing backlog, the Government has invested more money in the courts and opened temporary Nightingale courtrooms to increase the court estate available. These are necessary and welcome steps, but they are not sufficient. At the current rate it may take several years to get the backlog back to where it was before the pandemic began. And that must not be the stopping point. We recommend that the Government sets out a plan for addressing the backlog that will reduce it well below pre-pandemic levels. This should include plans to make maximum use of existing real estate, open more Nightingale courtrooms, increase the number of sitting days and increase the number of part-time and retired judges sitting. All of this will require additional investment by the Government in our justice system, both in the short- and medium-term. This is not yet forthcoming and was not included in the Government's Budget for 2021.

Reducing the number of jurors required for a trial has been mooted as one possible means of reducing the Crown Court backlog. It is unclear whether the Government is considering this option. Any change to the jury system, whether by allowing defendants to choose judge-only trials in serious cases, or by reducing the number of jurors needed for a Crown Court trial, should not be initiated without full parliamentary scrutiny and debate.

Remote jury trials in Scotland have succeeded in easing the pressures on the criminal courts. We recommend that the Government continues to pilot remote jury trials as a further potential means of reducing the significant criminal trial backlog in England and Wales.

Data deficiencies

The difficulties faced by the justice system during the pandemic have been exacerbated by a lack of data across the court service. High quality, up-to-date data are necessary to ensure the effective management of the courts service and enhance trust in the justice system more broadly. There are real concerns that remote hearings are disadvantaging vulnerable and non-professional court users, as well as those with protected characteristics. But the requisite data to assess and address these concerns are not available. We recommend that HMCTS sets out specific deadlines and targets for the collection, evaluation and publication of additional court data. Of particular priority are data that will enable HMCTS and the public to assess the impact of remote hearings on vulnerable court users, including whether remote hearings are having any impact on case outcomes.

The future of remote justice

The pandemic has shown that remote court access has the potential to enhance access to justice, but there is a significant difference in the experiences of professional and lay court users. Operational changes introduced in response to the pandemic should not be regarded as irreversible where they have risked undermining access to justice, open justice or consistency in the application of the law. We recommend that the Government continues to invest in and develop the technology for remote hearings and the guidance to support it, learning the lessons from its use during the pandemic. There should be an ongoing process of engaging with researchers and the legal sector to ensure that access to justice is secured via remote hearings.

COVID-19 and the Courts

CHAPTER 1: INTRODUCTION

1. The COVID-19 pandemic challenges every area of British society. Its health and economic implications, in particular, are profound. The constitutional impact of the pandemic has also been significant. Soon after the start of the pandemic we began an inquiry into the constitutional implications of COVID-19 in three areas:
 - the effect on the courts;
 - the impact on Parliament; and
 - issues related to the use and scrutiny of emergency powers.¹
2. In this first report on the inquiry, we consider the impact of COVID-19 on the courts in England and Wales.²
3. COVID-19 presents significant challenges for the operation of courts and tribunals. When the first nationwide lockdown was announced, a system that depended on the assembling of citizens—judges, lawyers, defendants, jurors, witnesses, court staff and others—faced a significant task to deliver its essential functions. On 23 March 2020, all new jury trials were suspended.³ A few days later, over half of court and tribunal buildings were temporarily closed.
4. The pandemic has resulted in significant changes to court activity. The sudden adoption of remote technology across the justice system has the potential to enhance access to justice for some, but also risks excluding certain users entirely. Growing backlogs across jurisdictions have resulted in significant case delays, particularly in the criminal courts, where the backlog is now historically high. The result has been a growing number of defendants in custody awaiting trial, held in prison for longer, and lengthy waits for justice.
5. The right of effective access to a court is deeply embedded in our constitutional law. The central idea was expressed in Chapter 40 of Magna Carta in 1215 and remains on the statute book in the version issued by Edward I in 1297: “we will not deny or defer to any man either Justice or Right.”⁴ These words are a guarantee of access to courts which administer justice fairly and promptly.
6. Access to justice underpins the fundamental constitutional principle that is the rule of law. As Lord Neuberger of Abbotsbury, former President of the Supreme Court of the United Kingdom, explained:

1 Constitution Committee, ‘Constitutional implications of COVID-19’: <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/>. See Appendix 3 for the call for evidence for the courts and tribunals strand of the inquiry.

2 The justice systems of Scotland and Northern Ireland are devolved to the Scottish Parliament and Northern Ireland Assembly.

3 No new jury trials were to start from 23 March 2020, although jury trials in progress on that date could continue in person until they reached a conclusion.

4 Magna Carta (1297), [Chapter 9 XXIX](#)

“The rule of law requires that any persons with a bona fide reasonable legal claim must have an effective means of having that claim considered ... citizens must have access to the courts to have their claims, and their defences, determined by judges in public according to the law.”⁵

7. Access to justice is not only a constitutional requirement. It also has clear practical benefits. The prompt resolution of legal disputes is critical to the lives and well-being of individuals, as well as the effective conduct of business. It is through legal disputes that courts resolve ambiguity in the law, providing greater legal certainty for all. Effective dispute resolution also enables society to function effectively. As Lord Reed of Allermuir, President of the Supreme Court, put it:

“People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations”.⁶

8. It was therefore an essential constitutional requirement for the justice system to keep working through the pandemic. As with the rest of society, courts and tribunals moved quickly to adopt new technologies to continue operating, primarily through using videoconferencing to facilitate remote hearings. In Chapter 2 of this report, we explore the impact of remote hearings, their benefits and drawbacks, and consider how access to justice can be maintained in their continued use. We also consider the impact on the pandemic on the viability of the legal sector.
9. Before COVID-19, the backlog of Crown Court cases was 39,000 and the average waiting time for a jury trial over 32 weeks. The pandemic added another 17,000 cases to the backlog and delayed justice still further. In Chapter 3 we consider how the backlog of cases is undermining access to justice and public confidence in the justice system, and how this might be addressed.
10. A thread running through the challenges faced by the courts system is the paucity of the data collected throughout the process. In Chapter 4 we explore the significant deficiencies in courts data, which is threatening to undermine effective court management and public faith in the justice system.
11. In the final chapter, we consider what role technology should play in maintaining and improving access to justice across courts and tribunals in England and Wales.
12. We are grateful to all who assisted our work by providing oral or written evidence. All the written evidence and transcripts of the oral hearings are on our webpages.⁷

5 Lord Neuberger of Abbotsbury, Tom Sergeant Memorial Lecture 2013, ‘Justice in an Age of Austerity’, 15 October 2013: <https://www.supremecourt.uk/docs/speech-131015.pdf> [accessed 18 February 2021]

6 The Supreme Court of the United Kingdom, *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51, [71]

7 See Appendix 2 for details.

CHAPTER 2: IMPACT OF THE PANDEMIC ON THE JUSTICE SYSTEM

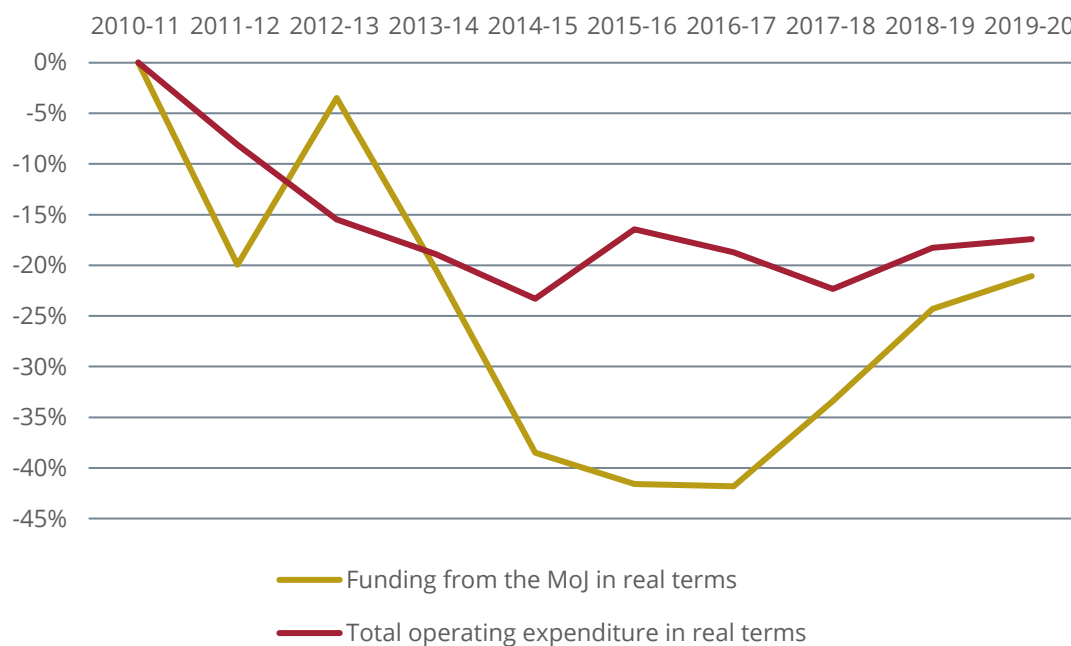
The resilience of the justice system

13. The COVID-19 pandemic necessitated widespread and unprecedented change to the operation of courts and tribunals in England and Wales. This added to the pressures on a courts system that was already under strain due to declining Government investment, reduced courts estate and outdated IT systems. Before exploring the impact of the pandemic on the justice system, we consider these pre-existing challenges.

Government funding

14. During the period of austerity, the Government failed to protect the justice system. Government funding for Her Majesty's Courts and Tribunals Service (HMCTS) had fallen significantly in the decade preceding the pandemic (see Figure 1). In 2019/20 funding for HMCTS from the Ministry of Justice (MOJ) was 21% lower in real terms than in 2010/11. HMCTS had been able to protect some of its spending through increased court fees (set by the MOJ) and the closure of some court buildings, but its operating expenditure was nonetheless 17% lower in 2019/20 than it had been in 2010/11.⁸

Figure 1: HM Courts and Tribunals Service funding and expenditure, change compared to 2010/11 in real terms



Source: HMCTS, 'HMCTS annual reports and plans', (8 October 2020): <https://www.gov.uk/government/collections/hmcts-annual-reports-and-plans> [accessed 1 February 2021]

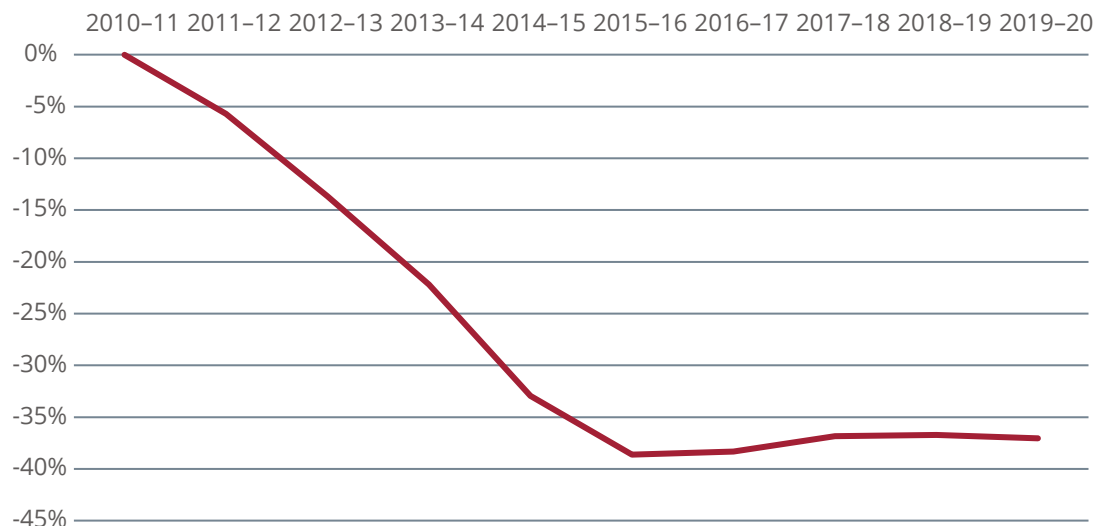
15. Successive governments have identified the courts estate and HMCTS staff as key targets for efficiency savings. Between 2010 and 2019, half of

8 HMCTS, 'HMCTS annual reports and plans', (8 October 2020): <https://www.gov.uk/government/collections/hmcts-annual-reports-and-plans> [accessed 2 March 2021]

magistrates' courts, and over a third of county courts, were closed.⁹ The number of HMCTS staff also fell during this period.¹⁰

16. Accompanying shrinking court budgets during this period was a reduction in legal aid funding (see Figure 2). From 2010/11 to 2015/16 annual legal aid spending fell at a rate of around 10% per year. By 2019/20 it was 37% less in real terms than it had been in 2010-11.¹¹

Figure 2: Annual legal aid expenditure, change compared to 2010/11 in real terms



Source: Ministry of Justice, 'Legal aid statistics: July to September 2020', (17 December 2020): <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2020> [accessed 1 March 2021]

17. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)¹², which came into effect in April 2013, abolished legal aid for a wide range of civil disputes, including all private law family cases,¹³ most employment law matters,¹⁴ and most welfare benefits cases.¹⁵ As part of this reform package, since January 2014 any defendant whose disposable annual income is £37,500 or more is no longer eligible for criminal legal aid at the Crown Court. As a result, many who would previously have been eligible for legal aid must either pay for legal advice, try to find free support (typically from a charity such as Citizens Advice), or manage their legal dispute alone.

9 House of Commons Library, *Court Closures and Access to Justice*, Debate Pack, [Number CDP-0156](#), 18 June 2019

10 Between 2013 and 2019, the number of staff employed by HMCTS fell by 17 per cent. See 'Tribunals struggle as backlog of cases reaches highest level since fee abolition', *GQ Littler* (26 February 2019): <https://www.gqlittler.com/resources/news-and-views/tribunals-struggle-as-backlog-of-cases-reaches-highest-level-since-fee-abolition.htm> [accessed 3 March 2021]

11 Ministry of Justice, 'Legal aid statistics: July to September 2020', (17 December 2020): <https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2020> [accessed 1 March 2021]

12 [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#)

13 Private law family cases are commonly divorce cases or disputes between parents who have split-up about who their child should live with or have contact with. Private law family cases may be contrasted with public law family cases where a local authority, or the NSPCC, steps in to protect a child on child welfare grounds. Private law family cases remain in scope in certain cases where there is documentary evidence of domestic abuse.

14 With the exception of employment-related discrimination.

15 Legal aid remains for welfare benefits appeals on a point of law to the upper tribunal and subsequent appeals, and for judicial review.

18. The consequence has been a significant increase in the number of cases in which one or both parties are unrepresented, particularly in private law family cases.¹⁶ Those who represent themselves in court proceedings create additional work for judges and court staff: hearings take longer on average, and more hearings take place that could have been ‘filtered out’ with accurate legal advice on their merits at an early stage.¹⁷ This added to the workload of the courts.
19. Witnesses told us that the preceding decade of declining investment in the justice system left the justice system vulnerable at the start of the pandemic.¹⁸ Derek Sweeting QC, former Vice-Chair, now Chair, of the Bar Council, said:

“we are virtually alone in western Europe in not having maintained or increased the funding of our justice system over the last 10 to 15 years. At 39 pence per day per person, which is roughly what it costs at the moment, we are well behind comparable jurisdictions.”¹⁹
20. **The reduction in Government funding in the decade preceding the pandemic left courts vulnerable going into the COVID-19 crisis. A significant number of court buildings had been closed, fewer staff were employed by HMCTS and the number of litigants in person had increased.**

Delayed digital transformation

21. In March 2014 the Ministry of Justice announced a programme to improve court and tribunal services. Known as the HMCTS reform programme, its aim was to simplify court procedures and move certain activities online, thereby reducing demand for court buildings.²⁰ Planned reforms included the introduction of new IT systems to support remote hearings, the closure of court buildings and enhanced data collection to inform continuous improvement.²¹
22. £700 million was allocated to civil courts and tribunals and a further £270 million to the criminal justice system.²² Once completed, HMCTS expected to reduce the number of cases held in physical courtrooms by 2.4 million

16 The proportion of cases where both parties had legal representation in private law family cases almost halved between 2013 and 2020: Ministry of Justice, *Family Court Statistics Quarterly: July to September 2020* (18 December 2020): <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2020/family-court-statistics-quarterly-july-to-september-2020> [accessed 2 March 2021]. The number of unrepresented defendants has also increased in the Crown Court since 2013: Ministry of Justice, *Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales - practitioners’ perspectives* (2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810051/unrepresented-defendants.pdf [accessed 2 March 2021]

17 Judicial College, *Equal Treatment Bench Book* (February 2021): <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf> [accessed 2 March 2021]

18 See, for example, *Q 116* (Simon Davis, Caroline Goodwin QC) and written evidence from Professor Gráinne McKeever (*CIC0009*) and Dr Kate Leader (*CIC0011*).

19 *Q 116* (Derek Sweeting QC)

20 Ministry of Justice, ‘Joint letter from Lord Chief Justice of England and Wales, Senior President of Tribunals and Lord Chancellor and Secretary of State for Justice’, (28 March 2014): <https://www.judiciary.uk/wp-content/uploads/2014/03/joint-letter-to-judges-and-staff-hmcts-reform.pdf> [accessed 2 March 2021]

21 HMCTS, ‘The HMCTS reform programme’, (6 February 2019): <https://www.gov.uk/guidance/the-hmcts-reform-programme> [accessed 2 March 2021]

22 Ministry of Justice, *Transforming Our Justice System* (September 2016): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf [accessed 1 February 2021]

cases a year, reduce annual spending by £265 million and employ 5,000 fewer staff.

23. In the years following its announcement, the progress of the reform programme was criticised by the National Audit Office (NAO) and the Public Accounts Committee (PAC). Both expressed concern that HMCTS was falling behind schedule, and that attempting to deliver significant reforms at pace risked undermining access to justice.²³ In response, HMCTS and the Ministry of Justice deferred the target date for implementing the reform programme by three years (from 2020 to 2023).²⁴ The PAC and NAO later considered even the revised timetable unrealistic, and continued to express concern that HMCTS was proceeding with reform without sufficient analysis of its the impact on justice outcomes or vulnerable court users.²⁵
24. Repeated delays to the HMCTS reform programme meant that a number of planned improvements to the courts service had not been implemented by March 2020. For example:
- The common platform, a new case management system designed to improve access to criminal case information, had not been rolled out, although it had originally been planned for July 2018.²⁶
 - Common IT systems had not been implemented in civil courts and tribunals as originally planned.²⁷
 - The digitisation of court forms was behind schedule due to difficulties implementing a bulk scanning and printing service.²⁸
 - Courts data continued to be stored on a range of legacy systems, making it difficult for HMCTS to collect data on court users and case outcomes.²⁹
25. **Delays to the original timetable for the HMCTS reform programme meant that a number of planned improvements to court IT systems had not been implemented by the time the COVID-19 pandemic suddenly rendered courts reliant on remote technology.**

23 National Audit Office, *Early progress in transforming courts and tribunals* (Session 2017–19, HC 1001): <https://www.nao.org.uk/wp-content/uploads/2018/05/Early-progress-in-transforming-courts-and-tribunals.pdf> [accessed 1 February 2021]; Public Accounts Committee, *Transforming courts and tribunals* (Fifty Sixth Report, Session 2017–19, HC 976)

24 HMCTS and Ministry of Justice, *Response to Public Accounts Committee: Transforming courts and tribunals* (5 February 2019): <https://www.gov.uk/government/news/response-to-public-accounts-committee-transforming-courts-and-tribunals> [accessed January 2021]

25 Public Accounts Committee, *Transforming courts and tribunals: progress review* (Second Report, Session 2019, HC 27); National Audit Office, *Transforming courts and tribunals: a progress update* (Session 2017–19, HC 2638): <https://www.nao.org.uk/wp-content/uploads/2019/09/Transforming-Courts-and-Tribunals.pdf> [accessed 1 February 2021]; ‘National Audit Office challenges basis of court reforms’, *Legal Futures* (18 January 2021): <https://www.legalfutures.co.uk/latest-news/nao-challenges-basis-of-court-reforms> [accessed 1 February 2021]

26 Public Accounts Committee, *Transforming courts and tribunals* (Fifty-Sixth Report, Session 2017–19, HC 976); HMCTS, *HMCTS online event, 15 Oct 2020: Introducing the Common Platform* (14 January 2021): <https://www.gov.uk/guidance/hmcts-online-event-15-oct-2020-introducing-the-common-platform> [accessed 2 March 2021]

27 National Audit Office, *Transforming courts and tribunals: a progress update* (Session 2017–19, HC 2638), Figure 4: <https://www.nao.org.uk/wp-content/uploads/2019/09/Transforming-Courts-and-Tribunals.pdf> [accessed 1 February 2021]

28 Oral evidence taken before the Public Accounts Committee on 6 June 2018 (Session 2017–19) [Q 54](#) (Susan Acland-Hood)

29 [Q 143](#) (Susan Acland-Hood)

HMCTS risk assessments

26. The Ministry of Justice was involved in Exercise Cygnus, the 2016 government simulation of a flu outbreak, but it only considered the impact of a pandemic on offender management. The potential impact of an outbreak on court operations was not considered.³⁰ HMCTS annual reports identify risks to the effective operations of the courts, but did not cover operational threats on the scale of the pandemic.³¹
27. **The courts were not prepared for disruption on the scale caused by the COVID-19 pandemic. The 2016 Government simulation of a flu outbreak, referred to as Exercise Cygnus, did not consider the potentially devastating impact of a pandemic on courts and tribunals in England and Wales. Risk assessments undertaken by the Ministry of Justice and HMCTS also failed to recognise the disruption that a pandemic could cause.**
28. **It is regrettable that the potential impact of a pandemic on the courts, a crucial public service, was not considered by those responsible for overseeing the justice system. Had the risk been identified in advance, the urgent need for modernised court IT systems and additional court estate might have been recognised sooner.**
29. **We recommend that all future risk assessments prepared by the Government, the Ministry of Justice and HMCTS consider the impact of major threats to the operation of courts and tribunals. The results of those risk assessments should be made publicly available on at least an annual basis, and include a statement of the steps that have been taken to manage the identified risks. It is essential that the operation of courts and tribunals be adequately protected as part of all future Government risk planning.**
30. **The extent to which the Government adequately prepared for the COVID-19 pandemic remains unclear. The Government has not published any documentation regarding the implementation of the recommendations from Exercise Cygnus, other than a redacted version of the initial 2016 Exercise Cygnus report.**
31. **We recommend that the Government publish all papers and minutes relating to Exercise Cygnus including a statement of the actions that were taken in response to its recommendations before March 2020.**

Operation of courts and tribunals during the pandemic

32. At the outset of the pandemic in mid-March 2020 the Lord Chancellor and Secretary of State for Justice, Rt Hon Robert Buckland QC MP, and the Lord Chief Justice of England and Wales, Rt Hon Lord Burnett of Maldon,

30 Public Health England, *Exercise Cygnus Report* (2017): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/927770/exercise-cygnus-report.pdf [accessed 1 February 2021]

31 HMCTS, 'HMCTS annual reports and plans', (8 October 2020): <https://www.gov.uk/government/collections/hmcts-annual-reports-and-plans> [accessed 1 February 2021]

emphasised the importance of maintaining the administration of justice.³² To reduce social interaction in courts and tribunals, HMCTS, the Ministry of Justice and the judiciary variously acted to:

- close some courts;
 - suspend jury trials;
 - focus on priority cases; and
 - increase the use of technology to support remote hearings.³³
33. HMCTS also received an additional £150m in Government funding to respond to the COVID-19 pandemic. This funding is intended to cover: (a) new technology to enable remote hearings; (b) additional temporary courtrooms, referred to as ‘Nightingale courtrooms’; (c) additional personal protective equipment (PPE) and cleaning across the HMCTS estate; and (d) additional staffing and judicial resources.³⁴
34. The Government recognises that the greatest challenges lie in operating the criminal courts during the pandemic, citing in particular “the safe and secure operation of Jury trials in a socially distanced environment”. A greater proportion of the recovery funding has therefore been allocated to criminal court services than to civil and family court services or tribunal services. As at 31 January 2021, approximately half of the allocated £150 million had been spent.³⁵
35. Box 1 summarises the key changes to the operation of courts and tribunals in England and Wales during and after the first UK-wide lockdown.

