Data gaps on the court backlog in England and Wales

What we don't know about the backlog in our courts, and recommendations for improvement

1. Introduction

Criminal courts in England and Wales are facing their biggest crisis in decades. The latest figures show that over 400,000 cases are waiting to be heard.[1] Cases are taking longer to move through the system, the proportion of ineffective trials has increased and victims are waiting longer for justice than any time on record.[2]

Even worse, the effective backlog may be more severe than headline figures suggest. The Institute for Government observes that cases delayed during the pandemic were

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[1] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023)

[2] Institute for Government, 'Performance Tracker 2022' (2022)

disproportionately jury trials, which take longer than other cases: accounting for the additional time jury trials need, the post-pandemic backlog may effectively have doubled.[3]

The factors driving the court backlog are undeniably complex - it would be naive to suggest there is obvious and easily-captured data that would reveal all, or provide a magic wand for tackling the delays. But we think there are two areas where better data would provide more insight into what is working and what is not, allow more targeting of scrutiny and resource, and support those who help ensure that the Government and the courts are working:

1) **What is the nature of the backlog, and where are delays worst?** All cases have different demands, some take longer and require more staffing and resources than others. Without a clear understanding of the cases in the backlog, it will be difficult to assess the scale of response needed, or how well the Government is providing that response. This could mean more information on delays in individual courts, or the proportion of trials that are ineffective for certain offences, or the proportion of cases with guilty pleas in the backlog.

2) **How effective are the Government's interventions?** During the pandemic the MoJ introduced reforms to reduce the backlog, including expanding the use of remote hearings, establishing Nightingale courts, and increasing magistrates' sentencing powers. Now most of these reforms are being continued as part of the Government's long-term plan, better data and evaluation is needed to understand how well they are helping.[4]

This briefing lays out some questions asked by stakeholders where official data has been lacking; reviews the data available; and draws on these findings to make recommendations for areas where data can be improved.

A clearer understanding of what the backlog looks like and the causes affecting it would help policymakers channel attention and resources to the parts of the system most in need. It would provide a better picture of the efficacy of costly Government interventions and, most importantly, would support the victims of crime currently trapped in the system.

2. The characteristics of the backlog

2.1 Timeliness: which cases take longest

Improving case timeliness is one of the MoJ's three objectives in its long-term action plan.[5] Protracted court delays can have devastating impacts on victims, and two-thirds of victims

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[3] *Ibid*

[4] The Law Society, 'Five steps to help fix chaos in our courts' (2022)

[5] This action plan does not appear to be published online, but is referenced in National Audit Office, 'Reducing the backlog in criminal courts' (2021)

feel their case takes too long to get to court.[6] Longer delays create stresses elsewhere in the criminal justice system, while support services have struggled to cope with demand.[7]

Currently, the MoJ publishes data tools for exploring timeliness at both Crown Courts and magistrates' courts, as well as experimental timeliness statistics, which track the average number of days from the date of an offence to the final court decision.[8] However, these statistics are lacking in at least two surprising areas.

Timeliness at individual courts

Crucially, MoJ official statistics don't tell us exactly where cases are taking longer to progress, at the level of individual courts, only by region (e.g London or North East).[9] Yet it is at the court level that more resources can be deployed, or that community attention can focus.

Dramatic differences in the overall *caseload* at individual courts have received attention[10], and the NAO has reported on the complex range of factors that underlie regional variation.[11] It seems likely there is also substantial variation in timeliness at court level, yet there are no official statistics to study.[12]

Timeliness data at the individual court level would provide scrutiny over which courts are succeeding or struggling to tackle cases in the backlog, and would help ensure that resources are directed accordingly. Our research suggests that the data source for these statistics does record individual court codes, so this should be straightforward to provide. **We recommend MoJ include breakdowns by individual court and offence in its timeliness data tools, help stakeholders identify which courts are taking the longest to progress cases, and direct resources and support accordingly.**

