

# **Impact of the pandemic on the Criminal Justice System**

A joint view of the Criminal Justice Chief  
Inspectors on the Criminal Justice System's  
response to Covid-19

**January 2021**



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# 1. Foreword

In sharp contrast to so much else in this strangest of years, the criminal justice system (CJS) did not pause or stop because of Covid-19. Indeed, it could not. Crimes continued to be committed, reported and investigated; cases were charged and progressed; detainees remained in the adult and youth secure estates; and those under the care of youth offending and probation services on 23 March 2020 (when national lockdown measures were introduced across England and Wales) remained so.

We congratulate the determined efforts and commitment of all those who work in the CJS. From our individual inspection reports, and looking across the system as a whole, we can see clearly the swift and effective decisions made, and the focus on the health and safety of service users, which has allowed the CJS to continue to operate.

However, this broad-brush summary sweeps over the sheer number of changes – some small, some large – wrought by Covid-19 necessity. From our position of overview of police, Crown Prosecution Service (CPS), prisons and probation, we can see that the cumulative impact of these changes is both clear and profound.

This impact is also not yet fully felt. We comment in this report on the plight of prisoners kept locked up for most of the day because of Covid-19, and of young people on Youth Offending Team caseloads whose schooling and contact with youth offending services have been severely disrupted by the pandemic and an inability to access digital services. There are different concerns in policing and the CPS. However, it is only when cases reported during lockdown have progressed through the entirety of the system that the true cumulative impact will be known.

We have grave concerns that this impact will prove deleterious to victims, witnesses and defendants alike. The significant backlogs in the Crown Court<sup>1</sup> in particular, and the ripple effects these are having on all parts of the system are problems which must be tackled now. This should be done firmly, and with a clear and unwavering focus on resolving the problem through an approach which considers the whole system. Lengthy waits – whether for investigations to conclude, court dates to be found or unpaid work and rehabilitation programmes to be carried out – benefit no one, and risk damage to many.

While each sector can establish its own recovery plans, these backlogs, if not dealt with, will create and maintain severe delays and inefficiencies in the system for years to come. The CJS in England and Wales was already

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<sup>1</sup> While we do not inspect the courts, their place at the heart of the CJS means no overview of the system would be complete without reference to them. Findings related to the courts' response to Covid-19 are taken from published sources.

excessively fragmented and under-resourced. It will be unable to manage this significant challenge without considerable resourcing, planning and joint work.

All agencies need to take stock individually and together, and review the changes they've made and the learnings from them. This will help ensure those innovations they wish to retain (or further expand) can be properly evaluated, and the resources and training needed to sustain them can be worked out and factored in.

We call on all agencies to work together to ensure the CJS can recover from the extreme pressures caused by Covid-19. But they cannot do this alone. Government must provide the funding, time and access to expertise to allow the system to recover.

We wish formally to record our thanks and admiration for all staff working in the criminal justice system, whether in policing, the CPS, the courts, prisons, probation services and youth justice, who have shown great commitment and dedication during this time of national emergency. We also record, with sadness, our condolences to the families and friends of those in the criminal justice system who have died from Covid-19.

## About this report

This report provides a cross-system view of how the CJS reacted in the immediate aftermath of the first national lockdown (23 March to 10 May 2020), and of how the system has managed since. All four criminal justice inspectorates<sup>2</sup> have carried out inspections of our respective agencies' responses to Covid-19. This report sets out findings from these inspections, as well as cross-cutting themes, and highlights the successes, challenges and problems that the CJS has faced and still faces.

Findings are divided into those summarising the responses of agencies and the system to Covid-19, and those detailing our assessment of the continuing impact of these changes. We highlight risks and innovative practice throughout, before concluding with a section on the greatest risk we see facing the CJS as it continues to respond to and recover from the pandemic.

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<sup>2</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services; Her Majesty's Crown Prosecution Service Inspectorate; Her Majesty's Inspectorate of Prisons; Her Majesty's Inspectorate of Probation.

## 2. Response

## Initial response: swift, pragmatic decisions to keep the system functioning

**2.1.** The level of planning for a pandemic varied across the system, as did the challenges faced by each body. It is, however, a testament to those working in the criminal justice system (CJS) that the challenges faced at the outset were in the main grasped by the police, Crown Prosecution Service (CPS), courts, youth offending services, probation services and prisons, who were all able to maintain at least a basic level of essential services.

**2.2.** Across the system, when the effect of the pandemic began to be felt, we found evidence of swift and sensible decision-making. Agencies reviewed their processes and practices, identified areas of risk and threats to the fundamental running of their parts of the CJS, and acted accordingly. This was against a backdrop of extreme uncertainty, in which predictions of infection levels among staff were frequently high, and changes to lockdown restrictions swift and often with little notice. This makes the initial, strong response of all agencies all the more impressive.