Box 1: COVID-19 and the courts—a timeline

- **17 March 2020:** The Lord Chief Justice announced that “no new trial should start in the Crown Court unless it is expected to last for three days or less. All cases estimated to last longer than three days listed to start before the end of April 2020 will be adjourned”.³⁶
- **23 March 2020:** The Lord Chief Justice announced that no new jury trials would start.³⁷

32 Courts and Tribunals Judiciary, *Coronavirus (COVID-19) update from the Lord Chief Justice* (17 March 2020) <https://www.judiciary.uk/announcements/coronavirus-update-from-the-lord-chief-justice/> [accessed 1 February 2021] and HM Government, *Courts during coronavirus pandemic: Robert Buckland statement*, (18 March 2020): <https://www.gov.uk/government/news/courts-during-coronavirus-pandemic-robert-buckland-statement> [accessed 1 February 2021]

33 HMCTS, *Covid-19: Overview of HMCTS response* (July 2020) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896779/HMCTS368_recovery_-_COVID-19-Overview_of_HMCTS_response_A4L_v3.pdf [accessed 1 February 2021]

34 Written Answer [HL13308](#), Session 2019-21

35 *Ibid.*

36 Courts and Tribunals Judiciary, *Coronavirus (COVID-19): Jury trials, message from the Lord Chief Justice* (17 March 2020): <https://www.judiciary.uk/announcements/coronavirus-jury-trials-message-from-the-lord-chief-justice/> [accessed 1 February 2021]

37 Courts and Tribunals Judiciary, *Review of court arrangements due to COVID-19, message from the Lord Chief Justice* (23 March 2020): <https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/> [accessed 1 February 2021]

- **25 March 2020:** The Coronavirus Act 2020,³⁸ containing provisions enabling use of technology in courts and tribunals, was enacted.³⁹
- **27 March 2020:** HMCTS announced that the work of courts and tribunals would be consolidated into fewer buildings and that 157 priority court and tribunal buildings would remain open for essential face-to-face hearings. This represented 42% of the 370 Crown, magistrates', county and family courts and tribunals across England and Wales.⁴⁰
- **14 April 2020:** A two-week consultation on use of remote hearings in the family justice system began. The results were published on 6 May 2020.⁴¹ The Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (2020 No. 417 (L. 12)),⁴² which changed the criminal procedure rules to facilitate video link hearings, came into force.
- **1 May 2020:** The Master of the Rolls commissioned a rapid review of the impact of COVID-19 measures on the civil justice system. The Civil Justice Council and the Legal Education Foundation published the results on 5 June 2020.⁴³
- **18 May 2020:** A limited number of jury trials resumed.⁴⁴
- **25 June 2020:** The Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 (2020 No. 582 (L. 13))⁴⁵, which put a stay on all possession proceedings until 23 August 2020, came into force.
- **30 June 2020:** The Prime Minister announced £142m to speed up technological improvements in the court service, modernise courtrooms and improve HMCTS buildings.⁴⁶
- **1 July 2020:** HMCTS published its recovery update in response to the COVID-19 pandemic.⁴⁷

38 [Coronavirus Act 2020](#)

39 Coronavirus Act 2020, [sections 53–57](#)

40 HM Government, *HMCTS daily operational summary on courts and tribunals during coronavirus (COVID-19) outbreak* (27 March 2020): <https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak#hmcts-operational-summary-27-march-2020> [accessed 1 February 2021]

41 Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf [accessed 1 February 2021]

42 The Criminal Procedure (Amendment No. 2) (Coronavirus) Rules 2020 ([SI 2020/417 \(L. 12\)](#))

43 The Civil Justice Council and the Legal Education Foundation, *The impact of Covid-19 measures on the civil justice system: Report and recommendations* (May 2020): <https://research.thelegaleducationfoundation.org/research-learning/funded-research/the-impact-of-covid-19-measures-on-the-civil-justice-system-report-and-recommendations> [accessed 1 February 2021]

44 Courts and Tribunals Judiciary, *Jury trials to resume this month* (11 May 2020): <https://www.judiciary.uk/announcements/jury-trials-to-resume-this-month/> [accessed 1 February 2021]

45 The Civil Procedure (Amendment No. 2) (Coronavirus) Rules 2020 ([SI 2020/582 \(L. 13\)](#))

46 HM Government, *PM: A New Deal for Britain* (30 June 2020): <https://www.gov.uk/government/news/pm-a-new-deal-for-britain> [accessed 4 March 2021]

47 HMCTS, 'Court and tribunal recovery update in response to coronavirus', (1 July 2020): <https://www.gov.uk/government/publications/court-and-tribunal-recovery-update-in-response-to-coronavirus> [accessed 1 February 2021]

- **21 August 2020:** The Ministry of Justice announced that up to £51 million of public funds will be allocated to the legal aid sector.⁴⁸ The suspension of all housing possession claims was extended to 20 September 2020.⁴⁹
- **6 September 2020:** The Government announced £80 million of additional COVID-19 related funding for HMCTS “reflecting the increased running costs of the courts and tribunals during COVID”.⁵⁰
- **28 September 2020:** The custody time limit (the maximum period that those on remand in prison awaiting trial can be held in prison) was extended from six to eight months.⁵¹
- **5 January 2021:** The Lord Chief Justice announced that the justice system would continue to function during the third national lockdown, emphasising the need to “ensure that the administration of justice continues”.⁵²
- **29 January 2021:** Jury trials were taking place across 79 Crown Court venues, six additional court sites and seven Nightingale courtroom venues.⁵³
- **11 March 2021:** A total of 24 additional Nightingale courtroom venues were open.⁵⁴

36. The Government’s response to the pandemic also involved widespread use of emergency powers from existing legislation and the passing of new laws. We will consider their effect on the justice system in a subsequent report for this inquiry focused on emergency powers.

Move to remote justice

37. The most significant change to the operation of courts and tribunals during the pandemic was the move to remote hearings. Delays to the HMCTS reform programme meant that courts staff and users remained reliant on IT that witnesses described as “antiquated”⁵⁵ and “virtually below sea level”.⁵⁶ Courts and tribunals nonetheless adapted quickly, making use of the limited technology available to deliver remote hearings.

38. The number of cases heard each day in England and Wales using audio and video technology increased fivefold from late March to late April 2020 (see

48 Ministry of Justice, *£50 million for legal aid sector* (21 August 2020): <https://www.gov.uk/government/news/50-million-for-legal-aid-sector> [accessed 1 February 2021]

49 The Right Honourable Sir Terence Etherton and The Right Honourable Robert Buckland QC MP, *124th Update: Practice Direction Amendments* (21 August 2020): <https://www.justice.gov.uk/courts/procedure-rules/civil/cpr-124-pd-update.pdf> [accessed 1 February 2021]

50 HMCTS, *COVID-19: Update on the HMCTS response for criminal courts in England & Wales* (September 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf [accessed 1 February 2021]

51 The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 (*SI 2020/953*). These regulations came into force on 28 September 2020 and have effect until 28 June 2021.

52 Courts and Tribunals Judiciary, *Message from the Lord Chief Justice: latest COVID-19 restrictions* (5 January 2021): <https://www.judiciary.uk/announcements/message-from-the-lord-chief-justice-latest-covid-19-restrictions/> [accessed 5 February 2021]

53 HMCTS, *Crown Courts that have resumed jury trials* (29 January 2021): <https://www.gov.uk/government/publications/crown-courts-that-have-resumed-jury-trials> [accessed 1 February 2021]

54 HMCTS, *Courts and tribunals additional capacity during coronavirus outbreak: Nightingale courts*, (11 March 2021): <https://www.gov.uk/guidance/courts-and-tribunals-additional-capacity-during-coronavirus-outbreak-nightingale-courts> [accessed 15 March 2021]

55 *Q 1* (Rt Hon Lord Burnett of Maldon)

56 *Q 19* (Professor Dame Hazel Genn)

Figure 3).⁵⁷ The Lord Chancellor said that at one stage during the pandemic “four out of every five cases were being heard remotely”.⁵⁸

39. In late April 2020, HMCTS provided criminal courts with a cloud-based video platform (CVP) for remote hearings.⁵⁹ By 10 May 2020, the platform was live in 34 magistrates’ courts and 12 Crown Court centres, and more than 2,000 hearings in the magistrates’ courts and Crown Court had taken place using the CVP.⁶⁰
40. The speed with which the courts system responded to the challenges of the pandemic was impressive. Judges, court staff, lawyers and HMCTS should be credited with keeping the justice system functioning.⁶¹ The Lord Chief Justice characterised the courts’ response to the pandemic as “quite remarkable”, noting the “astonishing amount of innovation and hard work on the part of judges, courts service staff and those more widely involved in legal proceedings”.⁶² These efforts were a “marked contrast ... to what has been going on in many parts of the world”.⁶³ Similarly, the Lord Chancellor said:

“Almost uniquely in jurisdictions across the world, we were able to keep the wheels of justice turning in a way that I do not think any of us could have foreseen at the beginning of this crisis ... The numbers of cases that were being heard were impressive.”⁶⁴

57 Courts and tribunals reported that the numbers of cases heard each day in England and Wales with the use of audio and video technology increased from under 1,000 in the last week of March 2020 to approximately 3,000 by mid-April. HMCTS, ‘Courts and tribunals data on audio and video technology use during coronavirus outbreak’, (30 April 2020): <https://www.gov.uk/guidance/courts-and-tribunals-data-on-audio-and-video-technology-use-during-coronavirus-outbreak> [accessed 1 February 2021]

58 [Q 132](#) (Rt Hon Robert Buckland QC MP)

59 A cloud-based video platform is an internet-based video meeting service that works like Skype or Zoom.

60 Criminal Justice Chief Inspectors, *Impact of the pandemic on the Criminal Justice System* (13 January 2021): <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf> [accessed 1 February 2021]

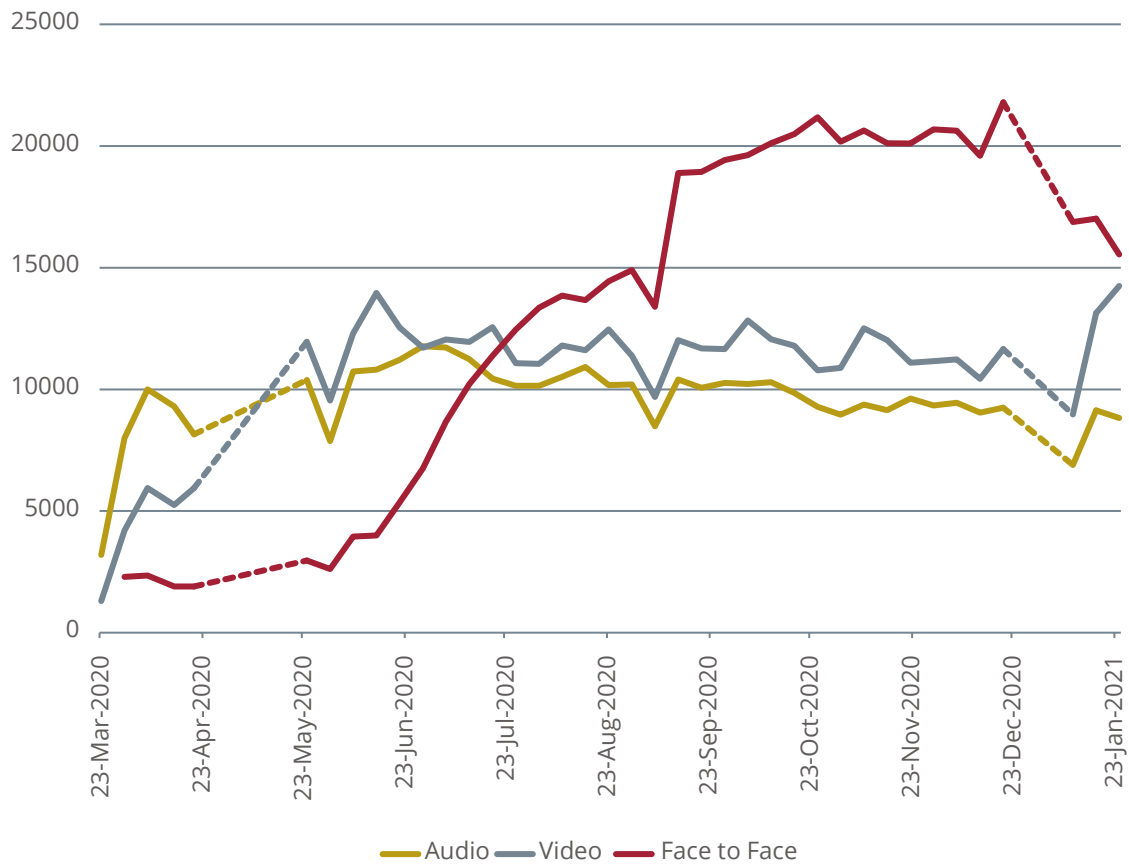
61 [Q 19](#) (Professor Dame Hazel Genn), [Q 40](#) (Dr Natalie Byrom), [Q 92](#) (Carol Storer OBE), [Q 105](#) (Simon Davis), and [Q 105](#) (Caroline Goodwin QC). See, also, Criminal Justice Chief Inspectors, *Impact of the pandemic on the Criminal Justice System* (13 January 2021): <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf> [accessed 1 February 2021]

62 [Q 1](#) (Rt Hon Lord Burnett of Maldon)

63 [Q 1](#) (Rt Hon Lord Burnett of Maldon). See, also, [Q 19](#) (Professor Richard Susskind OBE).

64 [Q 132](#) (Rt Hon Robert Buckland QC MP)

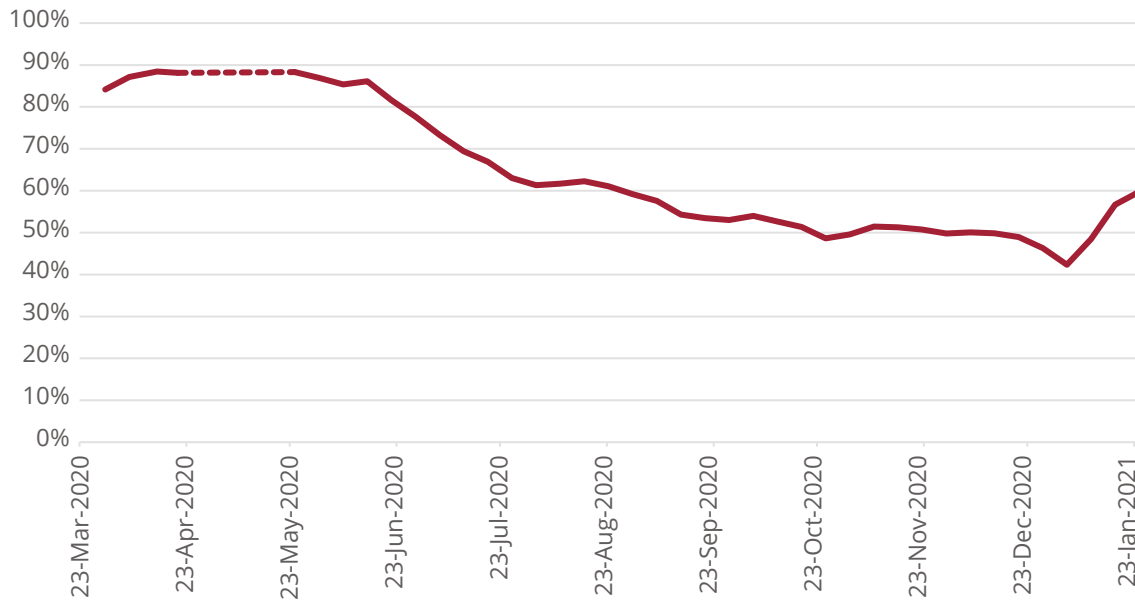
Figure 3: Number of case hearings per week, by the method conducted, March 2020–January 2021



Note: The dashed line from late April to late May 2020 covers a period for which data is unavailable. The dashed line from late December 2020 to early January 2021 covers a period where fewer cases were reported due to the break for Christmas.

Sources: HMCTS, 'Courts and tribunals data on audio and video technology use during coronavirus outbreak', (30 April 2020): <https://www.gov.uk/guidance/courts-and-tribunals-data-on-audio-and-video-technology-use-during-coronavirus-outbreak> [accessed 21 January 2021] and HMCTS, 'HMCTS weekly management information during coronavirus - March 2020 to January 2021', (11 February 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-january-2021-2020> [accessed 16 February 2021]

Figure 4: Audio and video cases as a proportion of all hearings, March 2020–January 2021



Note: The dashed line from late April to late May 2020 covers a period for which data is unavailable.

Sources: HMCTS, ‘Courts and tribunals data on audio and video technology use during coronavirus outbreak’, (30 April 2020): <https://www.gov.uk/guidance/courts-and-tribunals-data-on-audio-and-video-technology-use-during-coronavirus-outbreak> [accessed 21 January 2021] and HMCTS, ‘HMCTS weekly management information during coronavirus - March 2020 to January 2021’, (11 February 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-january-2021-2020> [accessed 16 February 2021]

Uneven impact

41. The sudden shift to remote hearings was not without its challenges. Some courts found it easier to adapt to remote hearings than others. In the senior and appellate courts, remote hearings were implemented with relatively little difficulty. The same could not be said for the lower courts, particularly those dealing with criminal and family cases, where the assessment of witness credibility and the need to support vulnerable litigants stretched court resources and technology to its limits.

The senior courts

42. Remote hearings generally worked well in the senior and appellate courts (the High Court, the Court of Appeal and the Supreme Court). In these courts, the judiciary and practitioners are generally well-resourced, the issues for determination are often focussed on specific points of law, litigants are rarely in court, and there is generally no live evidence to test.⁶⁵ These advantages meant that senior courts were able to adapt quickly to remote hearings.
43. Dr Natalie Byrom, Director of Research at the Legal Education Foundation and lead author of a review of the operation of the courts early in the pandemic,⁶⁶ said that the senior courts, “which are better supported and resourced, have

⁶⁵ Written evidence from the Transparency Project (CIC0019) and the Public Law Project (CIC0038)

⁶⁶ The Civil Justice Council and the Legal Education Foundation, *The impact of Covid-19 measures on the civil justice system: Report and recommendations* (May 2020): <https://research.thelegaleducationfoundation.org/research-learning/funded-research/the-impact-of-covid-19-measures-on-the-civil-justice-system-report-and-recommendations> [accessed 1 February 2021]

been much better able to adapt to arrangements under Covid” whereas the “county and district courts, which deal with the majority of cases, and those litigants who are most vulnerable, have had a more difficult time”.⁶⁷

44. The Lord Chief Justice told us that: “In the High Court, something like 80% of the normal work has continued to be conducted”.⁶⁸ The Supreme Court said that it had “been able to hear almost all planned appeals remotely: no case has been adjourned because the [court] was unable to provide a hearing”.⁶⁹

The lower courts

45. The lower courts, which deal with the majority of cases, and those litigants who are most vulnerable, have had a more difficult time.⁷⁰
46. The family courts in England and Wales adapted particularly rapidly to telephone and video hearings with mixed results. The Nuffield Family Justice Observatory, an independent research organisation, found that a majority of parents and family members had concerns about the way their case had been dealt with and just under half of those surveyed said they had not understood what had happened during the hearing.⁷¹
47. The increase in the number of litigants in person in recent years (see paragraph 18) caused particular difficulties for remote hearings in the county, district and family courts. The Public Law Project, an independent national legal charity, and the Council of Her Majesty’s Circuit Judges, the representative body of Circuit Judges in England and Wales, reported that virtual hearings were less effective where parties were unrepresented.⁷² Attending court is a stressful and intimidating experience for court users at the best of times. These stresses were increased for litigants in person, who did not have anyone to provide pre- or post-hearing explanations or support, and who had to negotiate the courts system and all of its recent changes with little or no guidance.⁷³
48. Remote proceedings in criminal courts have been particularly challenging.⁷⁴ Juries of twelve pose obvious difficulties for social distancing. In other hearings, attendance in person may nonetheless be required. The Crown Prosecution Service said that where witness evidence was being taken, or during complex criminal hearings, it was vital that “a prosecutor is present, visible and available to liaise with victims, witnesses and other parties at the court. In these cases, both before and during the court hearing, a level

67 Q40 (Dr Natalie Byrom)

68 Q7 (Rt Hon Lord Burnett of Maldon)

69 Written evidence from the Supreme Court of the United Kingdom (CIC0024). See, also, ‘The Future of Courts’, *The Practice*, vol 6(5), July/August 2020: <https://thepractice.law.harvard.edu/article/the-future-of-courts/> [accessed 1 February 2021]

70 Q40 (Dr Natalie Byrom)

71 Nuffield Family Justice Observatory, *Remote hearings in the family justice system: reflections and experiences: follow-up consultation* (September 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/remote_hearings_sept_2020.pdf [accessed 4 March 2021]

72 Written evidence from the Public Law Project (CIC0038) and the Council of Her Majesty’s Circuit Judges (CIC0039)

73 Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf [accessed 1 February 2021]

74 Written evidence from the Council of Her Majesty’s Circuit Judges (CIC0039) and Q105 (Derek Sweeting QC)

of face-to-face interaction is required that the technology is not yet able to replicate.”⁷⁵

49. That is not to say that all types of hearing in the lower courts were ill-suited to remote hearings. The Council of Her Majesty’s Circuit Judges said that virtual proceedings were particularly appropriate during “case management hearings, interlocutory applications, hearing legal argument and delivering judgment, particularly where parties are represented”.⁷⁶
50. Remote hearings also appear to work well in commercial cases, where litigants and practitioners are generally well resourced.⁷⁷ Commercial practitioners appear particularly enthusiastic about the continued use of virtual hearings in the future.⁷⁸
51. **The rapid adoption of remote technology had an uneven impact across the courts service. Senior and appellate courts adapted relatively well to audio and video hearings. Here, the judiciary and practitioners are generally well-resourced, the issues for determination are often focussed on specific points of law and there is generally no live evidence to test. The lower courts faced greater difficulty, particularly when assessing witness evidence and attempting to cater for unrepresented litigants.**
52. **Virtual hearings appear to have been effective where there has been: (a) adequate and fully functioning technology; (b) with which all parties are fully conversant; (c) deployed in preliminary, interlocutory or procedural cases.**

Inadequate court IT

53. The swift transition to online justice was not always smooth. Many witnesses reported technical difficulties with virtual hearings.⁷⁹ The common IT platforms envisaged by the HMCTS reform programme had not been rolled out at the start of the pandemic, and witnesses reported delays to hearings as a result of switching between different pieces of software.⁸⁰
54. This created difficulties for the court staff and members of the judiciary responsible for ensuring hearings went ahead. The Council of Her Majesty’s Circuit Judges said:

“At the start of lock down, the immediate challenge was that the Court Service lacked proper IT and computer hardware ... That such hearings progressed at all was due to everyone involved learning daily by mistakes and operating a system on a ‘make do and mend’ basis. There was limited if any training provided. This position was exacerbated by inconsistency of approach as to which operating platform should be used.”⁸¹

75 Written evidence from the Crown Prosecution Service ([CIC0036](#))

76 Written evidence from the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

77 *Ibid.*

78 The Civil Justice Council and the Legal Education Foundation, *The impact of Covid-19 measures on the civil justice system: Report and recommendations* (May 2020): [The impact of Covid-19 measures on the civil justice system: Report and recommendations](#) [accessed 24 August 2020]

79 Written evidence from the Public Law Project ([CIC0038](#)), the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)) and Transport for London ([CIC0016](#))

80 [Q 94](#) (Cris McCurley)

81 Written evidence from the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

55. Dr Byrom said that additional resources were needed to equip judges and court staff with adequate technology and training to conduct remote hearings effectively: “in the hearings that we captured data on, often it was the judge’s technology which was letting the hearing down and causing issues.”⁸²
56. The burden of managing the technological challenge fell heavily on a limited number of court staff. The Council of Her Majesty’s Circuit Judges said:
- “The pressures and strains on court staff cannot be underestimated; they have had to implement significant changes in working practices at very short notice using inadequate, poorly equipped IT systems with limited training or guidance being provided. Such training as was provided was often dependent on it being passed on from one to another with inevitable gaps in knowledge becoming apparent.”⁸³
57. Technical difficulties in running remote hearings also had a significant impact on court users and litigants. Dr Byrom said “nearly half of all hearings in our sample were beset by technical difficulties. This really matters because it drastically affects people’s perceptions of the fairness of the hearing that they have partaken in”.⁸⁴
58. Judy Goldsmith, a welfare benefit appeals caseworker for Citizens Advice Stevenage, said that poor IT systems had led to the adjournment of cases and harm to her clients:
- “In one case the appellant had given extremely comprehensive evidence in relation to the mobility component of PIP [Personal Independence Payment], which had lasted almost an hour. The Judge then asked if I had any questions. Although I could hear, I could not be heard, and the Judge decided in the interest of fairness to halt the proceedings. The appellant did not want to continue without me present but now faces another wait and the prospect of revisiting evidence already given in detail. When I spoke to the appellant after, he was extremely distressed, as he suffers from mental health difficulties and it had caused him significant stress preparing for and taking part in that hearing only to find he has to do it all again.”⁸⁵
59. A lack of familiarity with IT also gave rise to security risks and the potential for confidential information to be disclosed.⁸⁶ The Public Law Project said that during a break in a case before a judgment was handed down: “one participant disconnected their video connection but forgot to mute their microphone. This led to them inadvertently broadcasting their informal discussions with colleagues and some frantic emailing to alert them to what they had done”.⁸⁷
60. The decision on the suitability of hearing a particular case, or cases, for a remote hearing was and remains a matter for the presiding judge or magistrate. Witnesses reported that different technological capabilities amongst the judiciary led to inconsistency in the use of remote hearings. The

82 [Q 43](#) (Dr Natalie Byrom)

83 Written evidence from the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

84 [Q 40](#) (Dr Natalie Byrom)

85 Written evidence from Citizens Advice Stevenage ([CIC0021](#))

86 Written evidence from the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)), and the Public Law Project ([CIC0038](#))

87 Written evidence from the Public Law Project ([CIC0038](#))

Chartered Institute of Legal Executives said: “whilst technology confident judges were proceeding with remote hearings, less confident judges were asking for people to physically appear in court”.⁸⁸