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[6] Victims Commissioner, 'Enormous court backlogs mean victims of crime are facing years of unacceptable delay in their quest for justice' (2022)

[7] Mayor of London, 'Mayor calls for urgent action to tackle the court backlog' (2022)

[8] Ministry of Justice, 'Criminal court statistics' (2022) [Crown Court timeliness tool, Magistrates' courts timeliness tool, End to end timeliness tool]

[9] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Crown Court timeliness tool]

[10] The Telegraph, 'Delayed cases in one London court double that of the whole of Wales, figures show' (2023)

[11] National Audit Office, 'Reducing the backlog in criminal courts' (2021)

[12] [This reference added post-publication, on 27 March 2023] In February 2023, the Justice Committee asked Mike Freer, the Parliamentary Under Secretary of State for the Ministry of Justice, for data on timeliness at individual courts, and were told that this data was published within the MoJ's 'Crown Court Information' dashboard - see Ministry of Justice, 'Letter from the Minister for Courts and Legal Services on the redesigned criminal justice system Delivery Data Dashboard' (2023). However, this data is not published as part of official statistics, meaning that it is not subject to statistical assurance, and is not published on the new CJS delivery dashboards; it also only records timeliness by broad offence group rather than offence type, limiting its usefulness.

Timeliness for specific offences

MoJ timeliness statistics are not broken down by detailed offences: its Crown Court timeliness data tool is broken down by broad offence type (e.g sexual offences, or violence against the person) plus adult rape, while the magistrates' court data tool provides no data on offences. Offence types are broad categories and do not show how long it takes to conclude more serious offences - e.g. 'violence against the person' can range from common assault to murder. More granular data on offences would provide a better picture of how long more severe offences take to pass through courts.

In 2022, the Justice Select Committee recommended that the Government set itself timeliness targets for "specific offences".[13] Going one step further and publishing timeliness data by specific offences would help justice stakeholders, MPs and the public hold the Government to account for meeting these targets. Similarly, the new GOV.UK criminal justice system delivery data dashboards do report case timeliness for adult rape, but only otherwise aggregates timeliness for 'all crime', which is too broad a category to be useful[14].

As before, our research suggests that the MoJ's underlying data sources for these statistics do record detailed offence types, using standardised offence codes, so we think that it would be straightforward for the MoJ to add detailed offence types to its data tools. **We recommend MoJ include breakdowns by specific offence in its timeliness statistics, to help stakeholders identify delays affecting particularly serious or complex offences, or case types of particular interest, and track the MoJ's performance at tackling these.**

2.2 Offence types: cases in the backlog

MoJ data on the Crown Court backlog allows users to break down outstanding court cases by offence group.[15] This is helpful to understand whether the backlog is composed of cases that are typically more time-consuming for courts to deal with, such as sexual offences.

Curiously, no comparable data is available for magistrates' courts.[16] As for Crown Courts, this data would clearly be useful to understand the nature of the current backlog. MPs have asked for data on the flow of certain case types through the magistrates' courts, such as rape, fraud and theft cases, but have been told that no data is available.[17]

We recommend that data on disposals, receipts and outstanding cases in the magistrates' courts should be broken down by offence type. The rollout of Common Platform across magistrates' courts should make this possible. HMCTS' reporting

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[13] Justice Select Committee, 'Court capacity' (2022)

[14] GOV.UK, 'Criminal justice system delivery data dashboard - Improving timeliness' (2023)

[15] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Crown Court cases received, disposed and outstanding tool]

[16] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Magistrates' courts cases received, disposed and outstanding tool]

[17] TheyWorkForYou, 'Robbery: Criminal Proceedings' (2022)

database, One Performance Truth (OPT), already extracts data on offences from Common Platform, so it should be relatively straightforward to report on offence type.