Findings from across the system
Police forces immediately mobilised a national coordination centre and implemented a national learning programme, Operation Talla, to swiftly collate and disseminate good practice around England and Wales. At force level, Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) saw evidence of excellent scanning and consideration of changes that needed to be made to estate, processes and guidance to help keep people safe.
The CPS was able to take full advantage of digitisation to be able to work remotely without any major interruption to services. The level of service provided throughout has been effective, with digital capability being core to the continuation of the business. This is a major achievement.
The prison service responded swiftly and decisively to keep prisoners safe, containing the spread of the virus and reducing fatalities by restricting the prison regime, quarantining new arrivals, isolating those with symptoms and shielding the most vulnerable.
Emergency delivery models were put in place across probation services, most offices shut, and staff worked from home. Supervision switched from face-to-face to phone contact for 80-90% of cases. There were doorstep checks for higher-risk cases, including those involving domestic abuse. Face-to-face



appointments took place on release from prison, for TACT offenders and homeless individuals.

The alignment of Youth Offending Teams with local authorities and their ability to plan with and alongside partners allowed them to respond flexibly to local need. There was a common emphasis on keeping offices open for emergency assistance, switching most staff to homeworking. An effective balance was struck between responding to children's needs and risks.

In March 2020, almost half of all courts were closed and jury trials were paused to minimise social interaction between court users. Jury trials were reintroduced in May and are now taking place in more than three quarters of Crown Court buildings. The Criminal Courts Recovery Plan (see paragraph 4.3) set out a range of measures designed to help the courts return to normal business and minimise delays. The courts moved to increase the use of video technology, allowing more cases to be heard remotely. Case priorities included a focus on public protection.

## Acceleration of digital working

**2.3.** In the early days of the first national lockdown, a number of changes were made to ensure that the system could continue to function. Much of this related to digital developments and a move to working virtually for many services. From police forces taking statements by phone and accepting electronic signatures for victim statements, to the introduction of virtual prison visits for relatives, all required innovation as well as effective leadership of flexible and adaptable workforces that were delivering the core business. We found that many infrastructure programmes were accelerated to attain the digital environment needed to allow the CJS to operate during the restrictions.

### Findings from across the system

Police increased their use of telephone or video calls to discuss incidents, take statements and complete crime reports, with some innovative digital solutions. For instance, Sussex Police started using remote interviews for domestic abuse victims which leave no trace on a caller's phone. This is a positive development during the pandemic, keeping service levels in place and reducing face-to-face contact.

There was an agreement between the police and the CPS to increase the level of digital transfer of evidence. Before the first national lockdown, about half of the 43 forces were using a digital platform to share evidence. By the end of this period, 39 forces had moved to digital evidence sharing.

Her Majesty's Courts and Tribunals Service (HMCTS) worked to roll out a courts video platform which allowed court users to attend virtually, and also increased the use of prisoner video links.

Probation service staff switched from face-to-face to phone contact for the vast majority of their cases. Court-based probation staff used video links to provide sentencing advice.

Youth offending services were equipped with technology for homeworking and for establishing and operating out of court and referral order panels virtually.

A secure video calling facility was introduced across the prison estate to provide an alternative to in-person social visits, which had been suspended. This is a welcome development, which the inspectorates have repeatedly recommended since 2017.

A number of prisons were provided with a small number of tablet computers to allow prisoners to contact their families in exceptional circumstances. These were flexibly used in some establishments, for example to livestream funerals and enable prisoners to see new-born children or relatives nearing the ends of their lives.

## **Positives of digital working for partnership working**

**2.4.** Several routine multi-agency meetings were held virtually rather than face-to-face. These included case conferences for individuals under multi-agency public protection arrangements (MAPPA), multi-agency risk assessment conferences (MARAC) and other case conference meetings between probation and youth offending services. They were also used by organisations such as the police and local authorities and to facilitate multi-agency child safeguarding meetings.

**2.5.** Our inspections of police, probation and youth offending services found signs that this had particular benefits. Attendance from all participants increased, and better attendance led to swifter, more informed decision-making, improved coordination activity, and in some cases earlier interventions to help protect and safeguard children.