61. **Lawyers, judges and court staff faced considerable challenges to adjust to remote hearings in short order. We pay tribute to the efforts made to keep the justice system operating during the pandemic despite challenges posed by outdated court IT systems.**
62. **Acknowledging the significant efforts of those working in the courts system should not obscure the scale of the challenges that they faced. Drastically reduced funding for the justice system in the preceding decade left courts and tribunals in a difficult place going into this period of crisis.**
63. **The pandemic has highlighted the necessity for courts and tribunals to be furnished with adequate funding and technology. The modernisation and digitisation of courts and tribunals has the potential to strengthen the rule of law by improving access to the law and the timely delivery of justice.**
64. **We recommend that the Government sets out a timetable within three months for implementing the HMCTS reform programme, including a clear commitment to the funding that will be provided to ensure its prompt implementation.**
65. **We recommend that the Government ensures training and guidance is available to all judges and court staff operating virtual hearings urgently and, at the latest, by the end of 2021. It is vital that those working in courts are comfortable with the technology used for remote hearings, and that they adopt a consistent approach to its implementation and use.**

Missed opportunities

66. The challenges of adapting to remote technology meant that its potential benefits were not always fully realised. The cloud-based video platform introduced to the criminal courts in April 2020 (the CVP) enabled magistrates’ and Crown courts across England and Wales to be held remotely. Since its introduction, use of the platform has declined. By September 2020, the Crown Prosecution Service was making CVP applications in only approximately 15% of cases. As shown in Figure 3, after an initial surge in the use of audio and video hearings at the start of the pandemic, their use plateaued during the rest of 2020.
67. Remand hearings—where a court determines whether a suspect should be kept in custody pending further court appearances—initially took place remotely on the CVP platform.⁸⁹ Holding these hearings virtually reduced the time and cost incurred in transporting defendants to court buildings to appear in person. Virtual remand hearings also reduce the delay between defendants being detained and appearing before the court, allow solicitors to represent multiple defendants and appear before different courts more easily,

88 Written evidence from the Chartered Institute of Legal Executives (CIC0025)

89 HMCTS, ‘Using remote hearings to maintain justice during the coronavirus pandemic’, (30 April 2020): <https://insidehmcts.blog.gov.uk/2020/04/30/using-remote-hearings-to-maintain-justice-during-the-coronavirus-pandemic/> [accessed 4 March 2021]

and free up traditional court rooms that would otherwise be used for such hearings.⁹⁰

68. Virtual remand hearings are not without their challenges. Research released by HMCTS in 2018 found that defendants can struggle to fully participate in remand hearings and their ability to consult with their lawyer may be compromised.⁹¹ Nonetheless, the Lord Chancellor described video remand hearings as “a singular success story with regard to the response to Covid in our courts. It allows remote hearings to be held rather than the defendants being brought to court in the van”.⁹²

69. In October 2020 the National Police Chief’s Council confirmed that police forces would stop using virtual remand hearings from December 2020 due to cost and service pressures. A spokesperson said:

“At the height of the coronavirus pandemic police forces took on considerable extra responsibilities, at a significant cost to the service, in order to support the wider criminal justice system. As an emergency provision many forces supported HMCTS with video remand hearings from custody suites ... Chief constables have taken the decision to maintain video remand hearings from custody suites until it is no longer financially and operationally sustainable locally. Forces will stop the use of it altogether from December onwards.”⁹³

70. The Lord Chancellor explained in December 2020 that, because of legislative constraints, only police officers have the power to exercise the custodial functions required to carry out virtual remand hearings. A change in legislation, enabling a wider range of custody officers to support virtual remand hearings, is planned for later this year. In the meantime, the Lord Chancellor said he was working with the Home Office to “develop practical solutions” to support virtual remand hearings.⁹⁴

71. Those efforts appear to have had limited success to date. In January 2021, Richard Miller, the Head of Legal Aid at The Law Society of England and Wales, told the House of Commons Justice Committee that all police forces had withdrawn their support for video remand hearings except where the defendant had COVID-19 symptoms or a diagnosis. Seven unnamed police forces had withdrawn their support for video remand hearings even in cases of a COVID-19 diagnosis or symptoms.⁹⁵

72. The Criminal Justice Chief Inspectors have considered the move away from remote technology in the criminal courts to be a missed opportunity: “it now

90 HMCTS, *Video Remand Hearings* (31 October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/844906/Video_Remand_Hearings_handout.pptx [accessed 16 February 2021]

91 ‘HMCTS research highlights challenges of virtual justice’, *Law Society Gazette* (11 September 2018): <https://www.lawgazette.co.uk/practice/hmcts-research-highlights-challenges-of-virtual-justice/5067497.article> [accessed 4 March 2021]

92 Oral evidence taken before the Justice Committee on 1 December 2020 (Session 2019-21) [Q 103](#) (Rt Hon Robert Buckland QC MP)

93 ‘Police forces pull support for virtual remand hearings’, *Law Society Gazette* (19 October 2020): <https://www.lawgazette.co.uk/news/police-forces-pull-support-for-virtual-remand-hearings/5106062.article> [accessed 1 February 2021]

94 Oral evidence taken before the Justice Committee on 1 December 2020 (Session 2019-21) [Q 103](#) (Rt Hon Robert Buckland QC MP)

95 Oral evidence taken before the Justice Committee on 12 January 2021 (Session 2019-21) [Q 49](#) (Richard Miller)

seems that there is a clear judicial preference for in-person court attendance. As listing is a local judicial function, there is no established national protocol with a set of principles for remote participation. Given the severe problems in the growing listing backlog, this is a lost opportunity.”⁹⁶

73. **The decline in use of the Cloud Video Platform (the common IT platform developed for use in the criminal courts) represents a missed opportunity to make the best use of technology to ease pressures on the justice system.**
74. **The Cloud Video Platform has not been adopted as widely as might have been expected and its potential to ease demand on the criminal justice system has not been fully realised. The withdrawal of police support for video remand hearings on this Platform due to cost and service concerns is contributing to the already significant pressures on courts and prisons. This is a cause for serious concern.**
75. **Video remand hearings reduce the delay between defendants being detained and appearing in court and reduce the need for prison and court services to transport defendants to physical hearings. We welcome plans to introduce legislation that will enable greater use of video remand hearings.**
76. **We recommend that the Ministry of Justice, the Home Office and police forces across England and Wales make concerted efforts to increase the use of video remand hearings as a matter of urgent priority. The Government must report to Parliament on the progress made within six months.**
77. **We recommend that the Government prepares and publishes a statement setting out: (a) the lessons it has learned from the uneven adoption of new technologies during the pandemic; (b) how these lessons will inform the future development and implementation of the HMCTS reform programme; and (c) how the Government plans to support the courts and other public services to make full and effective use of new technologies introduced in future.**

Access to justice

78. Access to justice is fundamental to the rule of law. It requires that the protection of the law be accessible to all. Legal processes should also be open and transparent to allow for scrutiny of proceedings and enhance public confidence in the justice system. The media and members of the public must be able to observe court hearings for justice to be seen to be done. Any adaptation of court operations in response to the COVID-19 pandemic, whether short-term or long-term, must not come at the expense of these essential constitutional requirements.
79. The pandemic presented considerable challenges for:
 - fair, accessible and effective hearings;
 - a viable legal sector providing legal advice and representation; and

⁹⁶ Criminal Justice Chief Inspectors, *Impact of the pandemic on the Criminal Justice System* (13 January 2021): <https://www.justiceinspectorates.gov.uk/cji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf> [accessed 1 February 2021]

- open justice accessible to the public and the media.

80. Some witnesses expressed enthusiasm for remote hearings as a possible means of meeting these challenges, although others told us that remote hearings had excluded certain litigants and reduced public access to the courts.⁹⁷
81. The shift to remote hearings improved access to justice in some respects, but has also risked excluding court users, undermining public faith in the justice system and reducing access to legal advice.

Fair, accessible and effective hearings

Advantages of remote hearings for participation

82. The rapid adoption of remote hearings across the courts service enhanced access to justice in some respects. Most straightforwardly, remote hearings reduced social contact and the potential transmission of COVID-19, enabling more hearings to take place safely.⁹⁸
83. Remote hearings also had positive effects on the efficient operation of the courts. We heard that they led to reductions in court waiting times,⁹⁹ freed up capacity for other cases¹⁰⁰ and improved the efficiency of court listings. The Crown Prosecution Service explained:

“Virtual hearings also have potential benefits for more efficient court listing ... Courts will also be able to evenly distribute hearings, thus avoiding bulk listing in one court centre, where another operates at reduced capacity. Importantly, utilising virtual hearings in this way will enable HMCTS to use what Crown Court capacity it has for jury trials which is the most pressing requirement currently, and which require the physical attendance of most parties in court.”¹⁰¹

84. Some court users faced fewer difficulties attending remote hearings than physical ones, which meant that their use increased access to justice for some. Transform Justice said: “Prisoners are particularly keen to have video hearings since they thus avoid travelling in an uncomfortable prison van, missing out on meals and risking having to move prison”.¹⁰² The Sheffield ME and Fibromyalgia Group said that the move to online hearings had “overwhelmingly benefited” its disabled clients who were no longer required to travel great distances to attend hearings.¹⁰³
85. Susan Acland-Hood, the then Chief Executive of HMCTS, also told us that autistic litigants preferred the remote format.¹⁰⁴

97 See, for example, [Q 22](#) (Professor Richard Susskind OBE).

98 [Q 109](#) (Derek Sweeting QC) and written evidence from Transform Justice ([CIC0001](#)) and the Crown Prosecution Service ([CIC0036](#))

99 Written evidence from the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)), and Professor Gráinne McKeever ([CIC0009](#))

100 [Q 109](#) (Caroline Goodwin QC), [Q 109](#) (Derek Sweeting QC), [Q 109](#) (Simon Davis) and written evidence from the Crown Prosecution Service ([CIC0036](#)), Transform Justice ([CIC0001](#)), the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)) and the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

101 Written evidence from the Crown Prosecution Service ([CIC0036](#))

102 Written evidence from Transform Justice ([CIC0001](#))

103 Written evidence from the Sheffield ME and Fibromyalgia Group ([CIC0013](#))

104 [Q 134](#) (Susan Acland-Hood)

86. Other witnesses said that remote hearings were perceived as less intimidating or demanding for litigants.¹⁰⁵ The Public Law Project cited an example from their research of “a more equitable atmosphere” that made the client “feel more comfortable and less like an ‘imposter’.”¹⁰⁶

Perceptions of fairness

87. Attending court can be a stressful and alienating experience. The outcome of a court case can be life-changing for the individuals involved. That is true of many family, employment and asylum cases where emotions run high and users’ perceptions of fairness are fragile.
88. Remote technology heightened these challenges in a number of ways. Early reports on the use of remote hearings in the family courts found that a lack of face to face contact during audio and video hearings made it “extremely difficult” to conduct hearings with an appropriate level of empathy and humanity. As one judge put it “[t]he court process is more important than simply being an administrative adjudication. It’s a very human set of interactions”.¹⁰⁷ This risked alienating court users and undermining public faith in court processes.
89. Dr Kate Leader from the University of York cited research suggesting that virtual hearings could undermine trust in the court process.¹⁰⁸ Dr Byrom cited “upsetting accounts of the impact of remote hearings on litigants in person and their attitudes and confidence. We had descriptions of remote hearings as ‘humiliating’, ‘confusing’ and ‘second-class justice’.”¹⁰⁹ Derek Sweeting QC said there were some hearings “where people do not feel justice has been done unless they are there. It is very difficult to do justice unless you can hear and see people in the flesh”.¹¹⁰

Risk of exclusion

90. Remote hearings also presented real challenges for litigants with low levels of literacy and those with limited access to technology.¹¹¹ Lacking access to basic technology and internet posed obvious challenges. So too did sharing IT equipment within a household or limited internet bandwidth. The Equality and Human Rights Commission said that those “living in remote areas are more likely to experience disruption to participation owing to slow internet speeds and many people, if they have a suitable digital device, rely on data packages for their internet connection, which can be used very quickly during a video call”.¹¹²

105 Written evidence from the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)) and [Q 109](#) (Simon Davis)

106 Written evidence from the Public Law Project ([CIC0038](#))

107 Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf [accessed 1 February 2021]

108 Written evidence from Dr Kate Leader ([CIC0011](#))

109 [Q 44](#) (Dr Natalie Byrom)

110 [Q 109](#) (Derek Sweeting QC)

111 [Q 4](#) (Rt Hon Lord Burnett of Maldon), [Q 110](#) (Derek Sweeting QC), [Q 19](#) (Professor Dame Hazel Genn), [Q 94](#) (Carol Storer OBE), [Q 96](#) (Cris McCurley) and written evidence from Professor Gráinne McKeever ([CIC0009](#)) and the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)), [Q 23](#) (Professor Dame Hazel Genn)

112 Written evidence from the Equality and Human Rights Commission ([CIC0037](#)). See, also, [Q 109](#) (Caroline Goodwin QC) and written evidence from the Association of Chief Trading Standards Officers and National Trading Standards ([CIC0005](#)).

91. Even those who were well furnished with the latest IT and a quiet place to work faced challenges. The Council of Her Majesty’s Circuit Judges said: “electronic document management is virtually impossible” for most ordinary court users.¹¹³ Participating in remote hearings required litigants to have access not only to adequate IT but also somewhere private in which to use it.¹¹⁴ Cris McCurley, partner at the law firm Ben Hoare Bell LLP, said “I have had hearings where people have had a room full of children because the school is closed”.¹¹⁵
92. The shift to remote hearings may have undermined litigants’ ability to engage appropriately with courts and tribunals, potentially to the detriment of their own case. The Council of Her Majesty’s Circuit Judges expressed concern about the “difficulty of maintaining the dignity and proper solemnity of the court proceedings with some instances of defendants appearing half dressed and talking to others in their household”.¹¹⁶ Transform Justice said their research “suggested that defendants on video either ‘zoned out’ or got frustrated and behaved in an aggressive manner, which they would be less likely to display in court”.¹¹⁷ The Public Law Project said remote hearings could be more difficult to follow for non-professional court users.
93. Witnesses also told us that remote hearings were ill-suited to certain types of cases, such as benefits appeals, where an important function of physical hearings has been to enable judicial observation of claimants’ conditions.¹¹⁸

Government efforts to enhance the accessibility of remote proceedings

94. The Lord Chancellor told us that there was support available for vulnerable litigants during remote hearings:

“HMCTS, and indeed the judges themselves, provide assistance and support. There is technical assistance. We have information and a phone line for court users if they need particular help with accessibility. If there are enduring problems, and it is clear to a judge or tribunal chair that the remote technology is not working in the interests of justice, they have the independent discretion to make that alteration and go for a real live hearing.”¹¹⁹
95. In August 2020 the Government announced £3.1 million in additional funding to enhance free legal advice and support for litigants without legal support.¹²⁰
96. **Remote proceedings were, and continue to be, necessary to maintain the administration of justice during the pandemic. In appropriate cases, audio and video hearings have the potential to enhance access to justice by increasing the number of hearings that can take place,**

113 Written evidence from the Council of Her Majesty’s Circuit Judges (CIC0039)

114 Q 44 (Dr Natalie Byrom), Q 96 (Carol Storer OBE) and Q 106 (Derek Sweeting QC)

115 Q 94 (Cris McCurley)

116 Written evidence from Council of Her Majesty’s Circuit Judges (CIC0039)

117 Written evidence from Transform Justice (CIC0001)

118 Written evidence from Professor Gráinne McKeever (CIC0009), a Benefits Advisor (CIC0044) and Citizens Advice Stevenage (CIC0021)

119 Q 134 (Rt Hon Robert Buckland QC MP)

120 Ministry of Justice, *More support for those representing themselves in court* (19 August 2020): <https://www.gov.uk/government/news/more-support-for-those-representing-themselves-in-court> [accessed 1 February 2021]

driving greater efficiency in court timetabling, and improving access for court users with disabilities or other special requirements.

97. **Remote hearings are not appropriate in all cases or for all types of court users. Reduced face to face contact risks alienating litigants, as it can be difficult to conduct remote hearings with an appropriate level of empathy and humanity in sensitive cases.**
98. **The remote format also poses a number of practical challenges that make it more difficult for ordinary people to fully participate or to represent themselves. Limited IT access or bandwidth, distractions at home, sensory impairments, or English as a second language are just some of the features that threaten to undermine effective participation.**
99. **Access to justice requires that the protection of the law be accessible to all. There should not be one law for the rich, legally represented or digitally well-furnished, and another for everyone else. To limit the potentially exclusionary effects of remote hearings, greater support for court users from HMCTS, judges and courts staff is required.**
100. **We recommend that the Government provides simple and accessible guidance for ordinary court users, available in advance of remote hearings, providing information on the technological practicalities of attending different kinds of hearing.**
101. **We recommend that the Government ensures sufficient guidance is available to all judges and court staff on how to facilitate the needs of court users and ensure procedural justice. It is vital that those working in the justice system are sufficiently equipped to cater for common challenges and to secure a fair process for all court users.**
102. We consider the future use of technology in the courts system in Chapter 5.

Legal advice and representation

103. A key component of access to justice is the availability of prompt, accurate and affordable legal advice. Witnesses reported that access to legal advice had been enhanced in some respects by remote hearings. Some legal advisers reported being more readily available online than they would have been physically.¹²¹ Those working in the commercial sector reported enhanced international client engagement.¹²² Other witnesses suggested that legal advice was cheaper and more accessible given the limited travel time and costs associated with remote meetings.¹²³ However, remote hearings also created a number of barriers to access to legal advice.

Communication between lawyers and clients

104. Witnesses said that remote hearings hampered communications between court users and their legal representatives.¹²⁴ Professor Dame Hazel

121 Written evidence from Sheffield ME and Fibromyalgia Group (CIC0013) and the Crown Prosecution Service (CIC0036)

122 Written evidence from Mischon de Reya LLP (CIC0023)

123 Written evidence from Transform Justice (CIC0001), Sheffield ME and Fibromyalgia Group (CIC0013) and the Public Law Project (CIC0038)

124 Q 20 (Professor Richard Susskind OBE), written evidence from the Public Law Project (CIC0038), Dr Kate Leader (CIC0011) and Transform Justice (CIC0001)

Genn, Professor of Socio-Legal Studies at University College London and Director of the University College London Centre for Access to Justice, told the Committee that remote hearings created difficulties for effective communication between court users and their legal advisers, and that this could be undermining access to justice for some court users.¹²⁵

105. Legal professionals also struggled with the new technology, further undermining communication with their clients during hearings.¹²⁶ Dr Byrom told us that IT difficulties made it difficult for lawyers to manage litigant expectations or effectively prepare their clients for hearings.¹²⁷
106. Whether there were technical difficulties or not, remote justice may have undermined personal relationships between court users and their representative. One barrister told the Nuffield Family Justice Observatory that a “huge part” of their role was “to be in a room, with a person, and to listen, understand, and give advice ... This human connection is a vital part of what we do and is not something that can be readily replaced with technology”.¹²⁸

Access to legal advice

107. Some court users may not have had access to legal advice at all, either because they lacked the digital literacy and technology necessary to communicate with a lawyer remotely, or because they could not afford legal advice and legal aid was unavailable. James Sandbach, Director of Policy and External Affairs at Law Works, told us that the “question of who is not being picked up is critical ... there have been fewer litigants in person than perhaps might have been expected at this time”.¹²⁹ Professor Dame Hazel Genn said “all of us who work at the poverty or poor law—the social welfare—end of the system recognise that there are people who have not been coming forward or whose cases have been adjourned or held back.”¹³⁰
108. The cuts to the legal aid budget, which pre-dated the pandemic, were raised repeatedly by our witnesses as restricting access to legal advice and undermining access to justice (see paragraphs 17 and 18 on the reduction in legal aid funding in the years preceding pandemic and the consequent increase in litigants in person).¹³¹ Carol Storer, Interim Director at the Legal Action Group, said: “even before lockdown people found it hard to find advice because of the reduction in legal aid and financial pressures since the years of austerity. Advice agencies and charities had financial problems. Some organisations have had to furlough staff, even though they have had a huge number of inquiries.”¹³²
109. Legal aid is one essential way that the state secures access to justice for those who might not otherwise be able to afford legal representation. Accurate legal advice at an early stage can help to reduce the burden on the courts

125 [Q 24](#) and [Q 25](#) (Professor Dame Hazel Genn)

126 Written evidence from a Benefits Advisor ([CIC0044](#))

127 [Q 42](#) (Dr Natalie Byrom)

128 Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf [accessed 1 February 2021]

129 [Q 99](#) (James Sandbach)

130 [Q 19](#) (Professor Dame Hazel Genn)

131 [Q 21](#) (Professor Dame Hazel Genn), [Q99](#) and [Q100](#) (Carol Storer, Cris McCurley), [Q100](#) (James Sandbach)

132 [Q 99](#) (Carol Storer OBE)

by facilitating the practical resolution of disputes in advance of litigation and by helping to filter out unmeritorious cases. The absence of effective legal advice and support can lead to additional costs for other parts of society, such as the benefits system, local government, and the police. James Sandbach said: “legal aid should not necessarily be seen as a silo, but rather as part of a package of support that people need when they interact with the justice system and public services.”¹³³ The Law Society of England and Wales emphasised that “improving legal aid and ensuring more people are represented in court will also be vital in ensuring the courts run as efficiently as possible and clearing the backlogs.”¹³⁴

The viability of the legal profession

110. The reduction in the courts’ overall workload during the pandemic has had a detrimental impact on some sectors of the legal profession, particularly for those working in publicly funded sectors. Simon Davis, former President of the Law Society of England and Wales, said the reduction in court activity “meant a cessation in cash, put bluntly.”¹³⁵ Caroline Goodwin QC, former Chair of the Criminal Bar Association, described the pandemic as “the most crippling episode ever, for junior barristers and senior barristers alike”.¹³⁶
111. The impact of the reduction in caseload on barristers’ incomes was highlighted by a Bar Council report, which said that publicly funded barristers had seen a 69% reduction in fee income, with that figure rising to 75% for criminal barristers. The report suggested the pandemic could undermine diversity at the Bar: “BAME, women and state-educated barristers are triply hit—they are more likely to (a) be in publicly funded work (b) face greater financial pressures and (c) be primary carers for young children”.¹³⁷ Reduced diversity at the Bar could further undermine the diversity of the judiciary in years to come.
112. Derek Sweeting QC said the decline in the number of hearings during the pandemic could lead to barristers leaving the profession and that this would affect the quality of advocacy and justice: “If you deplete the resource, it is bound to have an impact because, at the cutting edge of advocacy, barristers provide in the senior courts the resource that the justice system relies on.”¹³⁸ The Lord Chief Justice also expressed concern that the significant reduction in Crown Court trials could lead to many professionals leaving the criminal Bar altogether.¹³⁹ This could, in turn, lead to a reduction in suitable appointees to the judiciary.
113. The Lord Chancellor acknowledged that the impact of the pandemic on publicly funded sectors of the legal profession had been significant.¹⁴⁰ In the month following his evidence to us, the Ministry of Justice announced

133 [Q 100](#) (James Sandbach)

134 Written evidence from the Law Society of England and Wales ([CIC0028](#))

135 [Q 107](#) (Simon Davis)

136 [Q 107](#) (Caroline Goodwin QC)

137 The Bar Council, *Whole Bar Survey July 2020: Summary of findings* (27 July 2020): <https://www.barcouncil.org.uk/uploads/assets/4fb6e80c-5e2c-4cb3-859547bf9f82d946/Bar-Survey-Summary-Findings-July-2020.pdf> [accessed 1 February 2021]

138 [Q 107](#) (Derek Sweeting QC)

139 [Q16](#) (Rt Hon Lord Burnett of Maldon)

140 [Q 138](#) (Rt Hon Robert Buckland QC MP)

increased support for unrepresented and legally aided litigants¹⁴¹ and announced that up to £51 million of public funds would be allocated to the legal aid sector.¹⁴²

114. **Access to legal advice is an essential component of access to justice. The reduction in the courts' overall workload has had a detrimental impact on the publicly funded and legally aided sectors of the legal profession, giving rise to a real possibility of a reduction in the number of available legal advisers practising in these areas. We are particularly concerned that some users may have been unable to access legal advice at all during the pandemic, with the consequence that they have been unable to enforce their legal rights. The reduction in legal aid funding over the preceding decade has exacerbated these barriers to justice.**
115. **Affordable legal representation not only enhances access to justice, it also supports the efficient operation of the justice system. Those who represent themselves in court proceedings can create additional work for judges and court staff: hearings take longer on average, and more hearings take place that could have been resolved by alternative routes with accurate legal advice at an early stage. Improving legal aid will help to ensure that the courts run as efficiently as possible to reduce the growing case backlog (see Chapter 3).**
116. **We welcome the additional funding that has been allocated to the legal aid sector, but the scale of the challenges for court users and the legal sector suggests that considerable additional funding will be required in the coming years.**
117. **We recommend that the Government further increases the funds available for legal aid to match the reality of need.**

Open justice

118. Remote hearings have the potential to enhance the transparency of legal proceedings, enabling journalists to observe more proceedings than if they had to travel between courts¹⁴³ and providing convenient access at home for the public, subject to available technology.
119. In the senior and appellate courts, remote hearings were relatively accessible to the public. In lower courts they were more difficult to access.¹⁴⁴ Central to this problem were the variable and incomplete listings for courts. Tristan Kirk, the courts correspondent for the *London Evening Standard*, said:

“This is an area where problems are long-standing but have been exacerbated by the pandemic. The listing systems in place in the courts of England and Wales are not fit for purpose, in my view. In a time of crisis in late March and early April, some parts of the system collapsed,

141 Ministry of Justice, *More support for those representing themselves in court* (19 August 2020): <https://www.gov.uk/government/news/more-support-for-those-representing-themselves-in-court> [accessed 1 February 2021]

142 Ministry of Justice, *£50 million for legal aid sector* (21 August 2020): <https://www.gov.uk/government/news/50-million-for-legal-aid-sector> [accessed 1 February 2021]

143 Written evidence from Tristan Kirk (CIC0042)

144 Written evidence from the Public Law Project (CIC0038) and Transform Justice (CIC0001), and Q 40 (Dr Natalie Byrom)

which should be of great concern to anyone interested in open and fair justice.”¹⁴⁵

120. Transform Justice said: “Information on what has been happening to court hearings in the pandemic has been almost impossible to obtain since magistrates’ court lists are not available to the public.”¹⁴⁶ Analysis of publicly available court lists published over one week in May 2020 revealed that only a minority of County Court centres (14 of 68) published notices with details on how to attend hearings alongside listings information. These notices varied considerably in terms of content.¹⁴⁷

121. Dr Byrom said that the pandemic had:

“exposed the extent to which the current system for collecting and publishing primary legal information, such as listings, transcripts and judgments, relies on in-person workarounds. These urgently need reform. We have a world-leading service for providing free access to legislation in the National Archives, and we need the same quality of service for judgments which are equally part of the law in this country, and yet beyond the reach of many people who need to access them.”¹⁴⁸

122. Where press and public observance was possible, there were issues with arranging access and the technical quality of the feed.¹⁴⁹ The Public Law Project reported:

“A number of the interviewees’ hearings had a press or public presence. While some saw the process of gaining access to remotely observe hearings as ‘quite easy to arrange,’ others noted instances immediately before a hearing where there was a struggle for press to be given the login details to observe the hearing remotely.”¹⁵⁰

123. Tristan Kirk said that the quality of the sound on remote proceedings was often “not good enough ... It far too often cuts out, is not of sufficient quality, and for reporters every word is important and it’s vital that we are able to hear properly.”¹⁵¹ While he was enthusiastic about the possibilities of virtual hearings for open justice, he noted other downsides such as the difficulty of accessing relevant documents and checking facts:

“On a virtual hearing, almost all of the personal interaction between the reporters and the barristers, as well as the court staff, is lost. This is an important part of the job, checking facts and spellings, learning a little more about the case you are covering, and possibly picking up tips on other cases to follow.”¹⁵²

145 Written evidence from Tristan Kirk (CIC0042)

146 Written evidence from Transform Justice (CIC0001)

147 The Civil Justice Council and the Legal Education Foundation, *The impact of Covid-19 measures on the civil justice system: Report and recommendations* (May 2020): <https://research.thelegaleducationfoundation.org/research-learning/funded-research/the-impact-of-covid-19-measures-on-the-civil-justice-system-report-and-recommendations> [accessed 1 February 2021]

148 Q 40 and Q 45 (Dr Natalie Byrom)

149 Written evidence from the Transparency Project (CIC0019)

150 Written evidence from the Public Law Project (CIC0038)

151 Written evidence from Tristan Kirk (CIC0042)

152 *Ibid.*

124. **The pandemic has exposed the systemic shortcomings in the publication of essential information related to court hearings, especially in the lower courts.**
125. **We recommend that HMCTS sets out how it will improve the availability of information in the courts for the press and the public. This should include timely, complete, and consistent court listings (for physical and remote hearings alike), documents relating to cases (such as written arguments in appropriate cases), and free access to all court judgments. This work should be integrated with efforts to improve the collection, management, and publication of data on the courts (see Chapter 4).**

CHAPTER 3: MANAGING THE BACKLOG

126. The pandemic has had a substantially detrimental impact on the flow of cases through the courts and tribunals of England and Wales. The number of outstanding cases has grown since March 2020 and is now at record highs. As the impact of COVID-19 continues to be felt, it may take several years before the backlogs across jurisdictions return to pre-pandemic levels.¹⁵³
127. The swift administration of justice is a vital public service which underpins the rule of law. It is a familiar aphorism, often attributed to Gladstone, that “justice delayed is justice denied” and King John famously pledged in Magna Carta that he would neither deny nor delay justice. The human cost of the backlog can be measured in part by defendants being held on remand in prison for longer, litigants and victims waiting longer for justice, and a greater likelihood of evidence being lost or forgotten during the lengthier waits for a hearing.

The criminal justice system

128. Criminal courts have been badly affected by the COVID-19 pandemic due to the difficulty of delivering courtroom-based hearings while maintaining social distancing. Despite the increased use of video technology and other changes to court operations, the number of hearings processed in the criminal courts remains significantly below pre-pandemic levels.
129. The number of cases processed between the end of March 2020 and late February 2021 in the Crown Court averaged 75% of pre-coronavirus levels; in the magistrates’ courts the figure was 55%.¹⁵⁴ The total criminal courts backlog¹⁵⁵ now exceeds 530,000—almost 100,000 more than at the start of the pandemic.¹⁵⁶

153 Criminal Justice Chief Inspectors, *Impact of the pandemic on the Criminal Justice System* (13 January 2021): <https://www.justiceinspectors.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf> [accessed 1 February 2021] and Crest Advisory, ‘Impact and legacy of Covid-19 on the CJS: Modelling overview’, (30 October 2020): <https://www.crestadvisory.com/post/a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis> [accessed 17 February 2021]

154 HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

155 This is the number of outstanding cases across magistrates’ courts and the Crown Court awaiting disposal. As at 21 February 2021 the Crown Court backlog was 56,875 and the magistrates’ courts backlog was 476,932: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

156 Total number of outstanding cases across both the Crown and magistrates’ court as at 21 February 2021 was reported to be 533,807. That figure was 435,856 on 8 March 2020: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

130. The pandemic has exacerbated, rather than created, the backlog in the criminal courts. In early March 2020, before the first UK-wide lockdown, the total criminal courts backlog exceeded 430,000.¹⁵⁷

The Crown Court

131. The Crown Court has been hit particularly hard. Jury trials were suspended for two months in March 2020 and have not yet reached pre-pandemic levels.¹⁵⁸ This, combined with the continued difficulties of holding trials with multiple defendants, has exacerbated the Crown Court backlog that pre-dates the pandemic.¹⁵⁹ Prior to the March 2020 lockdown, approximately 39,000 cases were waiting to be heard in the Crown Court. Eleven months later that figure exceeded 56,000 (see Figure 5).¹⁶⁰
132. This figure does not fully reveal the extent of the increase in outstanding jury trials. The Lord Chief Justice explained that the number of outstanding cases in the Crown Court had been reduced by focusing on preliminary, procedural, and sentencing hearings during the pandemic.¹⁶¹ Jury trials take far longer to complete, and pose more challenges for social distancing, than those types of hearings.
133. Adjusting the Crown Court backlog to take that into account, the Institute for Government and the Chartered Institute of Public Finance and Accountancy estimated the backlog at closer to 70,000 cases in November 2020—around 30% higher than the reported data and a 78% increase on the pre-Covid baseline.¹⁶²

157 The Crown Court backlog had previously peaked at 55,116 in 2014. The current Crown Court backlog is the highest on recent record: HMCTS, ‘Criminal court statistics quarterly: January to March’, 2020 (25 June 2020), Table C1: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897716/ccsq_tables_jan_mar_2020.ods [accessed 4 February 2021]; HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

158 All new jury trials were suspended on 23 March 2020 and a limited number resumed on 18 May 2020.

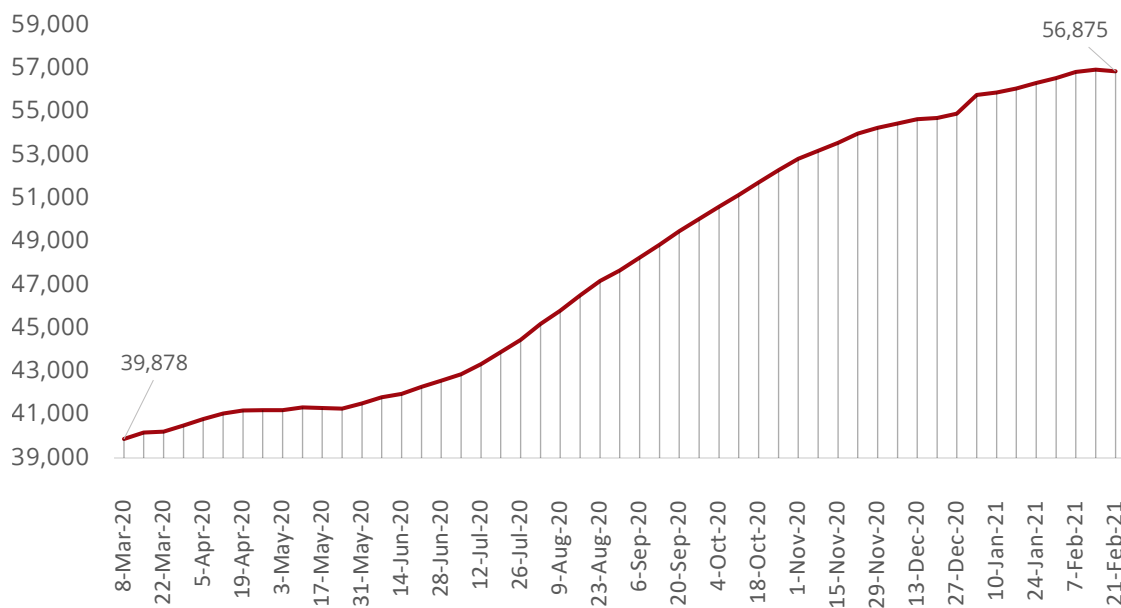
159 In October 2020 the Criminal Bar Association estimated that there were around 120 trials with seven or more defendants—including violent crime and organised criminal activity—that were too large to be accommodated in existing court real estate: ‘Courts backlog ‘tipping point’ for justice system’, *BBC News* (30 October 2020): <https://www.bbc.co.uk/news/uk-54737289> [accessed 17 February 2021]

160 HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

161 [Q 7](#) (Rt Hon Lord Burnett of Maldon)

162 That figure is not intended to represent the actual number of outstanding cases, but instead to facilitate a like-for-like comparison of outstanding jury trials before and after the pandemic. The Chartered Institute of Public Finance and Accountancy and the Institute for Government, *Performance Tracker 2020: how public services have coped with coronavirus* (2 November 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/performance-tracker-2020.pdf> [accessed 4 February 2021] and oral evidence taken before the Justice Committee on 12 January 2021 (Session 2019-21), [Q 9](#) (Thomas Pope)

Figure 5: Outstanding cases in the Crown Court



Source: HMCTS, 'HMCTS weekly management information during coronavirus: March 2020 to February 2021', (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

134. Significant delays to criminal trials have followed. In March 2021 the Lord Chancellor has said that some trials have been listed for as late as 2023.¹⁶³ Defendants, complainants and witnesses are reportedly having to wait up to four years from the time of an alleged offence for a Crown Court trial.¹⁶⁴ Such delays have a significant human and evidential impact, with the difficulties of recalling evidence compounding the stress of awaiting trial.
135. Crest Advisory, a specialist crime and justice consultancy and research organisation, reported that Crown Court capacity would need to double to return to pre-Covid backlog levels by 2024. It found that the backlog of Crown Court cases could exceed 195,000 in 2024 (a fivefold increase on pre-pandemic levels).¹⁶⁵ Crest concluded that a backlog of this severity would pose “a catastrophic risk to public confidence, procedural fairness and effective enforcement of the law”.¹⁶⁶ The Ministry of Justice said the study was based on “extreme assumptions that do not stand up to reasonable

163 Oral evidence taken before the Justice Committee on 12 January 2021 (Session 2019-21), [Q 106](#) (Rt Hon Robert Buckland QC MP) and ‘Law in Action’, *BBC Sounds* (2 March 2021): <https://www.bbc.co.uk/sounds/play/m000sqlf> [accessed 4 March 2021]

164 Examples from the London Criminal Courts Solicitors’ Association of delayed cases, such as an alleged offences committed in 2018 being listed for trial in 2022, can be found in: ‘Covid leading to four-year waits for England and Wales court trials’, *The Guardian* (10 January 2021): <https://www.theguardian.com/law/2021/jan/10/covid-leading-to-four-year-waits-for-england-and-wales-court-trials> [accessed 17 February 2021]

165 This model assumed court capacity dropping by 90% in March 2020 and recovering to 2019 levels over 12 months after September 2020. Further information about the assumptions made is set out in Crest Advisory, *Assumptions: A perfect storm: why the criminal justice system is facing an existential crisis* (30 October 2020): <https://www.crestadvisory.com/post/assumptions-a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis> [accessed 17 February 2021]

166 Crest Advisory, *Impact and legacy of Covid-19 on the CJS: Modelling overview* (30 October 2020): <https://www.crestadvisory.com/post/a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis> [accessed 1 February 2021]

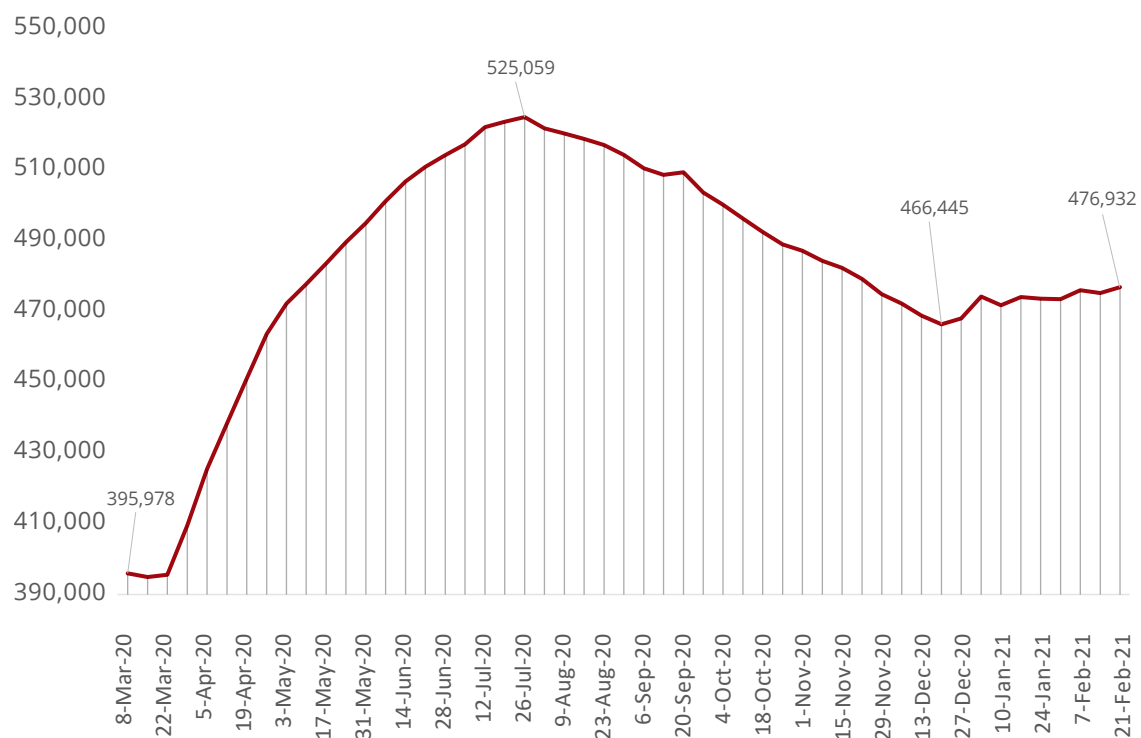
scrutiny”.¹⁶⁷ The authors said they had modelled a reasonable worst-case scenario.¹⁶⁸

136. Her Majesty’s Crown Prosecution Inspectorate, the independent body that oversees prosecutors, warned that it may take a decade to reduce the number of cases to pre-Covid levels if restrictions remain in place beyond 2021.¹⁶⁹

Magistrates’ courts

137. Jury trials do not take place in the magistrates’ courts. This reduces the operational challenges of delivering physical hearings in compliance with social distancing requirements and makes it easier for cases to progress.

Figure 6: Outstanding cases in magistrates’ courts



Source: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

138. Where possible, hearings have taken place in the magistrates’ courts using remote technology (see Chapter 2). Extended opening hours have also contributed to a rise in case disposals.¹⁷⁰ Partly as a result of these measures,

167 “Armageddon scenario’: Government warned justice could be derailed by 200,000 court backlog in four years’, *London Evening Standard*, 30 October 2020: <https://www.standard.co.uk/news/uk/crown-court-backlog-ministry-justice-cases-armageddon-criminal-b28872.html> [accessed 17 February 2021]

168 Crest Advisory, *Assumptions: A perfect storm: why the criminal justice system is facing an existential crisis* (30 October 2020): <https://www.crestadvisory.com/post/assumptions-a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis> [accessed 17 February 2021]

169 ‘The Times view on the backlog of criminal trials: Speed of Justice’, *The Times*, 20 August 2020: <https://www.thetimes.co.uk/article/the-times-view-on-the-backlog-of-criminal-trials-speed-of-justice-qw3bkqfgm> [accessed 17 February 2020]

170 HMCTS, *COVID-19: Update on the HMCTS response for criminal courts in England & Wales* (7 September 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf [accessed 16 February 2021]

in July 2020 the backlog started to decrease, but by mid-December it was rising again (see Figure 6).

139. By late February 2021, the backlog in the magistrates' courts had reached 476,932, a roughly 20% increase on the early March equivalent.¹⁷¹ As in the Crown Court, the main consequence of this backlog is delay. The average waiting time between charge and disposal almost doubled between March and November 2020.¹⁷²
140. Under the current recovery plan, the Government expects to be running magistrates' courts at 2% above pre-coronavirus capacity from December 2020.¹⁷³ At that rate it is expected to take just over two years for the backlog to return to pre-pandemic levels.¹⁷⁴
141. **The backlog in the criminal courts is neither acceptable nor inevitable. Years of underinvestment in the criminal justice system contributed to a significant backlog that predated the pandemic.**
142. **The backlog has now reached record levels. The consequent delay to criminal trials is undermining the rule of law, access to justice and risks damaging public confidence in the justice system. Urgent Government action and investment is necessary to reduce the backlog in the criminal courts.**
143. **We recommend that the Government provides the assistance and funding necessary to ensure that: (a) all cases in the Crown Court are tried within one year of the plea and trial preparation hearing; and (b) the average time from charge to disposal in the magistrates' courts falls to 8 weeks or fewer. The Government should also report to Parliament annually on the progress made in respect of both matters.**
144. One particularly concerning consequence of the backlog is the decline in the number of people who have been prosecuted, convicted, and sentenced in England and Wales in recent months. Delays to trials have made it necessary for the Crown Prosecution Service to carefully select which cases can be heard. As a result, the number of people being prosecuted or handed out-of-court disposals fell by 22% in the 12 months to September 2020, compared with the same period a year earlier. There was also 19% drop in the number

171 HM Government, 'HMCTS weekly management information during coronavirus: March 2020 to February 2021', (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

172 The average time from charge to disposal increased from 7.4 weeks in March 2020 to 14.0 weeks in November 2020: HMCTS, 'HMCTS management information: December 2019-December 2020', (11 February 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-december-2020> [accessed 16 February 2021]

173 HMCTS, *Covid-19: Update on the HMCTS response for criminal courts in England and Wales* (1 September 2020), para 5.12 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf

174 The Chartered Institute of Public Finance and Accountancy and the Institute for Government, *Performance Tracker 2020: how public services have coped with coronavirus* (2 November 2020): <https://www.instituteforgovernment.org.uk/sites/default/files/publications/performance-tracker-2020.pdf> [accessed 4 February 2021]

of offenders convicted and a similar decrease in the number of people sentenced.¹⁷⁵

145. **We recommend that the Government sets out how it is responding to the fact that court delays appear to have resulted in a reduction in prosecutions and convictions.**

Pre-trial detention

Increased remand population

146. Individuals charged with a crime and held in police custody must be brought to the first available court to determine whether they should continue to be held (remanded) in custody. If remanded, they are kept in prison for a limited period while awaiting trial.
147. Delays in the Crown Court have increased the periods for which defendants are being held in custody on remand. In the year to December 2020 the prison population fell by 6% but those in prison awaiting trial increased by 28%. In December 2020, over 8,000 men and women were on remand awaiting trial.¹⁷⁶
148. The proportion of unsentenced children in custody is historically high. In December 2020, of the 381 children in custody, 130 (or 34%) were awaiting trial.¹⁷⁷ This is a significant change since 2015 when remanded children represented just 22 per cent of the youth secure estate.¹⁷⁸ Many of the children on remand awaiting trial will never receive a custodial sentence. Two thirds (66%) of children given a remand to youth detention accommodation did not subsequently receive a custodial sentence in the year ending March 2020.¹⁷⁹
149. An increased remand population appears likely to disproportionately impact children and young people¹⁸⁰ from black and minority ethnic backgrounds. Across England and Wales, over half of children and young people in custody (315 out of 614) were from black and minority ethnic backgrounds in January 2021.¹⁸¹ Between July and September 2020 87% of children on remand in London were from black and minority ethnic backgrounds.¹⁸²

175 Ministry of Justice, *Criminal Statistics quarterly, England and Wales, October 2019 to September 2020* (18 February 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962357/criminal-justice-statistics-quarterly-sept-2020.pdf [accessed 5 March 2021]

176 The figure for men and women refers to those aged 18 and above. National Statistics, *Offender management statistics quarterly: July to September 2020* (28 January 2021): <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2020> [accessed 17 February 2021]

177 The statistics refer to children aged between 15 and 17 held in prisons, police cells, Secure Children's Homes or Secure Training Centres: Statistics, *Offender management statistics quarterly: July to September 2020* (28 January 2021): <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2020> [accessed 17 February 2021]

178 Howard League for Penal Reform, *Ending the detention of unsentenced children during the Covid-19 pandemic: A guide for practitioners* (May 2020): <https://howardleague.org/wp-content/uploads/2020/11/Ending-the-detention-of-unsentenced-children-during-the-Covid-19-pandemic.pdf> [accessed 12 March 2021]

179 Ministry of Justice and the Youth Justice Board, *Youth Justice Statistics 2019/20* (England and Wales) (28 January 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956621/youth-justice-statistics-2019-2020.pdf [accessed 12 March 2021]

180 Those aged 18 and under.

181 Her Majesty's Prison and Probation Service, *Youth Custody Data* (12 March 2021): <https://www.gov.uk/government/statistics/youth-custody-data> [accessed 12 March 2021]

182 Written evidence from the Howard League for Penal Reform (CIC0485)

150. Prison conditions have also worsened during the pandemic. Those in custody are confined to their cells for longer periods than would otherwise be the case—currently, 23 hours a day in some prisons—and are unable to receive visits.¹⁸³

Extended custody time limits

151. Article 6 of the European Convention on Human Rights includes a right to a fair and public hearing, conducted within a reasonable time, by an independent and impartial tribunal. Custody time limits safeguard unconvicted defendants (those who have been charged with a crime but who have not been found guilty) by preventing them from being held in pre-trial custody for an excessive period of time. These time limits ensure that prosecutors progress cases promptly and that individuals accused of crimes are protected from undue punishment before trial. Custody time limits may be extended in certain cases on application by the prosecution with permission from a court.
152. In September 2020 the Government temporarily extended custody time limits from six to eight months¹⁸⁴ to “ensure that, as we work to restore capacity to pre-Covid levels, courts have sufficient powers to effectively manage these unavoidable delays” and to provide “certainty for victims and the public in cases where there is a risk that defendants may abscond or commit offences if released back into the community on bail”.¹⁸⁵ This extension to custody time limits took effect under secondary legislation laid under the negative procedure and was not debated in Parliament before it became law.¹⁸⁶
153. The Howard League for Penal Reform said this extension to custody time limits “permits and facilitates further delay and therefore hardship on people who, under English law, are still ‘innocent until proven guilty’. It should be revoked in its entirety”.¹⁸⁷ Professor Richard Susskind, the President of the Society for Computer and Law, said: “we face a major public challenge in how to cope with the massive backlog that will inevitably [lead to a] build-up of serious criminal cases where people’s liberty is at stake.”¹⁸⁸
154. **The growing remand population and the extension to custody time limits have resulted in a serious diminution of the right to liberty and the rule of law. The significant impact of the backlog on un-convicted**

183 *Ibid.*

184 The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 ([SI 2020/953](#)). These regulations were subject to the negative procedure and came into force on 28 September 2020. They have effect until 28 June 2021. The regulations temporarily extend the custody time limit: (a) from 182 days to 238 days for all triable either-way and indictable only criminal offences awaiting trial on indictment at the Crown Court; and (b) from 56 days to 168 days where a voluntary bill of indictment is preferred or a fresh trial has been ordered by the Court of Appeal. The extension of the maximum custody period initially applied to all defendants, but was amended in February 2021 to exclude defendants under the age of 18.