2.3 Plea types: guilty pleas in the backlog

Not all cases in the backlog place the same demands on court services. Jury trials, which only take place when a defendant has pleaded not guilty, are typically far more time-consuming - they account for under 20% of Crown Court cases but take up over 75% of court time.[18] They are also likely to require more court space to accommodate a jury, legal professionals and often multiple defendants.[19]

Many jury cases were delayed during the pandemic as they could not be heard online, so they heavily populate the current backlog. These delays disproportionately affect victims of sexual offences, where roughly half of defendants plead not guilty.[20] There is evidence too that defendants are also pleading not guilty at higher rates.[21]

However, the MoJ's statistics on the Crown Court backlog are not broken down by plea type.[22] The Institute for Government has argued that this means that the headline backlog statistics do not "capture the true scale of unmet need".[23] Researchers told us that a breakdown of cases in the backlog by date, offence and current plea would be helpful for understanding the complexity of the current backlog.

We recommend that the MoJ include the current plea of defendants in their Crown Court backlog data tools. Common Platform records the plea of a defendant when they first enter a magistrates' court: it should thus be straightforward to incorporate this information into backlog statistics for cases that are sent to Crown Courts. This would enable a more accurate understanding of the composition of the backlog, which the current headline figure obscures.

2.4 Effectiveness: the reasons for vacated trials

One of the MoJ's key measures for how well the criminal justice system works is the proportion of cases that are effective, i.e cases that do not need to be delayed or

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[18] Institute for Government, 'Performance Tracker 2022' (2022)
[19] National Audit Office, 'Reducing the backlog in criminal courts' (2021)
[20] *Ibid*
[21] In 2022 Sir Mark Rowley, the Met Commissioner, said that in the past 80% of suspects would plead guilty before their case got to trial, which has fallen to 20% in some areas. See The Telegraph, 'Majority of criminals pleading not guilty to exploit court backlog' (2022)
[22] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Crown Court cases received, disposed and outstanding tool]
[23] Institute for Government, 'Performance Tracker 2022' (2022)

rescheduled.[24] Criminal trials that do not go ahead as planned are categorised as one of the following:[25]

- **Ineffective trials** - on the date the trial is planned to go ahead, it is rescheduled
- **Cracked trials** - on the date the trial is planned to go ahead, the listing is withdrawn and not relisted, typically because prosecution is dropped or the defendant offers an acceptable plea
- **Vacated trials** - prior to the trial date, the trial is removed from court listings.

Improving the proportion of trials that are effective is important for the MoJ. Victims and witnesses lose confidence in the system if their trials do not go ahead as planned. Failed trials take up resources and create rescheduling and opportunity costs.

MoJ's 'Trial Effectiveness in the Courts' data tool helps users understand some of the causes driving trial effectiveness, by supplying data on the reasons for cracked and ineffective trials.[26] Although far more trials are vacated than are ineffective,[27] vacated trials likely are a smaller contributor to the court backlog as there is typically time to replace them with another hearing. However, vacated trials can be aborted as late as a day before the trial is meant to take place, which can lead to problems for stakeholders, and there is no guarantee a replacement trial will occur.[28] Stakeholders also stress that vacated trials increase pressures on the prison population, as defendants are held on remand for longer.[29]

Curiously, no data is published on *why* trials are vacated, though MPs and other stakeholders have asked the MoJ for data on the reasons for vacated or collapsed cases, typically without success.[30] In 2015, the MoJ did provide ad hoc data on the number of trials vacated for reasons related to the prosecution[31] - but to our knowledge nothing similar has been published since.

We do know that Xhibit, a Crown Court case management system, at one point had the function to record the reasons for vacated trials in a free text field.[32] Understandably, it would be difficult to report and publish structured data from unstructured text. However, we know that courts do collect data on the reasons for ineffective and cracked cases, so it is unclear why a similar process cannot be used for vacated trials.