## **Highlighting the uneven digital playing field**

**2.6.** Digital CJS platforms, systems and processes were varied, inconsistent and largely unconnected before the pandemic. While progress to address this accelerated (through necessity) over the course of 2020, this was frequently inconsistent. For instance:

- Youth justice staff found it difficult to communicate with counterparts in young offender institutions (YOIs). This hampered work to support the resettlement in the community of children leaving custody.
- Police forces were using multiple conferencing platforms, making it harder to communicate over force boundaries in some cases.
- In prisons, the roll-out of the secure video calling facility has been frustratingly slow. By autumn 2020, some prisons still did not have this facility. While some prisoners had positive experiences with video calls, generally prisoner take-up of video calls was low, and the service was underused at most prisons that inspectors visited. In prisoner surveys carried out from July to December 2020, 82% of prisoners said that they had not had a video call in the last month.

**2.7.** Service users were also disadvantaged in some cases because of inequities in their technological provision. For instance, the digital divide was stark for children under youth offending supervision, almost half of whom did not have regular and reliable access to digital technology or an internet connection. This had a negative impact on their contact with youth offending services and their access to education and training.

## **Risk: reductions in education and rehabilitation provision**

### **Education**

**2.8.** In prisons, partnership working was severely affected by the pandemic. Withdrawal or remote working by partner agencies had an adverse effect on outcomes for prisoners. For example, for several months education providers were not able to provide face-to-face education in prisons. In prisoner surveys which took place from July to December 2020, only 21% of prisoners who responded said it was easy to access education. Prisons often provided in-cell education and activity packs instead. Some 57% of prisoners who responded to Her Majesty's Inspectorate of (HMI) Prisons' survey during the same period said they had received an in-cell activity pack. Fewer than half (48%) of prisoners who had received a pack found it to be useful.

**2.9.** Similarly, all face-to-face education was initially suspended for children in custody following a Her Majesty's Prison and Probation Service (HMPPS) national directive, despite the fact that the majority of children in custody would meet the Department for Education (DfE) definition of 'vulnerable' (entitling them to attend school during the first national lockdown if they were living in the

community). While face-to-face education was reinstated in one private sector YOI after a week, this face-to-face education was not consistently provided for a much longer period in the public sector YOIs. Instead, children were offered in-cell education packs and activities.

**2.10.** Outside custody, education provision during the first national lockdown was poor and arrangements did not take account of pre-existing difficulties in accessing education. DfE definitions of 'vulnerability' did not specifically prioritise children on youth offending service caseloads. If they were not included at a local level, they were not entitled to attend school. Lack of suitable IT and internet connection severely hampered home learning.

### **Rehabilitation**

**2.11.** Probation services are now increasing rehabilitation activity, which fell to very low levels during the first national lockdown due to restrictions on face-to-face group activity. Provision of accredited programmes has increased since June 2020, but by October 2020 it was still at less than 60% of pre-Covid levels. Too many individuals' sentences are expiring before they have developed the skills to move away from further offending. This could have a detrimental impact on the reputation of community sentencing. Judges, magistrates and the public must have confidence in sentencing, and they need to be assured that individuals will complete appropriate rehabilitation activity.

### **This risk is compounded by limits to wider support services in some areas**

**2.12.** Many individuals under probation supervision welcomed the switch from face-to-face to telephone contact. However, the most vulnerable individuals with complex needs struggled. During the first national lockdown, there was reduced access to support services for those with mental health conditions and drug and alcohol problems. Remote contact with probation officers was not enough to meet these individuals' needs.

**2.13.** Lack of face-to-face contact and remote working by community rehabilitation companies based in prisons often resulted in poor understanding of a prisoner's needs on release, and a resettlement plan which was not meaningful or effective.

**2.14.** More positively, immediate housing outcomes for probation service users improved during the pandemic under the government's 'Everyone In' initiative to prevent homelessness and through the regional Homelessness Prevention Teams established by the National Probation Service. However, HMI Prisons' inspectors found that some prisoners were still being released with no fixed abode and accommodation was too often temporary rather than longer-term.

While we welcome the extension of government support to January 2021, there is a lack of clarity on longer-term housing provision which is essential to rehabilitation and reducing reoffending.

**2.15.** For many children known to youth offending services, welfare problems became more acute during the pandemic, and isolation from friends and changes to normal support networks often exacerbated existing difficulties. We were concerned to hear about an increase in adolescent-on-parent violence in some households where children were locked down with their parents. This highlighted a lack of provision for the victims of this type of inter-familial abuse.

**2.16.** Youth offending services are relatively fragmented; there are more than 150 services aligned with local authorities. This makes it difficult for inspectors to get a clear view of how all services are coping with the pandemic, and to ensure all children are receiving high-quality support rather than subject to a 'postcode lottery'. HMI Probation will watch closely to see if the impact of the pandemic on council budgets affects funding for youth offending services.