185 [Explanatory Memorandum to The Prosecution of Offences \(Custody Time Limits\) \(Coronavirus\) \(Amendment\) Regulations 2020](#)

186 The regulations extending custody time limits were laid under the negative procedure (under s.29 of the [Prosecution of Offences Act 1985](#)). The negative procedure is a type of parliamentary procedure whereby secondary legislation becomes law on a day designated by a Minister and automatically remains law unless a motion to reject it is agreed by either House within 40 sitting days. The regulations extending custody time limits became law before they were laid before Parliament and came into force 21 days later.

187 Written evidence from the Howard League for Penal Reform ([CIC0485](#))

188 [Q 27](#) (Professor Richard Susskind OBE)

defendants, innocent until proven guilty, underscores the urgent need for action to reduce the backlog in the criminal courts.

155. **We welcome the Government’s decision to exclude defendants under the age of 18 from the extension to custody time limits. But the proportion of children in custody who are on remand, and the ethnic make-up of this cohort, is unacceptable.**
156. **We recommend that the Government reports to Parliament by the end of 2021 on the steps it will take to reduce the proportion of children on remand in custody. Depriving a child of liberty should always be a last resort and for the shortest possible time. Alternatives to custody, such as enhanced monitoring arrangements, should be utilised wherever possible.**
157. **We recommend that any further extension to custody time limits be scrutinised and debated by Parliament before taking legal effect. The extension of custody time limits is a significant policy decision with serious implications for the right to liberty and the rule of law. Adequate Parliamentary scrutiny and debate is essential for a change of such fundamental constitutional importance to take effect.**

Civil courts and tribunals

158. Virtual hearings enabled certain civil jurisdictions to operate close to pre-pandemic levels (see Chapter 2),¹⁸⁹ but the backlogs in the family courts and the Employment Tribunal have risen significantly since the outset of the pandemic. The stay on housing repossessions is likely to have also created a backlog of cases, although data on the number of outstanding possession cases have not been made available.

The family courts

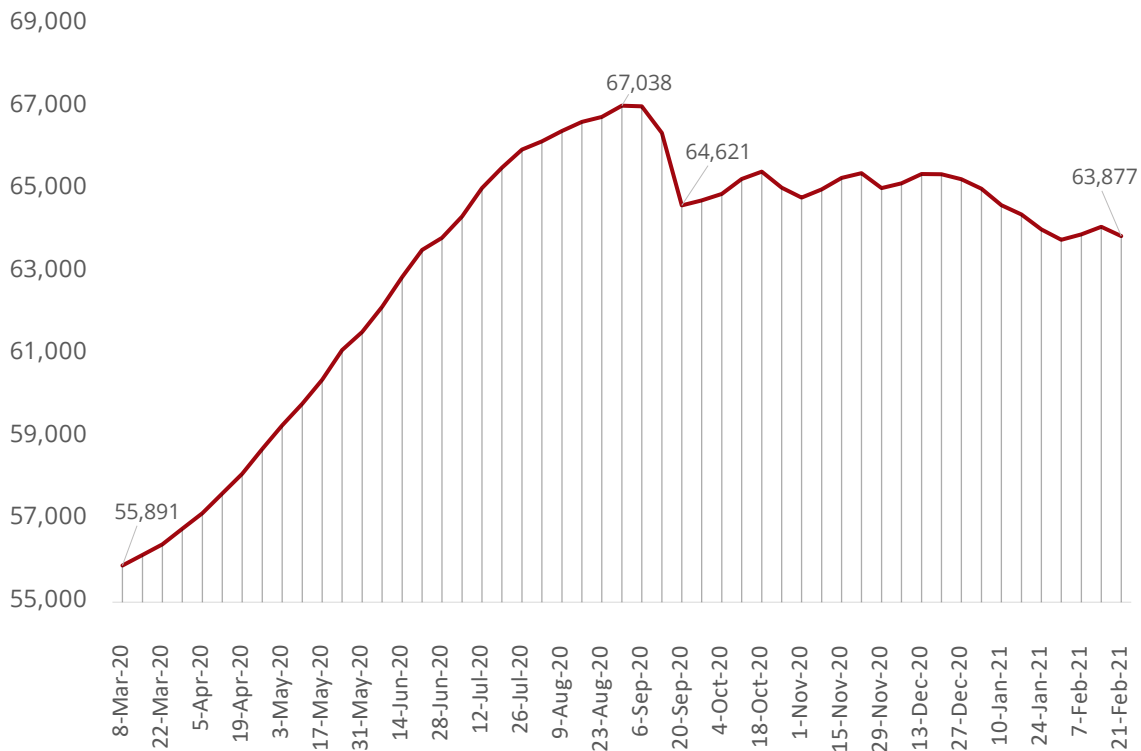
159. The family courts in England and Wales handle a range of matters relating to marriage, divorce, and the care of children. Most seriously, family courts determine cases where the Government intervenes to protect a child from harm (referred to as ‘public law’ cases). These cases can lead to children being taken into care, adopted, or placed with extended family.
160. Prompt decision-making in the family courts is one of the essential ways in which the state protects vulnerable children. Delay can itself cause significant harm. Lengthier waiting times for hearings can increase uncertainty for families, damage family relationships and result in vulnerable children living in unsafe conditions for longer periods.
161. The family courts adapted rapidly to telephone and video hearings in response to the pandemic. Judicial sitting days reached record levels over the summer of 2020. This helped to speed up case progression and tackle the backlog of cases.¹⁹⁰ In October 2020 the President of the Family Division, Sir Andrew McFarlane, considered the family court system to have adapted

189 Q 7 (Rt Hon Lord Burnett of Maldon)

190 HMCTS, *Covid-19: Overview of HMCTS Recovery for Civil and Family Courts and Tribunals* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932496/HMCTS_CFT_Recovery_Plan_v2b.pdf [accessed 3 March 2021]

well to remote working.¹⁹¹ Despite these significant efforts, the family justice system has been unable to progress remote hearings as quickly as it had delivered face-to-face hearings before the pandemic and the backlog in the family courts has increased (see Figure 7).¹⁹²

Figure 7: Outstanding cases in the family courts (public law and private law combined)¹⁹³



Source: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

162. In November 2020 HMCTS said that “[e]ven if the levels of judicial sittings are sustained for the remainder of this financial year, and if we improve the disposal rates through more efficient remote hearings and increased levels of face-to-face hearings, we are likely to see backlogs continue to grow in both family public and private law”.¹⁹⁴
163. This means that there are likely to be significant delays in the family courts for the foreseeable future. HMCTS estimate that, even with an increase in

191 ‘Remote hearing success means no backlog in some family courts’, *Legal Futures* (15 October 2020): <https://www.legalfutures.co.uk/latest-news/remote-hearing-success-means-no-backlog-in-some-family-courts> [accessed 25 March 2021]

192 HMCTS, ‘HMCTS weekly management information during coronavirus : March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

193 Private law family cases are commonly divorce cases or disputes between parents who have split-up about who their child should live with or have contact with. Public law family cases are typically child protection cases where a local authority, or the NSPCC, steps in on child welfare grounds.

194 HMCTS, *Covid-19: Overview of HMCTS Recovery for Civil and Family Courts and Tribunals* (November 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932496/HMCTS_CFT_Recovery_Plan_v2b.pdf [accessed 3 March 2021]

the number of sitting days in the family courts, it may be three years before the backlog returns to pre-crisis levels.¹⁹⁵

164. The backlog in the family courts before the pandemic was significant and returning to pre-pandemic levels will be insufficient. The Council of Her Majesty’s Circuit Judges said:

“The Family Court was already experiencing unprecedented delays in the system prior to lock down ... individual judges are routinely encountering difficulty in listing contested hearings within a reasonable timescale for the child in question.”¹⁹⁶

165. The Public Advisory Group of the Family Justice Board, a cross-sector forum which oversees the family justice system, issued the following statement in December 2020:

“The progress made in securing protection, stability and permanence for children [in the family courts] has been under increasing pressure, with growing backlogs exacerbated by COVID-19. For children who remain stuck in the middle of the court system, the detriment to them is immeasurable. Their young lives are now on hold and their whole futures could be seriously affected with long-term consequences.”¹⁹⁷

166. The Group called for a review of “the most effective use of the existing court estate [and] the establishment of further Nightingale court buildings to increase the court estate on a temporary basis” to address the backlog.¹⁹⁸

167. Of the £150 million Government funding provided to HMCTS in response to the pandemic, £37 million has been allocated to civil and family court services, over half of which has already been spent.¹⁹⁹

168. **Despite efforts to limit the backlog in the family courts, the number of outstanding cases remains high. Delay in resolving disputes concerning families and children can itself cause significant harm. HMCTS has estimated that it may take three years to return to pre-pandemic levels. Such a delay would be unacceptable.**

169. **We recommend that the Government explores additional ways to reduce the backlog in the family courts as a matter of urgent priority. Additional funding for temporary courtrooms in suitable buildings, greater use of retired and part-time judges, and greater use of alternative dispute resolution would help to reduce the backlog in the family courts (see further paragraphs 208–214 and 234–239).**

195 Family Justice Board (Private Law Advisory Group), *Final Report* (9 December 2020), p.8: <https://www.judiciary.uk/wp-content/uploads/2020/12/Private-Law-Advisory-Group-Report-Dec-2020.pdf> [accessed 4 February 2021]

196 Written evidence from Council of Her Majesty’s Circuit Judges ([CJC0039](#))

197 Family Justice Board (Public Law Advisory Group), *Final Report* (9 December 2020), p.8: <https://www.judiciary.uk/wp-content/uploads/2020/12/Public-Law-Advisory-Group-Report-Dec-2020.pdf> [accessed 4 February 2021]

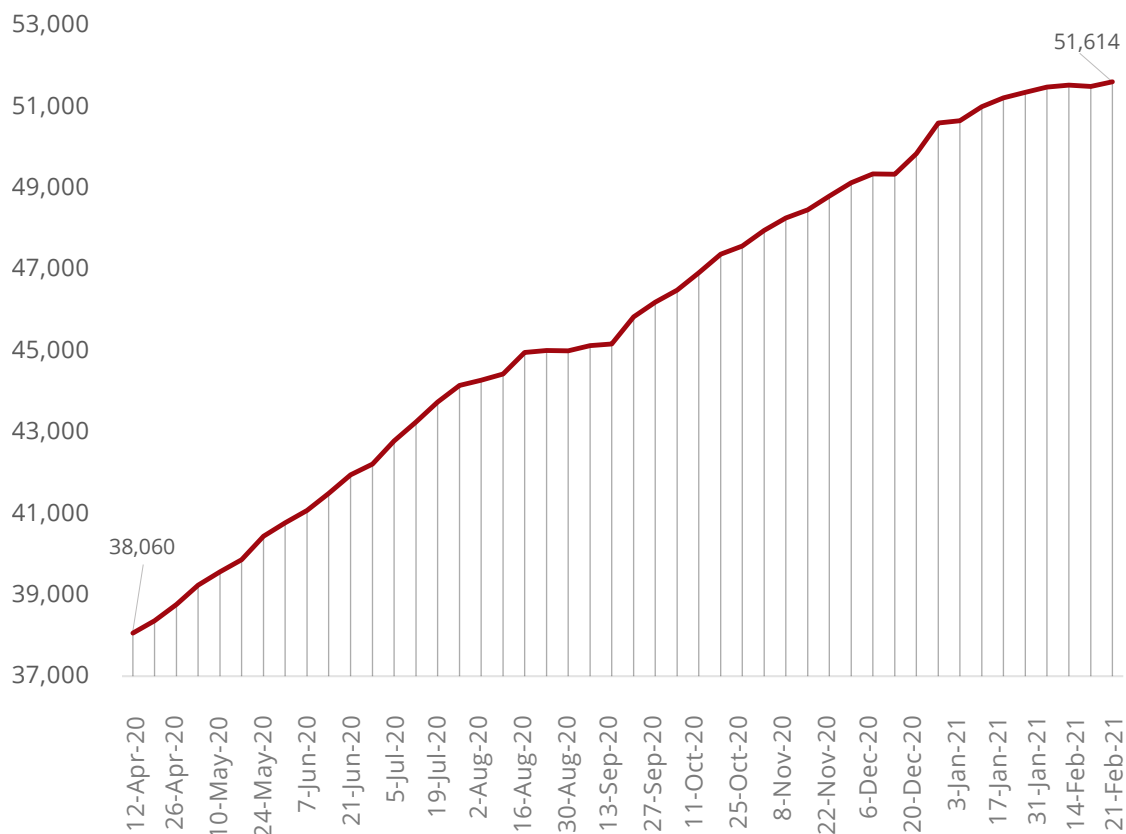
198 *Ibid.*

199 Written Answer [HL13308](#), Session 2019-21

The Employment Tribunal

170. Employment tribunals deal with claims brought against employers by employees. This includes claims relating to unfair and wrongful dismissal, discrimination, and equal pay.
171. By late February 2021 the number of outstanding cases in the Employment Tribunal had increased by 45% when compared to pre-Covid levels.²⁰⁰ The average waiting time for a hearing in December 2020 was 49 weeks—an increase of 15 weeks compared to December 2019.²⁰¹

Figure 8: Outstanding cases in the Employment Tribunal (multiple and single claims combined)²⁰²



Source: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

172. The Government has allocated 4% of its courts recovery money to tribunals, which includes the Employment Tribunal in addition to the Immigration

200 Combining single and multiple claims: HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to February 2021’, (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

201 HMCTS, ‘HMCTS management information: December 2019-December 2020’, (11 February 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-december-2020> [accessed 16 February 2021]

202 A typical claim brought by an individual against his/her employer claiming breach of employment rights is called a ‘single’ claim. Other claims to employment tribunals come from individuals involved in collective workplace disputes – two or more workers bringing claims against a common employer or, occasionally, employers.

& Asylum, Social Security and Child Support tribunals (£3.4m out of the £80.8m of Covid-related funding announced in September 2020).²⁰³

173. Rising unemployment in the wake of the pandemic, combined with the impact of COVID-19 on working conditions, suggests that this backlog is likely to continue to increase. Citizens Advice, a network of independent UK charities that provide free financial and legal advice, has warned of a “perfect storm” of rising demand at a time of restricted capacity in the Employment Tribunal. It has called for additional emergency funding to increase capacity further and ensure tribunals can clear the backlog.²⁰⁴
174. **The backlog in the Employment Tribunal could lead to justice being delayed for many who are already significantly suffering as a result of COVID-19. The prompt resolution of legal disputes is critical for the lives and well-being of individuals, as well as the effective management of businesses. The timely delivery of justice also underpins the rule of law. Backlogs in employment and housing repossession cases threaten to undermine these fundamental aims of our justice system.**

Housing possession claims

175. From 27 March 2020, all housing possession claims were suspended in courts in England and Wales. The ban initially ran for 90 days (until 25 June 2020) but was later extended to 20 September 2020.²⁰⁵ Repossession actions in the courts restarted on 21 September 2020.²⁰⁶
176. There is no official number of outstanding housing possession claims.²⁰⁷ James Sandbach said that the stay on eviction proceedings had caused a “massive backlog” that was a “significant” cause for concern: “all the tenancy problems and disputes that might have developed during lockdown could lead to a tsunami of cases once the stay has lifted”.²⁰⁸ From October to December 2020, the median average time from claim to landlord repossession increased to 43 weeks, up from 21 weeks in the same period in 2019.²⁰⁹
177. **The stay on housing possession claims protected private and social renters from eviction during the COVID-19 pandemic, and was**

203 Written answer [123733](#) Session 2019–21

204 Citizens Advice, *Tribunal trouble: how a backlogged tribunal system is stopping people enforcing their rights* (22 October 2020): https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/FINAL%20Tribunal%20trouble_%20How%20a%20backlogged%20tribunal%20system%20is%20stopping%20people%20enforcing%20their%20rights.pdf [accessed 4 February 2021]

205 On 5 June 2020, the stay was extended until 23 August 2020. On 21 August 2020, the ban was extended again to 20 September 2020: Ministry of Housing, Communities & Local Government, *Government support available for landlords and renters reflecting the current coronavirus (Covid-19) outbreak* (28 March 2020): <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities> [accessed 1 February 2021]; Ministry of Housing, Communities & Local Government, *Ban on evictions extended by 2 months to further protect renters* (5 June 2020): <https://www.gov.uk/government/news/ban-on-evictions-extended-by-2-months-to-further-protect-renters> [accessed 1 February 2021]; The Right Honourable Sir Terence Etherton and The Right Honourable Robert Buckland QC MP, *124th Update: Practice Direction Amendments* (21 August 2020): <https://www.justice.gov.uk/courts/procedure-rules/civil/cpr-124-pd-update.pdf> [accessed 1 February 2021]

206 House of Commons Library, *Coronavirus: Support for landlords and tenants*, Briefing Paper, [Number 08868](#), 10 January 2021

207 Written Answer [HL11552](#), Session 2019–2021

208 [Q 103](#) (James Sandbach)

209 Ministry of Justice, *Mortgage and landlord possession statistics: October to December 2020* (11 February 2021): <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2020/mortgage-and-landlord-possession-statistics-october-to-december-2020> [accessed 4 March 2021]

a significant step in providing security of tenure for most tenants in England and Wales during a difficult period. However, it has contributed to the backlog in the courts, further undermining the timely delivery of justice and placing additional pressure on the justice system.

178. **We recommend that the Government considers how alternatives to litigation might be implemented to alleviate the volume of housing repossession cases awaiting disposal in the courts.**

Government response to the backlog

179. Additional funding has been made available to support HMCTS in its recovery from the pandemic. In January 2021, the Government reported that “£142m has been spent on upgrading court buildings and technology, alongside £110m to increase capacity”.²¹⁰ The Lord Chancellor announced an additional £30m of funding on 16 February 2021.²¹¹
180. The steps taken to enhance court and tribunal capacity during the pandemic, and to thereby reduce the backlog across all jurisdictions, include:
- **Maximising the use of HMCTS’s existing estate.** 1,600 extra staff have been hired and plexiglass screens have been set up in more than 450 courts.²¹² By the end of December 2020, HMCTS had made over 290 courtrooms available for jury trials, in addition to over 120 court rooms for non-jury trial work across 79 Crown Court sites.²¹³
 - **Providing additional courtroom and tribunal capacity.** 40 temporary courtrooms, also known as Nightingale courtrooms, have opened since the outset of the pandemic, intended to increase the volume of court and tribunal activity that can take place in compliance with social distancing.²¹⁴ The Lord Chancellor announced the opening of an additional 14 Nightingale courtrooms on 16 February 2021.²¹⁵ A total of 60 Nightingale courtrooms are expected by the end of March 2021.²¹⁶
 - **Greater use of remote technology.** 20,000 remote hearings have been taking place via the Cloud Video Platform (CVP) each week.²¹⁷

210 HMCTS, *Two more Nightingale courts open* (28 January 2021): <https://www.gov.uk/government/news/two-more-nightingale-courts-open> [accessed 1 February 2021]

211 Letter from Robert Buckland QC MP to Baroness Taylor of Bolton, 16 February 2021: <https://committees.parliament.uk/publications/5263/documents/52655/default/>

212 HMCTS, *Two more Nightingale courts open* (28 January 2021): <https://www.gov.uk/government/news/two-more-nightingale-courts-open> [accessed 1 February 2021]

213 Letter from the Rt Hon Robert Buckland QC MP to Sir Robert Neill MP, 20 January 2021: <https://committees.parliament.uk/publications/4488/documents/45136/default/>

214 HMCTS, *Two more Nightingale courts open* (28 January 2021): <https://www.gov.uk/government/news/two-more-nightingale-courts-open> [accessed 1 February 2021]

215 Letter from Robert Buckland QC MP to Baroness Taylor of Bolton, 16 February 2021: <https://committees.parliament.uk/publications/5263/documents/52655/default/>

216 HMCTS, *More courts to speed up justice* (17 February 2021): <https://www.gov.uk/government/news/more-courts-to-speed-up-justice> [accessed 18 February 2021]

217 HMCTS, *Two more Nightingale courts open* (28 January 2021): <https://www.gov.uk/government/news/two-more-nightingale-courts-open> [accessed 1 February 2021]

- **Considering new court operating hours.** HMCTS have consulted on extended court operating hours, which remains under review by the Lord Chancellor.²¹⁸

181. **We welcome the Government’s investment to increase court capacity to help reduce the backlog. HMCTS worked hard to adapt court buildings after the first lockdown and Nightingale courtrooms have opened at impressive speed. However, despite these efforts, the backlog across jurisdictions remains unacceptably high.**
182. **We recommend that measures to address the backlog be demonstrably effective, well-funded and implemented urgently. Actions taken to reduce the backlog must also be manageable for those working in the justice system, including judges, court staff and legal professionals.**

Criticisms of Government efforts

Absence of clear targets

183. The Lord Chancellor said he was “determined ... to manage this case load in a way that these figures come to what we regard as normal positions” but that no target had been set for achieving pre-Covid levels of outstanding cases.²¹⁹
184. In November 2020, Ms Gemma Hewison, Director of Strategy and Change at HMCTS, said that the outstanding jury trial caseload could only be reduced to pre-Covid levels by March 2023.²²⁰ The Lord Chancellor subsequently described this assessment as out of date, stating that it would not be sensible to attempt to predict when HMCTS will reach a given level of outstanding cases “as there are too many variables involved to make any accurate predictions”.²²¹
185. Where targets have been set, HMCTS has not always been able to meet them. In September 2020, HMCTS reported on the progress of its response to COVID-19 in the criminal courts. As part of the recovery plans outlined in the report, 266 jury trials were projected to take place in each week of October 2020, rising to 333 a week in November 2020.²²² However, the Crown Court failed to reach these targets, disposing of an average of 193 jury trials per week in October and 230 per week in November.²²³
186. **We welcome the Lord Chancellor’s commitment to tackling the backlog. However, targeting “normal positions” is vague. We are concerned that HMCTS does not have clear targets or deadlines for the recovery of service in the criminal courts. This means it is not possible to assess whether the funding made available to HMCTS is**

218 HMCTS, *HMCTS weekly operational summary on courts and tribunals during coronavirus (COVID-19) outbreak* (15 February 2021): <https://www.gov.uk/guidance/hmcts-weekly-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak> [accessed 17 February 2021]

219 [Q 139](#) (Rt Hon Robert Buckland QC MP)

220 The High Court of Justice, *Lucima v CCC and DPP v Woolwich* [2020] EWHC 3243, [21]

221 Letter from the Rt Hon Robert Buckland QC MP to Sir Robert Neill MP, 20 January 2021: <https://committees.parliament.uk/publications/4488/documents/45136/default/>

222 HMCTS, *COVID-19: Update on the HMCTS response for criminal courts in England & Wales* (7 September 2020), Figure 4, page 7: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf [accessed 16 February 2021]

223 Letter from the Rt Hon Robert Buckland QC MP to Sir Robert Neill MP, 20 January 2021: <https://committees.parliament.uk/publications/4488/documents/45136/default/>

sufficient to clear the criminal backlog, or whether steps being taken in response to the growing backlog are adequate or effective.

187. **We recommend that the Government sets out detailed plans for reducing the backlog of criminal, family, and employment cases, including a timeline for implementation.**

Ineffective use of new real estate

188. HMCTS is using additional venues to provide increased estates capacity in response to the coronavirus outbreak. These venues have been referred to as ‘Nightingale courtrooms’. They will be used on a temporary basis to ensure as many hearings as possible can continue to take place during the coronavirus outbreak.

189. Media reports have suggested that the Nightingale courtrooms have not been fully utilised. *The Times* reported that, as of 20 August 2020, only six of the 10 temporary courts proposed had opened. One of them, Prospero House in London, “was operating only two of its three courtrooms during its first week. One opened on one day for less than one hour.”²²⁴ Across the court estate it was unclear how the number of open court buildings related to the number of courtrooms in use:

“Court service officials have consistently said that 90 per cent of the court buildings in England and Wales are now open and operating under COVID-19 restrictions. However, they fail to address how many actual courtrooms are open and how many trials are being conducted in them.”²²⁵

190. It is difficult to determine how effectively the Nightingale courtrooms are being utilised, as the Government does not break down or publish data on the number of cases heard in Nightingale courtrooms.²²⁶ Nor does the Government record how many sitting days or hours take place in Nightingale courtrooms.²²⁷ A total of 60 Nightingale courtrooms are expected by the end of March 2021.²²⁸ However, as of 11 March 2021, only 24 Nightingale courtroom venues appeared to be open for cases.²²⁹

191. **Significant investment has resulted in the opening of several Nightingale courtrooms to increase capacity during the pandemic, which we welcome as a solution to reduce the backlog by scaling up court capacity. However, it is unclear whether this additional courts estate is being used effectively.**

192. **It is concerning that the Government does not publish data showing the number of cases, sitting hours, or sitting days taking place in Nightingale courtrooms. This makes it difficult to assess whether**

224 ‘Justice minister accused over Nightingale courts’, *The Times*, 20 August 2020: <https://www.thetimes.co.uk/article/justice-minister-accused-over-nightingale-courts-8c2pxm52v> [accessed 1 February 2021]

225 *Ibid.*

226 Written Answer [HL11500](#), Session 2019-21

227 Written Answer [HL11501](#), Session 2019-21

228 HMCTS, *More courts to speed up justice* (17 February 2021): <https://www.gov.uk/government/news/more-courts-to-speed-up-justice> [accessed 18 February 2021]

229 HM Government Guidance, ‘Courts and tribunals additional capacity during coronavirus outbreak: Nightingale courts’, (3 March 2021): <https://www.gov.uk/guidance/courts-and-tribunals-additional-capacity-during-coronavirus-outbreak-nightingale-courts#history> [accessed 5 March 2021]

these additional courtrooms are being effectively utilised. Reports from the media suggest that utilisation is well below what might be expected. 60 Nightingale courtrooms are planned by the end of March 2021, yet less than half of these appeared to be open at the beginning of the month.