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[24] National Audit Office, 'Efficiency in the criminal justice system' (2016)
[25] HMCS and CPS, 'Joint effective, cracked, ineffective and vacated trials in the Crown Court and the Magistrates' Courts' (2010)
[26] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Trial effectives at the criminal courts tool]
[27] *Ibid*
[28] London Criminal Justice Board, 'London Criminal Justice Board meeting minutes - 26 May 2021' (2021)
[29] The Times, 'Innocent people are stuck in jail while ministers dither' (2020)
[30] UK Parliament, 'Written Question - Rape: Trials' (2023); WhatDoTheyKnow, 'Information about frequency and reasons that result in hearings being vacated by court' (2022); UK Parliament, 'Written Question - Magistrates' Courts: Greater Manchester' (2020)
[31] UK Parliament, 'Written Question - Trials: Costs' (2015)
[32] UK Parliament, 'Written Question - Rape: Trials' (2022)

In February 2023, the Justice Committee asked the MoJ whether Common Platform could be used to record and publish data breaking down the total number of vacated trials by reason. Mike Freer, the Parliamentary Under Secretary for the Ministry of Justice, responded that he would ask his "officials to explore data available in the Common Platform and explore the option to include this information for [future publication]".[33]

It's important to understand the most common reasons why trials are vacated, so that CJS partners can work to reduce these reasons in future. **We recommend the MoJ explore how to collect structured information on the reasons for vacated trials, in response to demand for this information - potentially via the new Common Platform case management system - and add this to published statistics.**

3. The effectiveness of interventions: the need for better evaluation

The MoJ has set a target to reduce the Crown Court backlog from over 60,000 cases to 53,000 by March 2025,[34] which is still 20,000 cases higher than pre-pandemic levels.[35] In October 2021, MoJ and HMCTS secured £477m of Treasury funding to meet this target.[36]

During the pandemic, measures were introduced to keep the criminal justice system functioning, many of which have since been adopted permanently. Understandably, when the emergency measures were introduced during the pandemic, speedy implementation was prioritised over setting out full evaluation plans.

But now the measures are set to extend beyond the pandemic, justice stakeholders are concerned about the lack of evidence on the efficacy of these reforms at reducing the backlog, and potential adverse effects or unintended consequences.[37] And there are concerns over whether adequate data is being collected by the Government to truly understand the impact of reforms. As argued by the Legal Education Foundation, if better data is not collected "the Ministry will remain unable to accurately assess which policies are working to reduce the backlog. Lack of data will continue to undermine the ability of the department to understand what works, design effective policies and deliver value for money for the taxpayer".[38]

The following are some of the key measures taken by the Government, and where stakeholders have called for evidence of their impact to be published. **We recommend that the MoJ set out for review how it intends to measure and report the outcomes for its**

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[33] [This paragraph and footnote added post-publication, on 27 March 2023] Ministry of Justice, 'Letter from the Minister for Courts and Legal Services on the redesigned criminal justice system Delivery Data Dashboard' (2023)

[34] Justice Select Committee, 'Oral evidence: The work of the Ministry of Justice, HC 1085' (2023)

[35] Ministry of Justice, 'Criminal court statistics quarterly: July to September 2022' (2023) [Crown Court cases received, disposed and outstanding

[36] HM Treasury, 'Autumn Budget and Spending Review 2021' (2021)

[37] The Law Society, 'Five steps to help fix chaos in our courts' (2022)

[38] Legal Education Foundation, 'Written evidence to the Public Accounts Committee' (2021)

upcoming evaluations of the Nightingale programme, as well as publishing robust data on the use of remote hearings. We also recommend that plans for frequent and granular reporting are built into the design of future measures to tackle the backlog.

3.1 Remote hearings

Within the first few weeks of the pandemic, remote hearings were rolled out across criminal courts in England and Wales. Evidence on the impact of remote hearings on reducing the backlog is mixed. They are typically used for shorter, routine hearings, which limit possible efficiency gains.[39] When surveyed, two-thirds of the judiciary felt that remote hearings took longer than in-person hearings,[40] and most magistrates thought they did not make courts run more efficiently, blaming the poor quality of technology and training.[41]

Between March 2020 and May 2021, HMCTS published weekly management information on the use of remote hearings in courts.[42] This data was discontinued, despite concerns from stakeholders.[43] We recommend that HMCTS restarts publishing regular data on how many remote hearings take place, where they are used most frequently, and for what type of hearings.