### 3. Impact

## Staff wellbeing

**3.1.** All agencies were clear that staff health, wellbeing and safety were paramount. For police and prisons, this was more difficult to manage as the need to provide frontline services on a large scale without the ability to work virtually meant that some staff had to continue to attend work in person (during a time when the impact of catching the virus was very much unknown). The inspectorates found:

- The police adapted well to the change in demand and the necessity to change working practices, although there were initial difficulties in identifying and sourcing the right personal protective equipment.
- The Crown Prosecution Service (CPS)'s principal objective, as well as continuity of service, was staff wellbeing. Many staff said that the values of the CPS were obvious throughout, and that the reaction to the crisis has been a clear demonstration of the commitment of the CPS to staff wellbeing.
- Most probation and youth offending service staff have felt supported by their leaders and managers. Some organisations had made hardship funds available. Additionally, the level of both formal and informal peer support was outstanding.

**3.2.** Across the system, however, even for those who could work at home, this was sometimes a difficult experience. Homeworking did not suit everyone; some people struggled to align home schooling and caring commitments with the demands of their work.

## Service user experience<sup>3</sup>

**3.3.** As noted above, the criminal justice system (CJS) continued to operate, because agencies responded swiftly to keep the fundamentals in place. However, this broad-brush summary masks the multitude of small and large adjustments made at every stage of the system. The long-term effect of these is not known; it should be the subject of careful analysis in the future.

**3.4.** In this section, we set out what we know about the cumulative effect on the service user.

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<sup>3</sup> Service users is a collective term to cover all people who come into contact with the CJS who are not working within the system, for example victims, defendants, witnesses and prisoners.

**3.5.** When reporting a crime during the first national lockdown, a typical person would be:

- more likely to report it online
- more likely not to be visited in person by the police
- more likely to have a telephone or video call to discuss the incident, take statements and complete crime reports
- more likely to have the case resolved through an out of court disposal
- more likely to see the suspect released under investigation instead of bailed
- less likely to have their case prioritised for charging decisions by the CPS, unless it was a Covid-19/custody one<sup>4</sup>
- more likely to have a long wait for a court date.

**3.6.** The experiences of a detainee in and leaving prison during the first national lockdown would typically have the following features.

- During the first few months of the pandemic, only the most fundamental aspects of prison life were maintained: the provision of food, medication, showers and daily exercise. This was generally achieved by unlocking prisoners for a short period of time each day.<sup>5</sup> Some prisoners were held in conditions which effectively amounted to solitary confinement, which was sometimes prolonged and/or indefinite.
- Offending behaviour programmes were cancelled, preventing prisoners from progressing their sentences. From July, inspectors found substantial waiting lists for some programmes in some establishments. From late August 2020, offender behaviour programmes remained suspended at most prisons, but some establishments that inspectors had visited had recently begun to develop interventions, which was welcomed.
- Most workshop and training activities ceased altogether initially, and many were only recommenced on a part-time basis in the autumn. In prisoner surveys which took place from July to December 2020, only 11% of

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<sup>4</sup> A new interim charging protocol was agreed setting out three types of cases and the priority to be given to them: immediate priority – custody and all Covid-19 related cases; high priority – non-custody bail cases; and other cases – released under investigation or no arrest required.

<sup>5</sup> In our surveys between July and December 2020, 78% of prisoners reported that they had less than two hours out of cell, including 42% who said that they had less than one hour.



prisoners who responded said it was easy to access vocational or skills training.

- Releases on temporary licence were mostly suspended, as were progressive transfers between prisons.
- There was limited rehabilitation available in the community. Public protection work was prioritised, with less done to address the underlying causes of offending. Provision of accredited programmes fell to under 10% of usual levels.

## **Risk: changes brought about by Covid-19 necessity need to be properly evaluated and (where appropriate) resourced**

**3.7.** The pandemic made it necessary for the CJS to innovate quickly. This was positive. We were impressed that so much valuable innovation was achieved in such extraordinary circumstances. However, there is a need for proper evaluation of what was done before it becomes ordinary practice.

**3.8.** This is particularly true of some of the digital changes introduced. Long-term, we don't know how remote and virtual working will have affected outcomes such as reoffending, or what the effect will have been on the system of justice experienced by perpetrators and victims. For those changes which are considered beneficial, much more work needs to be done to ensure the necessary governance, resourcing and training are introduced to allow them to successfully become common and widespread practice.

### **Case study: virtual courts**

Covid-19 has led to the introduction or extension of virtual courts for detainees to have their remand hearings from a police station. Faced with court closures, forces acted quickly to set up or extend their existing virtual court arrangements. Most had working arrangements to do this from early in the pandemic.