193. **We recommend that the Government be required to explain precisely how they are using the Nightingale courtrooms, how many cases are being heard in each of these new venues, and the factors it takes into account when identifying new venues for additional Nightingale courtrooms.**

Health and safety

194. On 5 January 2021 the Lord Chief Justice announced that the justice system would continue to function during the third national lockdown, emphasising the need to “ensure that the administration of justice continues”. He further confirmed that HMCTS would “continue to put in place precautionary measures in accordance with Public Health England and Public Health Wales guidelines to minimise risk. All those attending court must abide by guidance concerning social distancing, hand washing, wearing masks etc. Judges and magistrates will have a role in making sure this happens”.²³⁰
195. The effectiveness of the health and safety measures implemented in courtrooms has been criticised. Between 24 November 2020 and 11 January 2021, around 600 court users, judges and staff tested positive for COVID-19.²³¹ This prompted the Law Society of England and Wales to propose a pause of all Crown Court and magistrates’ court non-custody work for two weeks in January 2021 “for all stakeholders in the court process to assure themselves of the safety of attendance and to discuss local measures to ensure safety”.²³² The London Criminal Courts Solicitors’ Association advised its members that it was not safe to continue to attend magistrates’ courts: “Our members report that local magistrates’ courts are once again too crowded and applications to appear remotely are being underused.”²³³
196. On 19 January 2021, Her Majesty’s Chief Inspector of the Crown Prosecution Service said:

“The court service has been saying to date that courts are Covid-safe. Anyone who follows social media and listens to what the Bar and solicitors are saying about going into courts knows that that is not necessarily what they feel ... All I can say is that I would not wish to be in court at this time”.²³⁴

230 Courts and Tribunals Judiciary of England and Wales, *Message from the Lord Chief Justice: latest COVID-19 restrictions*, 5 January 2021: <https://www.judiciary.uk/announcements/message-from-the-lord-chief-justice-latest-covid-19-restrictions/> [accessed 5 February 2021]

231 Written answer, [135923](#) Session 2019–21

232 The Law Society of England and Wales, *Urgent action call for courts as COVID safety fears grow* (15 January 2021): <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/urgent-action-call-for-courts-as-covid-safety-fears-grow> [accessed 1 February 2021]

233 London Criminal Courts Solicitors’ Association, *LCCSA call for action during major incident in London* (12 January 2021): <https://www.lccsa.org.uk/wp-content/uploads/2021/01/LCCSA-call-for-action-during-state-of-emergency-210112.pdf> [accessed 1 February 2021]

234 Oral evidence taken before the Justice Committee on 19 January 2021 (Session 2019–21), [Q 266](#) (Kevin McGinty)

197. Chris Philp MP, Minister for Immigration Compliance and the Courts, responded to the Chief Inspector’s comments the following day in the House of Commons:

“The hon. Lady cited some remarks by the CPS inspector at the Committee yesterday and I have to tell her, in all candour, that those comments are inaccurate and inappropriate. The proper authorities for determining the safety of our court system are Public Health England and Public Health Wales, not the inspector of the CPS, and they, having looked at the measures we are taking, have found them to be appropriate and found that our courts are Covid-safe ... the number of Her Majesty’s Courts and Tribunals Service staff who have tested positive for Covid is in line with the number in the wider population ... I hope that reassures witnesses, defendants, jurors, lawyers—anyone using the courts—that our courts are safe.”²³⁵

198. **However stringent the measures in courts, physical hearings require court users to travel from homes, offices, and prisons to attend. Keeping the courts operating and maintaining face-to-face hearings will involve a degree of risk of exposure to COVID-19.**
199. **Given the severity of the backlog in the Crown Court and the urgent need to clear it, we recommend that urgent cases and jury trials continue to be heard in a physical setting where no alternative is feasible. The Government must continue to ensure that courts are as safe as possible during the pandemic.**
200. **We recommend that the Government takes additional steps to encourage and facilitate remote hearings, especially when the risk of infection is at its highest. The decline in the use of the Cloud Video Platform (see paragraphs 73-77) suggests a missed opportunity to keep court users safe by holding more hearings remotely.**

Excessive demands on court users and staff

201. Proposals to extend court opening hours were opposed by witnesses representing the legal profession, who said that longer working hours would adversely affect lawyers who already have heavy workloads, particularly those with caring responsibilities.²³⁶
202. The Law Society of England and Wales said: “Junior members of the profession may be adversely affected by extended hours as they could be asked to cover early, late or weekend sittings”.²³⁷ Particular concerns were raised about courts sitting late into the evening: “We are concerned about the safety of court users when leaving buildings at night, in particular those who may be involved in emotive cases, such as family cases, where proceedings can exacerbate already tense relations between parties”.²³⁸
203. Caroline Goodwin QC expressed concerns about the additional strains that late court hours might place on victims in criminal trials, who might be relied on to give evidence: “We have already had discussions with victims’

235 HC Deb, 20 January 2021, [col 974](#)

236 [Q 115](#) (Simon Davis)

237 Written evidence from the Law Society of England and Wales ([CIC0028](#))

238 *Ibid.*

groups and they are not at all keen on putting additional stress upon victims coming to court at awkward hours”.²³⁹

204. The Lord Chancellor said that while he understood the concerns of legal professionals, it was court users who must be prioritised.²⁴⁰ Susan Acland-Hood said that, although “representative bodies are not enormous fans of [extending court opening hours], I think there is work that we can do with the profession to get to a place where we can make this a pragmatic emergency solution to use while we have these backlogs to address”.²⁴¹ In February 2021, plans for extended court opening hours were temporarily suspended by the Ministry of Justice.²⁴²
205. **The Government must ensure that it is making the maximum use of existing facilities, and that courtrooms are not sitting idle during core business hours.**
206. **Before extending court operating hours, we recommend that HMCTS ensure that it is making maximum use of normal court hours, existing court estate and Nightingale courtrooms, as well as avoiding any restrictions on judges sitting.**

Further action to address the backlog

207. During our inquiry we considered various proposals to help tackle the backlog of cases. These included: increasing the amount of court time through greater use of Nightingale courtrooms and sitting days, reducing the strain on jury trials, and improving courts data to target further changes and investment more effectively.

Increasing court time

Additional Nightingale Courtrooms

208. **Nightingale courtrooms enhance courtroom capacity and will, if used effectively, reduce the backlog. Whilst we welcome the sixty Nightingale courtrooms that will open in response to the pandemic, we draw attention to the fact that the backlog in the criminal courts exceeds half a million. It has been suggested that Crown Court capacity would need to double to return to pre-Covid backlog levels by 2024.²⁴³ In the employment tribunal the backlog exceeds 50,000 and the family courts backlog exceeds 10,000. Sixty additional courtrooms are insufficient to address the urgency and scale of backlogs across the justice system.**
209. **We recommend that further funding be made available to HMCTS to significantly increase the number of Nightingale courtrooms open by the end of 2021.**

239 [Q 115](#) (Caroline Goodwin QC)

240 [Q 142](#) (Rt Hon Robert Buckland QC MP)

241 [Q 142](#) (Susan Acland-Hood)

242 ‘Plans for extended court opening hours are put on hold’, *The Times* (11 February 2021): <https://www.thetimes.co.uk/article/plans-for-extended-court-opening-hours-are-put-on-hold-g2ctx0mj> [accessed 4 March 2021]

243 This model assumes court capacity dropping by 90% in March 2020 and recovering to 2019 levels over 12 months after September 2020. Further information about the assumptions made see: Crest Advisory, *Assumptions: A perfect storm: why the criminal justice system is facing an existential crisis* (30 October 2020): <https://www.crestadvisory.com/post/assumptions-a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis> [accessed 17 February 2021]

An increase in sitting days

210. The Lord Chief Justice told us that sitting days have a clear and direct impact on the backlog of cases: “During 2019 ... sitting days were substantially cut. The result [was] that the backlog of trials has increased”.²⁴⁴
211. **We recommend that the Government further increases the number of sitting days, particularly in the Crown, magistrates’, and family courts and in employment tribunals.**

Greater use of the part-time and retired judiciary

212. The more judges or tribunal members that are permitted to sit, the greater the opportunity for cases to be heard. In March 2021 the Government said that it planned to legislate to increase the mandatory retirement age for judicial office holders. The planned reforms will enable existing judges to remain in judicial office until they are 75 years of age (rather than 70), and will enable retired judges to sit after retirement until they reach the age of 75.²⁴⁵
213. **We welcome Government proposals to increase the mandatory retirement age for judicial office holders. This will increase the number of judges who are able to sit and, therefore, the number of cases that can take place.**
214. **We recommend that the Government takes additional steps to further enhance judicial capacity. Shortages in the number of available judges could be alleviated through greater use of recorders in the Crown Court and further investment in the recruitment and training of new judges.**

Greater use of technology

215. A small number of criminal trials in Scotland have taken place virtually, transmitted on a secure two-way video to juries of 15 sitting in cinema complexes. Scotland’s second most senior judge, the Lord Justice Clerk Lady Dorrian, has said that this solution “preserves the 15-person jury trial, and will allow us, in time, to raise business in the High Court to a level that will start to address the growing backlog of cases”.²⁴⁶
216. The human rights group Justice has conducted mock trials to test the possibility of implementing fully remote jury trials in England and Wales. In their tests, participants joined the virtual court via video, with the hearing livestreamed to a virtual public gallery.²⁴⁷ Unlike the Scottish virtual trials, mock jurors used their own home computers and were not sat together in a cinema complex. The experiment was evaluated by independent academics Professor Linda Mulcahy, Dr Emma Rowden and Ms Wed Teeder, who

244 Q 8 (Rt Hon Lord Burnett of Maldon)

245 Ministry of Justice, *Judicial Mandatory Retirement Age: Response to Consultation* (8 March 2021): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/967234/judicial-mandatory-retirement-age-consultation-response.pdf [accessed 11 March 2021]

246 ‘Lord Carloway backs plans for use of remote juries in High Court cases’, *Holyrood* (14 August 2020): <https://www.holyrood.com/news/view,lord-carloway-backs-plans-for-use-of-remote-juries-in-high-court-cases> [accessed 4 March 2021]

247 JUSTICE, ‘JUSTICE COVID-19 response’; <https://justice.org.uk/our-work/justice-covid-19-response/> [accessed 4 March 2021]

concluded that the experiment provided a “convincing case” for rolling out the fully remote juries more widely.²⁴⁸

217. Legislation in England and Wales does not currently allow for the full use of remote facilities in a jury trial. In March 2021 the Lord Chancellor said he wanted to change that and enable remote juries to be deployed. He emphasised that this would be a slow and incremental process, allowing sufficient time for appropriate technologies to be tested and for the judiciary to be consulted.²⁴⁹
218. Many witnesses said that listing a greater number of hearings online and a greater use of virtual hearings could help to reduce the backlog.²⁵⁰ We consider the future application of technology to the courts system in Chapter 5.
219. **We welcome the Lord Chancellor’s plans to enable greater use of remote technology in jury trials.**
220. **We recommend that the Government continues to pilot remote jury trials as a further potential solution to the significant criminal trial backlog.**

Altering juries of twelve

221. One of the challenges for the criminal courts during the pandemic has been safely assembling juries of twelve people. Some witnesses said that reducing the size of juries could allow more trials to take place.²⁵¹ It has also been suggested that defendants with legal representation should be allowed to choose trial by a judge or panel of judges without a jury.²⁵²
222. In June 2020, the former Supreme Court President, Baroness Hale of Richmond, expressed her support to the idea of a judge sitting with two lay people instead of a jury.²⁵³ Lord Phillips of Worth Matravers, a former Lord Chief Justice and the first President of the Supreme Court, has advocated for judge-only trials in response to the pandemic, but only where this is chosen by the defendant in question: “[a]ny defendant who would like to be tried by a judge only should be allowed that facility rather than waiting years for a jury”.²⁵⁴
223. Reducing the number of jurors required for a trial has also been proposed as a means of enabling more trials to take place in a socially distanced manner. The Lord Chief Justice said in May 2020 that a reduction in juror numbers

248 JUSTICE, *JUSTICE pilots first ever worldwide virtual mock jury trial* (April 2020): <https://justice.org.uk/wp-content/uploads/2020/04/JUSTICE-mock-virtual-trial-press-release.pdf> [accessed 4 March 2021]

249 ‘Law in Action’, *BBC Sounds* (2 March 2021): <https://www.bbc.co.uk/sounds/play/m000sqlf> [accessed 4 March 2021]

250 **Q 48** (Dr Natalie Byrom), **Q 24** (Professor Richard Susskind OBE) and written evidence from the Sheffield ME and Fibromyalgia Group (**CIC0013**) and the Employment Lawyers Association (**CIC0027**)

251 Written evidence from the Law Society of Scotland (**CIC0033**), the Lord Chief Justice of England and Wales (**CIC0045**) and the Criminal Cases Review Commission (**CIC0051**)

252 ‘Call for trials amid fear that crisis will put criminals on streets’, *The Times* (20 August 2020): <https://www.thetimes.co.uk/article/call-for-trials-without-juries-amid-fear-that-crisis-will-put-criminals-on-streets-qk93vdtrf> [accessed 17 February 2021]

253 ‘Lady Hale: Rethinking The Courts’, *BBC Sounds* (22 June 2020): <https://www.bbc.co.uk/programmes/p08hg5q1> [accessed 17 February 2021]

254 ‘Call for trials without juries amid fear that crisis will put criminals on streets’, *The Times* (20 August 2020): <https://www.thetimes.co.uk/article/call-for-trials-without-juries-amid-fear-that-crisis-will-put-criminals-on-streets-qk93vdtrf> [accessed 17 February 2021]

“would be something well worth thinking about if these difficulties were to continue ... Another might be to have trials in the Crown Court with a judge and two magistrates, which of course would be much easier to manage than any jury”.²⁵⁵ However, he said reducing jurors should be seen as a last resort.²⁵⁶

224. In January 2021 the shadow Lord Chancellor and Secretary of State David Lammy MP urged the Government to reduce the number of jurors required in criminal trials to seven in order to reduce the Crown Court backlog.²⁵⁷

225. Jury trials have been altered in the past. During the Second World War juries were temporarily reduced to seven, save for murder and treason. In Northern Ireland, non-jury trials for certain serious crimes were introduced in 1973 and used for political and terrorism-related cases. These “Diplock” courts were abolished in 2007. The exceptional circumstances of the pandemic and the risk to the operation of, and public faith in, the justice system have prompted a renewed consideration of these alternatives to twelve-strong jury.²⁵⁸

226. Other witnesses opposed any change to the jury system as a means of addressing the backlog.²⁵⁹ The Council of Her Majesty’s Circuit Judges said that reducing the number of jurors would make little practical difference to the number of courts able to hold trials and maintain social distancing, and that it would have limited practical benefits in cases with multiple defendants, as social distancing cannot always be maintained in the dock or court cells. The Council added: “Any reduction would make it less likely that the resulting jury accurately reflects the diversity of the population ... The issues with regard to lower numbers (on a reduced jury) include the public perception as to the legitimacy of the verdicts and whether such verdicts should be unanimous or by a majority. The lower the number of jurors the stronger is the need for unanimity”.²⁶⁰

227. James Sandbach said that “jury trials are a bedrock of our constitutional and legal architecture, ensuring that people have a fair trial. They should not be put aside lightly”. He proposed remote jury trials as a preferable solution.²⁶¹

228. The Law Society of England and Wales said:

“Jury trials are a fundamental part of the rule of law and our criminal justice system We are opposed to a model where jury trials would be replaced by a judge plus two others. Judges can become ‘case hardened’ and tend to be much easier to persuade that someone is guilty. Juries come to each case with an open mind and hear the evidence, and then make their collective decision without a long experience in dealing with criminals”.²⁶²

229. Derek Sweeting QC observed:

255 Q 9 (Rt Hon Lord Burnett of Maldon)

256 Q 9 (Rt Hon Lord Burnett of Maldon)

257 ‘Coronavirus: Cut jury size to clear courts backlog: Labour’, *BBC News* (27 January 2021): <https://www.bbc.co.uk/news/uk-politics-55813636> [accessed 1 February 2021]

258 This argument is put forward, but not endorsed, in: ‘The Times view on the backlog of criminal trials: Speed of Justice’, *The Times* (20 August 2020): <https://www.thetimes.co.uk/article/the-times-view-on-the-backlog-of-criminal-trials-speed-of-justice-qw3bkqfgm> [accessed 18 February 2021]

259 Q 102 (Cris McCurley)

260 Written evidence from Council of Her Majesty’s Circuit Judges (CIC0039)

261 Q 102 (James Sandbach)

262 Written evidence from the Law Society of England and Wales (CIC0028)

“the one stage in the criminal justice process in England and Wales where members of BAME groups appear not to be treated disproportionately is when a jury reaches a verdict by deliberation. In other words, statistically, you are no more likely to be convicted by a jury if you are black than if you are white. In fact, the study says it goes the other way. Now is not the time to be interfering with a fundamental right which underpins our system. As soon as you start taking a chunk out of it, you are doing damage to it, and we should avoid doing that”.²⁶³

230. Carol Storer said that trial by jury “ensures that ordinary people are directly engaged with the justice system”.²⁶⁴

231. Giving evidence to us in July 2020, the Lord Chancellor appeared open to reducing the number of jurors usually needed for a Crown Court trial as one possible solution to the backlog. The Government would consider reducing the number to “nine jurors, with a minimum of seven, replicating the rules about majority verdicts on juries of 12”.²⁶⁵ In the intervening months the notion of reducing the size of juries was dropped. In January 2021, justice minister Lord Wolfson of Tredegar QC appeared to reject any reduction in the number of jurors:

“Trial by jury is a cornerstone of the criminal justice system in this jurisdiction. With the support of Public Health England and Public Health Wales, we have made adjustments to more than 290 court rooms and jury deliberation rooms so as to facilitate trial by jury. Reducing the size of the jury is therefore unlikely to free up an additional amount of space for jury trials.”²⁶⁶

232. **Any change to the jury system, whether by allowing defendants to choose judge-only trials in serious cases, or by reducing the number of jurors required for a Crown Court trial, would fundamentally alter a core element of our criminal justice system. Such changes could only be justified as a means of addressing the backlog if there was no other way to return to pre-pandemic levels of outstanding cases in the Crown Court.**

233. **The jury system should not be altered without full parliamentary debate preceded by evidence on the potential impact of changes on case outcomes, access to justice and public perceptions of the criminal justice system.**

Alternative dispute resolution

234. One method of reducing the volume of civil cases in the courts system, and therefore the case backlog, would be greater use of alternative dispute resolution—where legal disagreements are resolved out of court.

235. The Employment Lawyers Association advocated greater use of alternative dispute resolution procedures to assist with the Employment Tribunal backlog, such as “more proactive and focussed conciliation” in the early stages of a claim being issued: “[a]n initial two hour conciliation with the

263 [Q 115](#) (Derek Sweeting QC)

264 [Q 102](#) (Carol Storer OBE)

265 [Q 141](#) and [Q 184](#) (Rt Hon Robert Buckland QC MP)

266 HL Deb, 26 January 2021, [col 1517](#)

parties may lead to early settlement in more cases”.²⁶⁷ Judicial mediation was posited as a potential solution for “cases which might otherwise require long listings and extensive and expensive preparation”.²⁶⁸ Professor Susskind also said that alternative dispute resolution could enable disputes to be resolved more efficiently out of court.²⁶⁹

236. **Greater use of alternative and online dispute resolution could reduce workload in the civil courts and thereby reduce the backlog of civil cases both in present circumstances and in the future. However, we remain concerned about those for whom financial barriers may make alternative dispute resolution an unaffordable solution.**
237. **We recommend that HMCTS facilitates and encourages greater use of alternative dispute resolution in appropriate civil cases, subject always to the condition that access to justice is secured through its use.**

Data-driven solutions

238. Some witnesses said that in order to tackle the backlog greater research was needed to understand how well the courts system was operating and to target resources most effectively.²⁷⁰ We consider this matter and other issues related to courts data in Chapter 4.
239. **It may not be possible for the Government to target a fixed number of outstanding cases across all jurisdictions whilst the pandemic continues.**
240. **We recommend that the Government sets out clear plans, both short-term and long-term, for addressing the backlog in all jurisdictions, along with timelines and targets for implementation. Clarity is necessary to facilitate scrutiny of the adequacy of the Government’s response and to restore faith in the justice system.**

267 Written evidence from the Employment Lawyers Association ([CIC0027](#))

268 *Ibid.*

269 [Q 24](#) (Professor Richard Susskind OBE)

270 [Q 40](#) (Dr Natalie Byrom) and written evidence from the Employment Lawyers Association ([CIC0027](#))

CHAPTER 4: DATA IN THE COURTS SYSTEM

241. Without adequate data, it is not possible for the Ministry of Justice or members of the public to know whether courts and tribunals are operating effectively. The collection and publication of data are therefore critical to building public trust in the justice system and ensuring court services are delivered in a way that secures access to justice. In order to review and, where necessary, improve our justice system, a robust strategy for data collection, analysis and publication must be in place.
242. Whether access to justice has been maintained or undermined by recent changes to the justice system is partly an empirical question. The Lord Chief Justice described the rapid adoption of new technology during the pandemic as “the biggest pilot project that the justice system has ever seen”.²⁷¹ He told us that the shift to remote hearings provided an opportunity to “take the best of this new way of working to improve access to justice”, but the information to support improvements to the courts service was “just not available”.²⁷²
243. The lack of data on the operation of the courts was raised by a number of witnesses. Many said there was an urgent need for HMCTS to collect, analyse and publish more information to understand how the justice system works, particularly during the pandemic, and identify solutions to improve its operations and access to justice more broadly.²⁷³

A long-standing issue

244. The absence of robust, in-depth data on the operation of courts system is a long-standing problem. The need to address it was recognised by the Ministry of Justice and HMCTS in 2016. Improved data management was a key pillar of the HMCTS reform programme (discussed at paragraphs 21 to 25)²⁷⁴ which would “enable HMCTS to become an increasingly data-driven organisation.”²⁷⁵
245. In October 2017, Susan Acland-Hood said that HMCTS would “build excellent data systems into all our new systems—so that we can keep track of how well they and we are working; learn and improve; and measure the right things”.²⁷⁶
246. In 2018 the then courts minister Lucy Frazer QC MP reiterated the Government’s commitment to information gathering and sharing as a means of securing open justice:

271 Q 6 (Rt Hon Lord Burnett of Maldon)

272 *Ibid.*

273 Q 19 (Professor Richard Susskind OBE), Q 19 (Professor Dame Hazel Genn), Q 48 (Dr Natalie Byrom), Q 99 (James Sandbach), Q 93 (Carol Storer OBE), Q 108 (Simon Davis), Q 108 (Caroline Goodwin QC), Q 108 (Derek Sweeting QC) and written evidence from the Law Society of England and Wales (CIC0028), the Public Law Project (CIC0038); the Transparency Project (CIC0019); Professor Gráinne McKeever (CIC0009) and Dr Kate Leader (CIC0011).