3.2 Magistrates' sentencing powers

In 2022, magistrates' prison sentencing powers were doubled from 6 to 12 months for triable either way offences (cases that could be heard in either the magistrates' or Crown Court), with the expectation this would free up 1,700 extra Crown Court days a year.[44] In March 2023, it was reported that the additional powers had been paused, but could be reinstated in the future if necessary.[45]

At the time of introduction, many stakeholders warned this reform could *increase* the backlog, for two reasons.[46] First, it was likely to lead to more appeals and retrials in the Crown Courts. And second, defendants would be more likely to choose to bring their cases to the Crown Court, if there was no difference in potential sentencing.

When it introduced the measures, the MoJ committed to developing a dashboard to monitor court data, intended to help it "understand the impact of the extension of magistrates' courts sentencing powers".[47] However, little detail or data appears to have

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[39] Institute for Government, 'Performance Tracker 2022' (2022)

[40] HMCTS, 'Evaluation of remote hearings during the COVID-19 pandemic' (2021)

[41] Magistrates Association, 'Magistrates' courts and Covid-19' (2022)

[42] HMCTS, 'HMCTS weekly use of remote audio and video technologies May 2020 to May 2021' (2021)

[43] The Transparency Project, 'Remote hearings: the HMCTS evaluation' (2022); The Law Society, 'Written evidence to the Justice Select Committee' (2020)

[44] GOV.UK, 'Magistrates to help tackle backlog as sentencing powers doubled' (2022)

[45] The Guardian, 'Magistrates 'incredibly disappointed' as sentencing powers scaled back' (2023)

[46] The Howard League for Penal Reform, 'Why extending the sentencing powers of magistrates is a bad idea' (2022); BBC, 'Magistrates to get power to jail offenders for a year' (2022)

[47] Ministry of Justice, 'Extending Magistrates' Court Sentencing Powers' (2022)

been shared since about either the impact of the extension, or the reason for pausing it. We recommend that the Government publishes a formal evaluation on the impact that extending magistrates' sentencing powers had on the court backlog, justice outcomes and the prison population, to inform future policymaking.

3.3 Nightingale courts

Between July 2020 and June 2021, HMCTS opened up 72 temporary ('Nightingale') courtrooms, to increase capacity during the pandemic[48], 30 of which have since had their leases extended.[49] Many judges and legal professionals have noted the positive impact Nightingale courts had in freeing up court space.[50] But some stakeholders have questioned whether Nightingale courts have had the infrastructure to take on Crown Court cases, and warned that there is not enough data to answer questions on which interventions have been effective.[51]

Following a recommendation from the Justice Select Committee, the Government has committed to providing a "comprehensive evaluation" of the Nightingale court programme by the end of the 2022/23 financial year.[52] We recommend this evaluation should set out how better data will be provided on the use of Nightingale courts.

About us and acknowledgements

The Centre for Public Data is a non-partisan, non-profit research and advocacy organisation that works to improve the quality of UK public data. We have a particular interest in data gaps - areas where questions of significant public interest cannot be answered due to a lack of public data or statistics.

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Special thanks to the Institute for Government for sharing their expertise with us. Any errors are our own. We would be delighted to receive feedback and corrections - please get touch at contact@centreforpublicdata.org.

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[48] National Audit Office, 'Reducing the backlog in criminal courts' (2021)
[49] GOV.UK, 'Nightingale Courts extended to support justice recovery' (2022)
[50] National Audit Office, 'Reducing the backlog in criminal courts' (2021)
[51] Justice Select Committee, 'Oral evidence: (a) Court Capacity, HC 284' (2021) Q32, Q33; West Midlands Regional PCC, 'Written evidence to Justice Committee' (2020)
[52] Justice Select Committee, 'Court capacity: Government Response to the Committee's Sixth Report of Session 2021–22' (2022)