274 HMCTS, ‘HMCTS reform programme projects explained’, (4 June 2019): <https://www.gov.uk/guidance/hmcts-reform-programme-projects-explained> [accessed 1 February 2021]

275 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 1 February 2021]

276 HMCTS, ‘Susan Acland-Hood sets out our priorities for the next phase of courts and tribunals reform’, (26 October 2017): <https://insidehmcts.blog.gov.uk/2017/10/26/susan-acland-hood-sets-out-our-priorities-for-the-next-phase-of-courts-and-tribunals-reform/> [accessed 1 February 2021]

“[the HMCTS reform programme] provides us with a timely opportunity to review and improve some of our practices, such as improving processes to make information readily available to the public as far as is lawful and proportionate, so that future courts and tribunals are effective for the judiciary, legal and media professionals, and the public.”²⁷⁷

247. In October 2019, the Legal Education Foundation published its report by Dr Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice*.²⁷⁸ The report made 29 recommendations for evaluating the impact of reform and ensuring the needs of all court users were fully met in the move to digital justice.
248. HMCTS responded 12 months later, accepting the majority of Dr Byrom’s recommendations and setting out the progress made.²⁷⁹ HMCTS reaffirmed its ambition to “become an increasingly data-driven organisation” and said the pandemic had highlighted “the need for data to support delivery, to monitor and evaluate our response to date to inform plans for the future”.²⁸⁰ It said that work was under way on the 17 recommendations accepted and that it would start to collect data on the outcomes of cases across different court processes.
249. The Legal Education Foundation was unimpressed. Its Chief Executive, Matthew Smerdon, said:
- “If the window of opportunity was vanishing a year ago when we first published the ‘Digital Justice’ report, it is now at risk of disappearing completely. Over the last 12 months, HMCTS has made disappointingly slow progress at moving forward on any of the major recommendations made by Dr Byrom. In our view, COVID-19 cannot be an excuse. Rather, the impact of the pandemic on the court service has shone a spot-light on why it is more important than ever to improve the quality of data collection to enable the digital transformation of the court service.”²⁸¹
250. The Lord Chancellor told us: “obviously the better the data, the better the operations, and indeed the policy”.²⁸² Susan Acland-Hood said that the prompt provision of statistics on court operations was essential for determining how

277 Department for Digital, Culture, Media & Sport and Ministry of Justice, *Letter on Commitment to Open Justice in the Open Government National Action Plan 2018-20* (26 November 2018): <https://www.opengovernment.org.uk/resource/letter-on-commitment-to-open-justice-in-the-open-government-national-action-plan-2018-20/> [accessed 1 February 2021]. Further examples of HMCTS and Government commitments to facilitate the collection and publication of data through the reform programme are set out in Dr Natalie Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice: Report and recommendations* (October 2019), paras 3.1–3.9: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF [accessed 1 February 2021]

278 Dr Natalie Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice: Report and recommendations* (October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF [accessed 1 February 2021]

279 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 1 February 2021]

280 *Ibid.*

281 The Legal Education Foundation, *TLEF statement on HMCTS’ response to its ‘Digital Justice’ Report* (9 October 2020): <https://www.thelegaleducationfoundation.org/articles/tlef-statement-on-hmcts-response-to-its-digital-justice-report> [accessed 1 February 2021]

282 [Q 144](#) (Rt Hon Robert Buckland QC MP)

the courts' estate ought to be managed to meet the changing demands of the pandemic.²⁸³

251. **Justice policy and the operation of the courts should be based on detailed, high-quality data. Robust data collection, analysis and publication are essential for enabling HMCTS to plan its services and improving access to justice, transparency and public faith in the justice system.**
252. **We welcome HMCTS proposals to collect and publish better quality data on the courts service. However, we are concerned that words have not translated sufficiently quickly into action. The HMCTS response to Dr Natalie Byrom's report is framed in broad terms and lacks a clear timeline for enhancing data collation and publication.**
253. **We recommend that HMCTS sets out plans for implementing each of the Byrom recommendations that it has accepted, the steps that will be taken, and the timeline for doing so.**
254. **We recommend that the Ministry of Justice sets out in greater detail its plans for data reform across the courts service, specifying the short- and longer-term projects that will be implemented to enhance the collection, analysis and publication of courts data.**

Courts data during the pandemic

255. HMCTS took steps to improve access to data during the pandemic. It has published data showing the use of audio and video technology since March 2020.²⁸⁴ From June 2020, HCMTS published weekly management information showing the number of outstanding cases in selected courts and tribunals,²⁸⁵ and how this number had changed since early March 2020.²⁸⁶
256. Susan Acland-Hood told us that these data were crucial to court management in response to the pandemic, and were being used alongside internal surveys and third-party research to inform HMCTS activity.²⁸⁷
257. However, our witnesses identified various issues with the collection and publication of courts data.

Data collection and publication

258. The basic process of establishing what data are available to HMCTS, and how much are suited to publication, remains a challenge. In October 2019, Dr Byrom reported that simply “defining the types of data currently collected and stored by HMCTS and mapping the arrangements for accessing this data

283 [Q 132](#) (Susan Acland-Hood)

284 HMCTS, ‘Courts and tribunals data on audio and video technology use during coronavirus outbreak’, (30 April 2020): <https://www.gov.uk/guidance/courts-and-tribunals-data-on-audio-and-video-technology-use-during-coronavirus-outbreak> [accessed 1 February 2021]; HMCTS, ‘HMCTS weekly management information during coronavirus: March 2020 to January 2021’, (11 February 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-january-2021-2020> [accessed 16 February 2021]

285 Magistrates’ Court, Crown Court, Family Court, Social Security and Child Support Tribunal, Immigration & Asylum Tribunal, Employment Tribunal and Special Educational Needs and Disability Tribunal.

286 HMCTS, *HMCTS weekly management information during coronavirus:- March 2020 to February 2021* (11 March 2021): <https://www.gov.uk/government/statistical-data-sets/hmcts-weekly-management-information-during-coronavirus-march-2020-to-february-2021> [accessed 15 March 2021]

287 [Q 132](#) (Susan Acland-Hood)

and making it available is a difficult task.” Her research found that “meeting data requests from internal and external stakeholders is a lengthy and time-consuming process that is currently under-resourced by HMCTS.”²⁸⁸

259. HMCTS confirmed that identifying the available data was not straightforward, as they were held in fragmented legacy systems, some paper-based, and “often difficult to access”.²⁸⁹ In October 2020, HMCTS stated that one of its aims was to catalogue available data to “produce a report describing ... what data is already available on an open and shared basis, what data could be made available on request” and the applicable limits to releasing such information.²⁹⁰
260. **Public access to data is an important part of an open justice system and a key feature of good government. It is vital that data on the operation of the courts be made publicly available, particularly during periods of great change, such as during the pandemic.**
261. **We welcome proposals from HMCTS to catalogue and clarify the data within its systems and to publish more data in an accessible form to facilitate public scrutiny. However, current commitments lack clarity.**
262. **We recommend that HMCTS sets out what steps it will take to catalogue available courts data, including clear timelines for making appropriate data available to the general public.**

Experiences of non-professional users

263. Witnesses expressed concerns about the lack of data on the experiences of non-professional court users during the pandemic. Professor Genn said that data on the experience of professional court users (for example lawyers and judges) were more readily available than data on the experience of their vulnerable, disadvantaged, or lay counterparts.²⁹¹
264. James Sandbach echoed these concerns, saying that it was impossible adequately to assess how the sudden shift to remote hearings was affecting unrepresented and vulnerable litigants: “[w]e do not know who the justice system and the advice system are not helping ... there have been fewer litigants in person than perhaps might have been expected at this time”.²⁹²
265. Both Mr Sandbach and Professor Genn recognised that HMCTS would be unable to collect data about people who do not engage with the system, and that other avenues would need to be explored to assess whether the shift to remote hearings had discouraged cases that might otherwise have been brought.²⁹³

288 Dr Natalie Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice: Report and recommendations* (October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF [accessed 1 February 2021]

289 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 1 February 2021] and [Q 143](#) (Susan Acland-Hood)

290 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 1 February 2021]

291 [Q 19](#) (Professor Dame Hazel Genn)

292 [Q 99](#) (James Sandbach)

293 [Q 19](#) (Professor Dame Hazel Genn) and [Q 99](#) (James Sandbach)

266. Professor Susskind emphasised the urgency of the need to collect data on how changes to the courts system affected different groups:

“If we are to use this experience to help reform our courts system and to take the best of this new way of working to improve access to justice, we simply must know more ... we have to move beyond speculation, anecdote and the personal preferences of individual participants to something much more systematic.”²⁹⁴

267. In October 2019, Dr Byrom recommended that HMCTS consider introducing ID numbers for each court user. Tracking individual litigants in this way would provide a more detailed understanding of how people used the courts. Experts in privacy law and data ethics could be consulted to ensure that the data was collected and stored in a manner that respected legal and ethical requirements.

268. HMCTS did not accept this recommendation. Although it expressed agreement in principle “that HMCTS’ understanding of users of the justice system should be deepened” and that “HMCTS is currently developing approaches to this”, it explained that “[u]nique identifiers for individuals are not part of the current scope of work”.²⁹⁵

269. Dr Byrom also recommended that HMCTS start asking all court users 13 questions designed to assess their level of vulnerability. These included questions on disability, employment, race, and religion. Replies would be optional.²⁹⁶ HMCTS accepted this recommendation but, so far, this data is only being collected from those who directly engage with digital probate services. Otherwise, HMCTS “have begun with collection of data from those who engage directly with [digital Civil, Family and Tribunals] ... while Divorce is scheduled for release soon”.²⁹⁷ This amounts to only a minority of court users.

270. Concerns have been raised about the detrimental impact of remote hearings on those who lack access to technology or who have lower levels of literacy, but the requisite data to address these concerns is not available. Access to justice is therefore at risk.

271. We recommend that HMCTS prioritises the collation of data that will enable it to identify, and the public to scrutinise, the effects of the increased use of digital technology on non-professional court users.

272. Having decided not to introduce unique identifiers for court users, HMCTS has not yet come forward with any alternative method for collecting, analysing or publishing data on how different users experience courts and tribunals.

294 Q 20 (Professor Richard Susskind OBE)

295 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 18 February 2021]

296 Dr Natalie Byrom, *Digital Justice: HMCTS data strategy and delivering access to justice: Report and recommendations* (October 2019): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/835778/DigitalJusticeFINAL.PDF [accessed 1 February 2021]

297 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 18 February 2021]

273. **We recommend that HMCTS sets out its strategy by the end of 2021 for analysing: (a) how different categories of individuals use courts and tribunals and (b) what barriers to access there are for non-professional users.**
274. **HMCTS has accepted the need to collect data on the vulnerability of court users, but has so far taken limited action to gather this data.**
275. **We recommend that HMCTS sets out its plans for collecting the 13 data points identified by Dr Natalie Byrom for assessing the vulnerability of court users. This should include a clear commitment to collecting this data across all court services, both physical and digital, within specified timeframes.**

Protected characteristics under the Equality Act 2010

276. The Equality Act 2010²⁹⁸ makes it unlawful to discriminate on grounds relating to any of the nine protected characteristics defined in that Act.²⁹⁹ Public bodies such as courts and tribunals are subject to the Public Sector Equality Duty, according to which they must, in the exercise of their functions, have due regard to the need to eliminate unlawful discrimination, harassment and other conduct prohibited by the Act.
277. Many witnesses expressed concern about the lack of data collected by HMCTS on the protected characteristics of court users.³⁰⁰ This was a particular concern in the context of the recent rise in remote hearings, which risk disadvantaging elderly and disabled litigants (age and disability are protected characteristics under the Act).³⁰¹
278. In October 2020 HMCTS said that “work has already started on the collection of more consistent, higher quality data on protected characteristics ... We began to ask users for protected characteristics data in live reformed services from August 2020, and will continue to do so”.³⁰²
279. **There are concerns that remote justice is disadvantaging those with protected characteristics. The longer the delay to the collation and publication of the requisite data, the greater the risk that our justice system is failing to protect users against unlawful discrimination.**
280. **We welcome HMCTS plans to collect data on users’ protected characteristics. It is regrettable that progress has, to date, been slow and that current plans lack clear deadlines or targets.**
281. **We recommend that HMCTS sets out specific deadlines and targets for the collection, evaluation and publication of data on the protected characteristics of court users.**

298 [Equality Act 2010](#)

299 The protected characteristics are: (a) age; (b) disability; (c) gender reassignment; (d) marriage and civil partnership; (e) pregnancy and maternity; (f) race; (g) religion or belief; (h) sex; and (i) sexual orientation.

300 [Q 48](#) (Dr Natalie Byrom), [Q 108](#) (Simon Davis), and written evidence from the Equality and Human Rights Commission ([CIC0037](#)) and the Public Law Project ([CIC0038](#))

301 Written evidence from the Equality and Human Rights Commission ([CIC0037](#))

302 HMCTS, *Making the most of HMCTS data: HMCTS’ full response and update to Dr Byrom’s recommendations* (9 October 2020): <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report> [accessed 1 February 2021]

Remote hearings' influence on case outcomes

282. The Public Law Project said that more research was needed “on the effectiveness of online hearings and the effect they have on substantive outcomes”.³⁰³ It suggested that “[a] cautious approach to the future use of virtual proceedings must be adopted until there has been systematic collection of data by HMCTS and robust evaluation of virtual proceedings, particularly in relation to outcomes and engagement levels for participants”.³⁰⁴
283. Professor Genn said that research suggested that a litigant’s chances of success in certain tribunal hearings appeared to depend on whether they opted for a paper or in-person hearing.³⁰⁵ Transform Justice said there was “growing evidence of a correlation between defendants appearing on video and receiving more punitive criminal justice outcomes.”³⁰⁶
284. In Government-funded studies published in 2010 and 2020, correlation was observed between defendants appearing on video and those defendants receiving immediate custodial sentences.³⁰⁷ Those defendants who appeared face to face received comparatively fewer custodial sentences. This suggests that dealing with defendants on video may disadvantage defendants during sentencing hearings.
285. The Government said that it was not tracking the impact of remote hearings on case outcomes. Baroness Scott of Bybrook, the Government’s spokesperson on the courts, said: “At present for most jurisdictions the only information is a manual data collection via a ‘situation report’ (to provide overall picture of use of audio/video) and is not attached to cases.” The only exception was magistrates’ courts, where “there is a case marker to show if defendant appears via audio/video”.³⁰⁸
286. **Research suggests that the format of a hearing may have a substantive impact on the case outcome. If that is true, the shift to remote hearings in response to the pandemic must be scrutinised closely. It is vital that sufficient data are collected to assess the impact of remote hearings on outcomes. This is necessary to justify and inform the continued use of remote hearings during the pandemic and in future.**
287. **We recommend that HMCTS collects data on remote hearings and corresponding case outcomes so that the effects of remote hearings can be analysed and published.**

303 Written evidence from the Public Law Project ([CIC0038](#))

304 *Ibid.*

305 [Q 24](#) (Professor Dame Hazel Genn)

306 Written evidence from Transform Justice ([CIC0001](#))

307 Ministry of Justice, *Virtual Court pilot: Outcome evaluation* (20 December 2010): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/193633/virtual-courts-pilot-outcome-evaluation.pdf [accessed 4 March 2021]; Sussex Police & Crime Commissioner and the University of Surrey, *Video Enabled Justice Evaluation* (March 2020): <https://www.sussex-pcc.gov.uk/media/4851/vej-final-report-ver-11b.pdf> [accessed 4 March 2021]

308 Written Answer [HL11556](#), Session 2019-21

CHAPTER 5: TECHNOLOGY AND THE FUTURE OF THE JUSTICE SYSTEM

288. In May 2020, early in the pandemic, the Lord Chief Justice said that “there will be no going back to February 2020” for the courts.³⁰⁹ Speaking later that year, the Lord Chancellor agreed: “Returning to the status quo would be a massively missed opportunity. Although Covid has sent us some really grave and dreadful challenges, the experience of technology in the courts is one that I want to be positive about and work positively to further improve.”³¹⁰

289. In Chapter 2, we considered the impact of remote hearings on the justice system during the pandemic. In this chapter we explore the future use of technology in the courts.

Future use of remote hearings

290. Virtual proceedings have been necessary to keep the justice system operating during the pandemic, maintain social distancing and prevent the backlog getting even worse. In the longer term, we heard widespread support among witnesses for their use in certain circumstances.

291. There are downsides to handling some types of proceeding remotely. Case management conferences, preliminary matters, trials without evidence, particularly where both sides are represented, and commercial cases were all seen to work effectively.³¹¹ Other types of proceeding were perceived to be less suitable, particularly those involving an assessment of credibility, asylum or benefits appeals,³¹² and those that involved the discussion of sensitive issues in live evidence, as in family and criminal cases.³¹³

292. Regardless of the type of case, more data and analysis are needed on the effects of remote proceedings on the outcomes of cases and the satisfaction of participants in them (see Chapter 4). There is insufficient research at present to be certain about the effects of virtual hearings,³¹⁴ but there is enough evidence to suggest that caution is required in expanding their use beyond the areas where they are universally seen to work well.³¹⁵

293. Any expansion of remote proceedings will require measures to address the concerns about access to justice that arise. Inexperienced litigants, those

309 Q 6 (Rt Hon Lord Burnett of Maldon)

310 Q 135 (Rt Hon Robert Buckland QC MP)

311 Written evidence from the Public Law Project (CIC0038) and The Civil Justice Council, and: Legal Education Foundation, *The impact of Covid-19 measures on the civil justice system: Report and recommendations*, May 2020: <https://research.thelegaleducationfoundation.org/research-learning/funded-research/the-impact-of-covid-19-measures-on-the-civil-justice-system-report-and-recommendations> [accessed 1 February 2021]

312 Written evidence from a Benefits Advisor (CIC0044), Citizens Advice Stevenage (CIC0021), Council of Her Majesty’s Circuit Judges (CIC0039), the Equality and Human Rights Commission (CIC0037) and Jonathan Berkson (CIC0015)

313 Written evidence from the Equality and Human Rights Commission (CIC0037) and the Public Law Project (CIC0038). See, also, Nuffield Family Justice Observatory, *Remote hearings in the family justice system: a rapid consultation* (May 2020): https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/nfjo_remote_hearings_20200507-2-.pdf [accessed 1 February 2021]

314 Q 24 (Professor Dame Hazel Genn), Q 135 (Rt Hon Robert Buckland QC MP) and written evidence from the Crown Prosecution Service (CIC0036)

315 Q 24 (Professor Dame Hazel Genn) and written evidence from Transform Justice (CIC0001). See, also, ‘Justice: a train ride too far? The (not so) hidden cost of court reform’, *The Law Society of England and Wales* (29 July 2019): <https://www.lawsociety.org.uk/topics/blogs/justice-a-train-ride-too-far> [accessed 1 February 2021]

with low literacy or digital literacy, and those with mental health or other issues, can be at a significant disadvantage understanding and participating in remote proceedings.³¹⁶ Professor Genn said it was:

“quite clear already from the evidence of the Civil Justice Council rapid review, and from intelligence I am getting from people on the ground, that regular clients at the lower end of the income spectrum are not making the inquiries that we would expect; they cannot access the forms of advice that they would have done in the past”.³¹⁷

294. Access to legal advice, before and during proceedings, is essential.³¹⁸ Professor Richard Susskind said: “there needs to be ways for lawyers and clients to communicate with one another during the hearings, because they are not sitting together and are not able to write notes or talk to one another”.³¹⁹
295. To support all this, better and more reliable technology is required alongside guidance to ensure it is used effectively and consistently. Systems should aim to minimise the burden on non-professional court users.³²⁰ For court staff and judges more investment is needed in virtual document management systems and training to use new systems.³²¹ Professor Susskind said it was “quite hard to handle cases where there are large bodies of documents involved. We do not have good document management systems to support these kinds of hearings”.³²²
296. Remote proceedings have the potential to significantly strengthen the principle of open justice, but only if the technology and the processes for such hearings allow the public and the media access to them.³²³
297. **Remote hearings can significantly improve the delivery and accessibility of justice in appropriate cases. For procedural and preliminary hearings and certain types of civil cases, properly resourced remote hearings can deliver a convenient and effective alternative to physical hearings.**
298. **The Ministry of Justice and HMCTS must continue to deliver technological change to enhance the capabilities of courts and tribunals to make effective use of remote hearings in appropriate cases. The impetus for change during the pandemic will need to be sustained in the longer-term, given the scale of change required and the challenge of the backlog of cases.**
299. **Operational changes introduced in response to the pandemic should not be regarded as irreversible where they have risked undermining access to justice, open justice or consistency in the application of the law. The pandemic should not be used as an excuse to initiate**

316 Written evidence from Transform Justice ([CIC0001](#)), the Public Law Project ([CIC0038](#)), the Equality and Human Rights Commission ([CIC0037](#)) and the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

317 [Q 24](#) (Professor Dame Hazel Genn)

318 [Q 44](#) (Dr Natalie Byrom) and written evidence from Transform Justice ([CIC0001](#))

319 [Q 20](#) (Professor Richard Susskind OBE)

320 [Q 44](#) (Dr Natalie Byrom)

321 Written evidence from the Council of Her Majesty’s Circuit Judges ([CIC0039](#))

322 [Q 20](#) (Professor Richard Susskind OBE)

323 Written evidence from the Public Law Project ([CIC0038](#)), the Transparency Project ([CIC0019](#)) and Transform Justice ([CIC0001](#))

permanent changes without prior consultation and suitable evaluation of their effects.

300. **We recommend that the Government continues to invest in and develop the technology for remote hearings and the guidance to support it, learning from its use during the pandemic. There should be an ongoing process of engaging with researchers and the legal sector to ensure that access to justice is secured during the development and implementation of technology to facilitate remote hearings.**

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Impact of the pandemic on the justice system

1. The reduction in Government funding in the decade preceding the pandemic left courts vulnerable going into the COVID-19 crisis. A significant number of court buildings had been closed, fewer staff were employed by HMCTS and the number of litigants in person had increased. (Paragraph 20)
2. Delays to the original timetable for the HMCTS reform programme meant that a number of planned improvements to court IT systems had not been implemented by the time the COVID-19 pandemic suddenly rendered courts reliant on remote technology. (Paragraph 25)
3. The courts were not prepared for disruption on the scale caused by the COVID-19 pandemic. The 2016 Government simulation of a flu outbreak, referred to as Exercise Cygnus, did not consider the potentially devastating impact of a pandemic on courts and tribunals in England and Wales. Risk assessments undertaken by the Ministry of Justice and HMCTS also failed to recognise the disruption that a pandemic could cause. (Paragraph 27)
4. It is regrettable that the potential impact of a pandemic on the courts, a crucial public service, was not considered by those responsible for overseeing the justice system. Had the risk been identified in advance, the urgent need for modernised court IT systems and additional court estate might have been recognised sooner. (Paragraph 28)
5. We recommend that all future risk assessments prepared by the Government, the Ministry of Justice and HMCTS consider the impact of major threats to the operation of courts and tribunals. The results of those risk assessments should be made publicly available on at least an annual basis, and include a statement of the steps that have been taken to manage the identified risks. It is essential that the operation of courts and tribunals be adequately protected as part of all future Government risk planning. (Paragraph 29)
6. The extent to which the Government adequately prepared for the COVID-19 pandemic remains unclear. The Government has not published any documentation regarding the implementation of the recommendations from Exercise Cygnus, other than a redacted version of the initial 2016 Exercise Cygnus report. (Paragraph 30)
7. We recommend that the Government publish all papers and minutes relating to Exercise Cygnus including a statement of the actions that were taken in response to its recommendations before March 2020. (Paragraph 31)
8. The rapid adoption of remote technology had an uneven impact across the courts service. Senior and appellate courts adapted relatively well to audio and video hearings. Here, the judiciary and practitioners are generally well-resourced, the issues for determination are often focussed on specific points of law and there is generally no live evidence to test. The lower courts faced greater difficulty, particularly when assessing witness evidence and attempting to cater for unrepresented litigants. (Paragraph 51)
9. Virtual hearings appear to have been effective where there has been: (a) adequate and fully functioning technology; (b) with which all parties are fully conversant; (c) deployed in preliminary, interlocutory or procedural cases. (Paragraph 52)

10. Lawyers, judges and court staff faced considerable challenges to adjust to remote hearings in short order. We pay tribute to the efforts made to keep the justice system operating during the pandemic despite challenges posed by outdated court IT systems. (Paragraph 61)
11. Acknowledging the significant efforts of those working in the courts system should not obscure the scale of the challenges that they faced. Drastically reduced funding for the justice system in the preceding decade left courts and tribunals in a difficult place going into this period of crisis. (Paragraph 62)
12. The pandemic has highlighted the necessity for courts and tribunals to be furnished with adequate funding and technology. The modernisation and digitisation of courts and tribunals has the potential to strengthen the rule of law by improving access to the law and the timely delivery of justice. (Paragraph 63)
13. We recommend that the Government sets out a timetable within three months for implementing the HMCTS reform programme, including a clear commitment to the funding that will be provided to ensure its prompt implementation. (Paragraph 64)
14. We recommend that the Government ensures training and guidance is available to all judges and court staff operating virtual hearings urgently and, at the latest, by the end of 2021. It is vital that those working in courts are comfortable with the technology used for remote hearings, and that they adopt a consistent approach to its implementation and use. (Paragraph 65)
15. The decline in use of the Cloud Video Platform (the common IT platform developed for use in the criminal courts) represents a missed opportunity to make the best use of technology to ease pressures on the justice system. (Paragraph 73)
16. The Cloud Video Platform has not been adopted as widely as might have been expected and its potential to ease demand on the criminal justice system has not been fully realised. The withdrawal of police support for video remand hearings on this Platform due to cost and service concerns is contributing to the already significant pressures on courts and prisons. This is a cause for serious concern. (Paragraph 74)
17. Video remand hearings reduce the delay between defendants being detained and appearing in court and reduce the need for prison and court services to transport defendants to physical hearings. We welcome plans to introduce legislation that will enable greater use of video remand hearings. (Paragraph 75)
18. We recommend that the Ministry of Justice, the Home Office and police forces across England and Wales make concerted efforts to increase the use of video remand hearings as a matter of urgent priority. The Government must report to Parliament on the progress made within six months. (Paragraph 76)
19. We recommend that the Government prepares and publishes a statement setting out: (a) the lessons it has learned from the uneven adoption of new technologies during the pandemic; (b) how these lessons will inform the future development and implementation of the HMCTS reform programme; and (c) how the Government plans to support the courts and other public services to make full and effective use of new technologies introduced in future. (Paragraph 77)

20. Remote proceedings were, and continue to be, necessary to maintain the administration of justice during the pandemic. In appropriate cases, audio and video hearings have the potential to enhance access to justice by increasing the number of hearings that can take place, driving greater efficiency in court timetabling, and improving access for court users with disabilities or other special requirements. (Paragraph 96)
21. Remote hearings are not appropriate in all cases or for all types of court users. Reduced face to face contact risks alienating litigants, as it can be difficult to conduct remote hearings with an appropriate level of empathy and humanity in sensitive cases. (Paragraph 97)
22. The remote format also poses a number of practical challenges that make it more difficult for ordinary people to fully participate or to represent themselves. Limited IT access or bandwidth, distractions at home, sensory impairments, or English as a second language are just some of the features that threaten to undermine effective participation. (Paragraph 98)
23. Access to justice requires that the protection of the law be accessible to all. There should not be one law for the rich, legally represented or digitally well-furnished, and another for everyone else. To limit the potentially exclusionary effects of remote hearings, greater support for court users from HMCTS, judges and courts staff is required. (Paragraph 99)
24. We recommend that the Government provides simple and accessible guidance for ordinary court users, available in advance of remote hearings, providing information on the technological practicalities of attending different kinds of hearing. (Paragraph 100)
25. We recommend that the Government ensures sufficient guidance is available to all judges and court staff on how to facilitate the needs of court users and ensure procedural justice. It is vital that those working in the justice system are sufficiently equipped to cater for common challenges and to secure a fair process for all court users. (Paragraph 101)
26. We consider the future use of technology in the courts system in Chapter 5. (Paragraph 102)
27. Access to legal advice is an essential component of access to justice. The reduction in the courts' overall workload has had a detrimental impact on the publicly funded and legally aided sectors of the legal profession, giving rise to a real possibility of a reduction in the number of available legal advisers practising in these areas. We are particularly concerned that some users may have been unable to access legal advice at all during the pandemic, with the consequence that they have been unable to enforce their legal rights. The reduction in legal aid funding over the preceding decade has exacerbated these barriers to justice. (Paragraph 114)
28. Affordable legal representation not only enhances access to justice, it also supports the efficient operation of the justice system. Those who represent themselves in court proceedings can create additional work for judges and court staff: hearings take longer on average, and more hearings take place that could have been resolved by alternative routes with accurate legal advice at an early stage. Improving legal aid will help to ensure that the courts run as efficiently as possible to reduce the growing case backlog. (Paragraph 115)

29. We welcome the additional funding that has been allocated to the legal aid sector, but the scale of the challenges for court users and the legal sector suggests that considerable additional funding will be required in the coming years. (Paragraph 116)
30. We recommend that the Government further increases the funds available for legal aid to match the reality of need. (Paragraph 117)
31. The pandemic has exposed the systemic shortcomings in the publication of essential information related to court hearings, especially in the lower courts. (Paragraph 124)
32. We recommend that HMCTS sets out how it will improve the availability of information in the courts for the press and the public. This should include timely, complete, and consistent court listings (for physical and remote hearings alike), documents relating to cases (such as written arguments in appropriate cases), and free access to all court judgments. This work should be integrated with efforts to improve the collection, management, and publication of data on the courts (Paragraph 125)

Managing the backlog

33. The backlog in the criminal courts is neither acceptable nor inevitable. Years of underinvestment in the criminal justice system contributed to a significant backlog that predated the pandemic. (Paragraph 141)
34. The backlog has now reached record levels. The consequent delay to criminal trials is undermining the rule of law, access to justice and risks damaging public confidence in the justice system. Urgent Government action and investment is necessary to reduce the backlog in the criminal courts. (Paragraph 142)
35. We recommend that the Government provides the assistance and funding necessary to ensure that: (a) all cases in the Crown Court are tried within one year of the plea and trial preparation hearing; and (b) the average time from charge to disposal in the magistrates' courts falls to 8 weeks or fewer. The Government should also report to Parliament annually on the progress made in respect of both matters. (Paragraph 143)
36. We recommend that the Government sets out how it is responding to the fact that court delays appear to have resulted in a reduction in prosecutions and convictions. (Paragraph 145)
37. The growing remand population and the extension to custody time limits have resulted in a serious diminution of the right to liberty and the rule of law. The significant impact of the backlog on un-convicted defendants, innocent until proven guilty, underscores the urgent need for action to reduce the backlog in the criminal courts. (Paragraph 154)
38. We welcome the Government's decision to exclude defendants under the age of 18 from the extension to custody time limits. But the proportion of children in custody who are on remand, and the ethnic make-up of this cohort, is unacceptable. (Paragraph 155)
39. We recommend that the Government reports to Parliament by the end of 2021 on the steps it will take to reduce the proportion of children on remand in custody. Depriving a child of liberty should always be a last resort and for the

shortest possible time. Alternatives to custody, such as enhanced monitoring arrangements, should be utilised wherever possible. (Paragraph 156)

40. We recommend that any further extension to custody time limits be scrutinised and debated by Parliament before taking legal effect. The extension of custody time limits is a significant policy decision with serious implications for the right to liberty and the rule of law. Adequate Parliamentary scrutiny and debate is essential for a change of such fundamental constitutional importance to take effect. (Paragraph 157)
41. Despite efforts to limit the backlog in the family courts, the number of outstanding cases remains high. Delay in resolving disputes concerning families and children can itself cause significant harm. HMCTS has estimated that it may take three years to return to pre-pandemic levels. Such a delay would be unacceptable. (Paragraph 168)
42. We recommend that the Government explores additional ways to reduce the backlog in the family courts as a matter of urgent priority. Additional funding for temporary courtrooms in suitable buildings, greater use of retired and part-time judges, and greater use of alternative dispute resolution would help to reduce the backlog in the family courts. (Paragraph 169)
43. The backlog in the Employment Tribunal could lead to justice being delayed for many who are already significantly suffering as a result of COVID-19. The prompt resolution of legal disputes is critical for the lives and well-being of individuals, as well as the effective management of businesses. The timely delivery of justice also underpins the rule of law. Backlogs in employment and housing repossession cases threaten to undermine these fundamental aims of our justice system. (Paragraph 174)
44. The stay on housing possession claims protected private and social renters from eviction during the COVID-19 pandemic, and was a significant step in providing security of tenure for most tenants in England and Wales during a difficult period. However, it has contributed to the backlog in the courts, further undermining the timely delivery of justice and placing additional pressure on the justice system. (Paragraph 177)
45. We recommend that the Government considers how alternatives to litigation might be implemented to alleviate the volume of housing repossession cases awaiting disposal in the courts. (Paragraph 178)
46. We welcome the Government's investment to increase court capacity to help reduce the backlog. HMCTS worked hard to adapt court buildings after the first lockdown and Nightingale courtrooms have opened at impressive speed. However, despite these efforts, the backlog across jurisdictions remains unacceptably high. (Paragraph 181)
47. We recommend that measures to address the backlog be demonstrably effective, well-funded and implemented urgently. Actions taken to reduce the backlog must also be manageable for those working in the justice system, including judges, court staff and legal professionals. (Paragraph 182)
48. We welcome the Lord Chancellor's commitment to tackling the backlog. However, targeting "normal positions" is vague. We are concerned that HMCTS does not have clear targets or deadlines for the recovery of service in the criminal courts. This means it is not possible to assess whether the funding made available to HMCTS is sufficient to clear the criminal

backlog, or whether steps being taken in response to the growing backlog are adequate or effective. (Paragraph 186)

49. We recommend that the Government sets out detailed plans for reducing the backlog of criminal, family and employment cases, including a timeline for implementation. (Paragraph 187)
50. Significant investment has resulted in the opening of several Nightingale courtrooms to increase capacity during the pandemic, which we welcome as a solution to reduce the backlog by scaling up court capacity. However, it is unclear whether this additional courts estate is being used effectively. (Paragraph 191)
51. It is concerning that the Government does not publish data showing the number of cases, sitting hours or sitting days taking place in Nightingale courtrooms. This makes it difficult to assess whether these additional courtrooms are being effectively utilised. Reports from the media suggest that utilisation is well below what might be expected. 60 Nightingale courtrooms are planned by the end of March 2021, yet less than half of these appeared to be open at the beginning of the month. (Paragraph 192)
52. We recommend that the Government be required to explain precisely how they are using the Nightingale courtrooms, how many cases are being heard in each of these new venues, and the factors it takes into account when identifying new venues for additional Nightingale courtrooms. (Paragraph 193)
53. However stringent the measures in courts, physical hearings require court users to travel from homes, offices, and prisons to attend. Keeping the courts operating and maintaining face-to-face hearings will involve a degree of risk of exposure to COVID-19. (Paragraph 198)
54. Given the severity of the backlog in the Crown Court and the urgent need to clear it, we recommend that urgent cases and jury trials continue to be heard in a physical setting where no alternative is feasible. The Government must continue to ensure that courts are as safe as possible during the pandemic. (Paragraph 199)
55. We recommend that the Government takes additional steps to encourage and facilitate remote hearings, especially when the risk of infection is at its highest. The decline in the use of the Cloud Video Platform suggests a missed opportunity to keep court users safe by holding more hearings remotely. (Paragraph 200)
56. The Government must ensure that it is making the maximum use of existing facilities, and that courtrooms are not sitting idle during core business hours. (Paragraph 205)
57. Before extending court operating hours, we recommend that HMCTS ensure that it is making maximum use of normal court hours, existing court estate and Nightingale courtrooms, as well as avoiding any restrictions on judges sitting. (Paragraph 206)
58. Nightingale courtrooms enhance courtroom capacity and will, if used effectively, reduce the backlog. Whilst we welcome the sixty Nightingale courtrooms that will open in response to the pandemic, we draw attention to the fact that the backlog in the criminal courts exceeds half a million.

It has been suggested that Crown Court capacity would need to double to return to pre-Covid backlog levels by 2024. In the employment tribunal the backlog exceeds 50,000 and the family courts backlog exceeds 10,000. Sixty additional courtrooms are insufficient to address the urgency and scale of backlogs across the justice system. (Paragraph 208)

59. We recommend that further funding be made available to HMCTS to significantly increase the number of Nightingale courtrooms open by the end of 2021. (Paragraph 209)
60. We recommend that the Government further increases the number of sitting days, particularly in the Crown, magistrates' and family courts and in employment tribunals. (Paragraph 211)
61. The more judges or tribunal members that are permitted to sit, the greater the opportunity for cases to be heard. In March 2021 the Government said that it planned to legislate to increase the mandatory retirement age for judicial office holders. The planned reforms will enable existing judges to remain in judicial office until they are 75 years of age (rather than 70), and will enable retired judges to sit after retirement until they reach the age of 75. (Paragraph 212)
62. We welcome Government proposals to increase the mandatory retirement age for judicial office holders. This will increase the number of judges who are able to sit and, therefore, the number of cases that can take place. (Paragraph 213)
63. We recommend that the Government takes additional steps to further enhance judicial capacity. Shortages in the number of available judges could be alleviated through greater use of recorders in the Crown Court and further investment in the recruitment and training of new judges. (Paragraph 214)
64. We welcome the Lord Chancellor's plans to enable greater use of remote technology in jury trials. (Paragraph 219)
65. We recommend that the Government continues to pilot remote jury trials as a further potential solution to the significant criminal trial backlog. (Paragraph 220)
66. Any change to the jury system, whether by allowing defendants to choose judge-only trials in serious cases, or by reducing the number of jurors required for a Crown Court trial, would fundamentally alter a core element of our criminal justice system. Such changes could only be justified as a means of addressing the backlog if there was no other way to return to pre-pandemic levels of outstanding cases in the Crown Court. (Paragraph 232)
67. The jury system should not be altered without full parliamentary debate preceded by evidence on the potential impact of changes on case outcomes, access to justice and public perceptions of the criminal justice system. (Paragraph 233)
68. Greater use of alternative and online dispute resolution could reduce workload in the civil courts and thereby reduce the backlog of civil cases both in present circumstances and in the future. However, we remain concerned about those for whom financial barriers may make alternative dispute resolution an unaffordable solution. (Paragraph 236)

69. We recommend that HMCTS facilitates and encourages greater use of alternative dispute resolution in appropriate civil cases, subject always to the condition that access to justice is secured through its use. (Paragraph 237)
70. It may not be possible for the Government to target a fixed number of outstanding cases across all jurisdictions whilst the pandemic continues. (Paragraph 239)
71. We recommend that the Government sets out clear plans, both short-term and long-term, for addressing the backlog in all jurisdictions, along with timelines and targets for implementation. Clarity is necessary to facilitate scrutiny of the adequacy of the Government's response and to restore faith in the justice system. (Paragraph 240)

Data in the courts system

72. Justice policy and the operation of the courts should be based on detailed, high-quality data. Robust data collection, analysis and publication are essential for enabling HMCTS to plan its services and improving access to justice, transparency and public faith in the justice system. (Paragraph 251)
73. We welcome HMCTS proposals to collect and publish better quality data on the courts service. However, we are concerned that words have not translated sufficiently quickly into action. The HMCTS response to Dr Natalie Byrom's report is framed in broad terms and lacks a clear timeline for enhancing data collation and publication. (Paragraph 252)
74. We recommend that HMCTS sets out plans for implementing each of the Byrom recommendations that it has accepted, the steps that will be taken, and the timeline for doing so. (Paragraph 253)
75. We recommend that the Ministry of Justice sets out in greater detail its plans for data reform across the courts service, specifying the short- and longer-term projects that will be implemented to enhance the collection, analysis and publication of courts data. (Paragraph 254)
76. Public access to data is an important part of an open justice system and a key feature of good government. It is vital that data on the operation of the courts be made publicly available, particularly during periods of great change, such as during the pandemic. (Paragraph 260)
77. We welcome proposals from HMCTS to catalogue and clarify the data within its systems and to publish more data in an accessible form to facilitate public scrutiny. However, current commitments lack clarity. (Paragraph 261)
78. We recommend that HMCTS sets out what steps it will take to catalogue available courts data, including clear timelines for making appropriate data available to the general public. (Paragraph 262)
79. Concerns have been raised about the detrimental impact of remote hearings on those who lack access to technology or who have lower levels of literacy, but the requisite data to address these concerns is not available. Access to justice is therefore at risk. (Paragraph 270)
80. We recommend that HMCTS prioritises the collation of data that will enable it to identify, and the public to scrutinise, the effects of the increased use of digital technology on non-professional court users. (Paragraph 271)

81. Having decided not to introduce unique identifiers for court users, HMCTS has not yet come forward with any alternative method for collecting, analysing or publishing data on how different users experience courts and tribunals. (Paragraph 272)
82. We recommend that HMCTS sets out its strategy by the end of 2021 for analysing: (a) how different categories of individuals use courts and tribunals and (b) what barriers to access there are for non-professional users. (Paragraph 273)
83. HMCTS has accepted the need to collect data on the vulnerability of court users, but has so far taken limited action to gather this data. (Paragraph 274)
84. We recommend that HMCTS sets out its plans for collecting the 13 data points identified by Dr Natalie Byrom for assessing the vulnerability of court users. This should include a clear commitment to collecting this data across all court services, both physical and digital, within specified timeframes. (Paragraph 275)
85. There are concerns that remote justice is disadvantaging those with protected characteristics. The longer the delay to the collation and publication of the requisite data, the greater the risk that our justice system is failing to protect users against unlawful discrimination. (Paragraph 279)
86. We welcome HMCTS plans to collect data on users' protected characteristics. It is regrettable that progress has, to date, been slow and that current plans lack clear deadlines or targets. (Paragraph 280)
87. We recommend that HMCTS sets out specific deadlines and targets for the collection, evaluation and publication of data on the protected characteristics of court users. (Paragraph 281)
88. Research suggests that the format of a hearing may have a substantive impact on the case outcome. If that is true, the shift to remote hearings in response to the pandemic must be scrutinised closely. It is vital that sufficient data are collected to assess the impact of remote hearings on outcomes. This is necessary to justify and inform the continued use of remote hearings during the pandemic and in future. (Paragraph 286)
89. We recommend that HMCTS collects data on remote hearings and corresponding case outcomes so that the effects of remote hearings can be analysed and published. (Paragraph 287)

Technology and the future of the justice system

90. Remote hearings can significantly improve the delivery and accessibility of justice in appropriate cases. For procedural and preliminary hearings and certain types of civil cases, properly resourced remote hearings can deliver a convenient and effective alternative to physical hearings. (Paragraph 297)
91. The Ministry of Justice and HMCTS must continue to deliver technological change to enhance the capabilities of courts and tribunals to make effective use of remote hearings in appropriate cases. The impetus for change during the pandemic will need to be sustained in the longer-term, given the scale of change required and the challenge of the backlog of cases. (Paragraph 298)
92. Operational changes introduced in response to the pandemic should not be regarded as irreversible where they have risked undermining access to justice,

open justice or consistency in the application of the law. The pandemic should not be used as an excuse to initiate permanent changes without prior consultation and suitable evaluation of their effects. (Paragraph 299)

93. We recommend that the Government continues to invest in and develop the technology for remote hearings and the guidance to support it, learning from its use during the pandemic. There should be an ongoing process of engaging with researchers and the legal sector to ensure that access to justice is secured during the development and implementation of technology to facilitate remote hearings. (Paragraph 300)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Beith (until 28 January 2021)
Baroness Corston
Baroness Doocey (from 28 January 2021)†
Baroness Drake
Lord Dunlop
Lord Faulks
Baroness Fookes
Lord Hennessy of Nympsfield
Lord Hope of Craighead (from 28 January 2021)
Lord Howarth of Newport
Lord Howell of Guildford
Lord Pannick (until 28 January 2021)
Lord Sherbourne of Didsbury
Baroness Suttie (from 28 January 2021)
Baroness Taylor of Bolton (Chair)
Lord Wallace of Tankerness

Declarations of interest

Lord Beith
Honorary Bencher of the Middle Temple

Baroness Corston
No relevant interests

Baroness Doocey
No relevant interests

Baroness Drake
No relevant interests

Lord Dunlop
No relevant interests

Lord Faulks
Chair of the Independent Review of Administrative Law and practising barrister

Baroness Fookes
No relevant interests

Lord Hennessy of Nympsfield
No relevant interests

Lord Hope of Craighead
No relevant interests

Lord Howarth of Newport
No relevant interests

Lord Howell of Guildford
No relevant interests

Lord Pannick
Practising barrister

Lord Sherbourne of Didsbury
No relevant interests

Baroness Suttie

No relevant interests

Baroness Taylor of Bolton (Chair)

No relevant interests

Lord Wallace of Tankerness

No relevant interests

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests/>

Professor Jeff King, University College London, and Professor Stephen Tierney, University of Edinburgh, acted as legal advisers to the Committee. They both declared no relevant interests.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at <https://committees.parliament.uk/work/298/constitutional-implications-of-covid19/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those witnesses marked ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Rt Hon Lord Burnett of Maldon, Lord Chief Justice of England and Wales	QQ 1-17
**	Professor Richard Susskind OBE, President, Society for Computers and Law	QQ 18-30
**	Professor Dame Hazel Genn, Professor of Socio-Legal Studies at University College London and Director of the University College London Centre for Access to Justice	QQ 18-30
**	Dr Natalie Byrom, Director of Research, Legal Education Foundation	QQ 40-48
**	James Sandbach, Director of Policy and External Affairs, Law Works	QQ 91-104
**	Carole Storer OBE, Interim Director, Legal Action Group	QQ 91-104
**	Cris McCurley, Partner, Ben Hoare Bell LLP	QQ 91-104
**	Simon Davis, former President, Law Society of England and Wales	QQ 105-118
**	Caroline Goodwin QC, former Chair, Criminal Bar Association	QQ 105-118
**	Derek Sweeting QC, former Vice-Chair, now Chair, The Bar Council	QQ 105-118
**	Susan Acland-Hood, former Chief Executive, HM Courts and Tribunals Service	QQ 132-151
**	Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice	QQ 132-151

Alphabetical list of all witnesses

**	Susan Acland-Hood, former Chief Executive, HM Courts and Tribunals Service (QQ 132-151)	
	Association of Chief Trading Standards Officers and National Trading Standards	CIC0005
	A Benefits Advisor	CIC0044
	Jonathan Berkson, Partner, Bermans Solicitors	CIC0015

- ** Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice ([QQ 132-151](#))
- * Rt Hon Lord Burnett of Maldon, Lord Chief Justice of England and Wales ([QQ 1-17](#)) [CIC0045](#)
- ** Dr Natalie Byrom, Director of Research, Legal Education Foundation ([QQ 40-48](#))
 - The Chartered Institute of Legal Executives [CIC0025](#)
 - Citizens Advice Gateshead [CIC0026](#)
 - Citizens Advice Stevenage [CIC0021](#)
 - His Honour Peter Collier QC, Retired Senior Circuit Judge [CIC0018](#)
 - The Council of Her Majesty's Circuit Judges [CIC0039](#)
 - Criminal Cases Review Commission [CIC0051](#)
 - Crown Prosecution Service [CIC0036](#)
- ** Simon Davis, former President, Law Society of England and Wales ([QQ 105-118](#))
 - Employment Law Bar Association [CIC0035](#)
 - Employment Lawyers Association [CIC0027](#)
 - Equality and Human Rights Commission [CIC0037](#)
- ** Professor Dame Hazel Genn, Professor of Socio-Legal Studies at University College London and Director of the University College London Centre for Access to Justice ([QQ 18-30](#))
- ** Caroline Goodwin QC, former Chair, Criminal Bar Association ([QQ 105-118](#))
 - Hogan Lovells International LLP [CIC0031](#)
 - Howard League for Penal Reform [CIC0485](#)
 - Tristan Kirk, Correspondent, London Evening Standard [CIC0042](#)
 - The Law Society of England and Wales [CIC0028](#)
 - The Law Society of Scotland [CIC0033](#)
 - Dr Kate Leader, University of York [CIC0011](#)
 - Lord Justice Lindblom, Senior President of Tribunals [CIC0046](#)
- ** Cris McCurley, Partner, Ben Hoare Bell LLP
- Professor Gráinne McKeever, Ulster University ([QQ 91-104](#)) [CIC0009](#)
- Mishcon de Reya LLP [CIC0023](#)
- Norfolk Community Law Service [CIC0030](#)
- Public Law Project [CIC0038](#)

- ** James Sandbach, Director of Policy and External Affairs, Law Works ([QQ 91-104](#))
 - Sheffield ME and Fibromyalgia Group [CIC0013](#)
 - Spotlight on Corruption [CIC0029](#)
- ** Carole Storer OBE, Interim Director, Legal Action Group ([QQ 91-104](#))
 - The Supreme Court of the United Kingdom [CIC0024](#)
- ** Professor Richard Susskind OBE, President, Society for Computer and Law ([QQ 18-30](#))
- ** Derek Sweeting QC, former Vice-Chair, now Chair, The Bar Council ([QQ 105-118](#))
 - Transform Justice [CIC0001](#)
 - The Transparency Project [CIC0019](#)
 - Transport for London [CIC0016](#)

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Constitution Committee is undertaking an inquiry into the constitutional implications of COVID-19.

It is exploring the impact of the pandemic, and the Government's response to it, in relation to the operation of the courts, the ability of Parliament to function effectively and hold the Government to account, and the use and scrutiny of emergency powers.

The Committee is calling for evidence on the workings of the courts and tribunals in response to the pandemic and what the future of the justice system might look like as a result.

The Committee welcomes written submissions on any aspect of this topic, and particularly on the issues and questions set out below. You need not address all the questions in your submission. We welcome contributions from all interested individuals and organisations. The deadline for submissions is Thursday 20 August at 12 noon.

Questions

Virtual proceedings

1. How effective are virtual court and tribunal proceedings? What are the benefits, disadvantages and challenges of virtual proceedings?
2. What is the impact of virtual proceedings on (1) litigants, (2) lawyers, (3) judges, (4) court staff, (5) media, (6) the public? What support is available to them and what is required?
3. What are the implications of virtual proceedings for: (1) access to justice, (2) participation in and fairness of proceedings, (3) transparency and media reporting, (4) adversarial vs inquisitorial styles of proceeding?
4. What difference, if any, might virtual proceedings make to the outcomes of cases?
5. What further research or data are required in order to understand the impact of virtual proceedings?
6. Are the IT systems in the courts fit for purpose to support virtual proceedings?
7. Are certain types of case more/less suitable for virtual proceedings? If so, which ones?
8. Should virtual court proceedings continue after the end of social distancing? If so, for what types of proceedings? If so, how might they be used to extend, rather than just maintain, access to justice?
9. What legal changes are needed to facilitate virtual proceeding in future? To what extent would the proposals included in the Courts and Tribunals (Online Proceedings) Bill 2017-19 meet those requirements?
10. What changes should be made to HM Courts and Tribunal Service's courts modernisation programme as a result of the operation of virtual proceedings during the pandemic?

Physical proceedings and jury trials

11. What measures are required to maintain the safety of people attending courts in person? Is the courts estate capable of providing socially-distanced justice?
12. What are the implications of virtual proceedings for the programme of courts modernisation and court closures?
13. Is there a case for changing the number of jurors required for trials to ensure that cases progress and social distancing can be maintained? If so, what is the minimum acceptable number of jurors?
14. What are the benefits and risks of replacing juries with judges for some types of case?

Progress of cases

15. What types of case are proceeding, both physically and virtually, during lockdown? What types of case are not making progress and what are the implications of that?
16. What types of case should be prioritised during the pandemic?
17. What affect has the pandemic had on the large backlog of criminal cases and what are the consequences of this? How should the backlog be addressed?