However, many forces incur significant costs to provide additional staff to run these virtual court arrangements. Their use means many detainees spend longer in police custody awaiting their hearings. This places additional demands and responsibilities on forces as they continue to manage each detainee's risks and meet their ongoing care and welfare needs during their extended detention.

Partnership working with Her Majesty's Courts and Tribunals Service (HMCTS) to resolve these problems is increasingly strained; this is not sustainable, and

some forces are already planning soon to withdraw from the current virtual arrangements.

A new model (which takes account of both the advantages and disadvantages of the virtual court system) needs to be developed as soon as possible.

**Case study: Cloud video platform (CVP)**

In late April 2020, HMCTS provided court users with a cloud-based video platform, with the benefit of the early experience of virtual hearings in the courts. The CVP is connected securely to the existing justice video network which links police stations and prisons to courts. It can be accessed by any internet-enabled device with a camera and a microphone. 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. This permitted prosecutors to be deployed efficiently, and in some instances meant advocates were able to cover multiple court locations, bringing real benefits in continuity of representation.

Since then, however, the use of the CVP has declined. By September 2020, the CPS was only making CVP applications in approximately 15% of cases. In most places, it now 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.

**3.9.** The impact on service provision of other Covid-19 generated innovations also requires further analysis. For instance, this work should determine whether probation services should introduce an element of remote supervision in their usual operating model, alongside face-to-face contact with individuals. We also suggest more is done to evaluate and address the reasons why secure video calls are underused by prisoners.

**3.10.** We welcome the initial steps agencies took swiftly to respond to the pandemic. We fully appreciate that the CJS is still coping with Covid-19. However, we urge all agencies, singularly and together, to plan now how best to adopt, adapt, or accelerate the beneficial changes necessitated by the pandemic.

**3.11.** In particular, since the initial lockdown ended, it remains the case that the majority of prisoners have continued to be subject to a highly restrictive regime. This has lasted many months without respite. It has had serious adverse effects

on their physical, emotional and psychological wellbeing, and on their prospects for effective rehabilitation.

**3.12.** Short scrutiny visits conducted by Her Majesty's Inspectorate of (HMI) Prisons from April to July 2020 raised concerns about the potential medium- and long-term effects of isolation and the lack of meaningful human interaction, including the loss of social visits. Inspectors were told by prisoners that the absence of access to open space, exercise and human contact was having an adverse effect on their wellbeing and leading to anxiety, deterioration of their physical health and increased mental health problems.

**3.13.** Thematic work carried out by HMI Prisons in October and November 2020 has revealed how prolonged exposure to restricted regimes has negatively impacted prisoners' wellbeing.

## 4. Major risk: system backlogs

**4.1.** Whilst we are heartened that the criminal justice system (CJS) coped reasonably well with the immediate challenges of the pandemic, it is the significant backlog of cases which constitutes the greatest threat to the proper operation of the criminal justice system. Observations include:

- While the recorded numbers of most types of crime fell in March 2020, they increased back to pre-pandemic levels over the summer.
- Custody suite throughput remained steady throughout, as officers cleared old cases. This meant that there was no drop in cases entering the system.
- The Crown Prosecution Service (CPS) cleared charging backlogs during the first national lockdown.
- Court closures from late March to mid-May 2020 in the majority of courts and for a longer period in other courts led to significant increases in backlogs.
- Two temporary early-release schemes were introduced in April 2020 to reduce the prison population. The schemes had very limited effect as only 316 prisoners were released, despite many more prisoners being assessed as suitable and referred to Her Majesty's Prison and Probation Service (HMPPS) for consideration. The schemes were paused in August 2020.
- Nevertheless, between March and September 2020 the total prison population fell by 4.5% (82,990 to 79,235), largely because of reduced court activity reducing receptions to prison.
- During this period, the remand population increased by 22% (from 10,043 to 12,274) and is currently at its highest annual figure in six years, representing 15.5% of the prison population.
- Recent legislative amendments have extended the custody time limits for some individuals on remand by 56 days.<sup>6</sup> The Ministry of Justice does not routinely publish data on the average length of time spent on remand.
- During the first national lockdown, five probation-approved premises closed because of the pandemic; another four were closed for other reasons. This, combined with a shift to single occupancy rooms, led to a 21.3% reduction in capacity (from 2,258 to 1,805 beds).
- Social distancing regulations significantly reduced probation capacity to provide prisoners with accredited programmes and unpaid work

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<sup>6</sup> The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020 came into force on 28 September 2020.

requirements; since the end of March 2020, significant backlogs in both have developed.

## Court backlogs

**4.2.** As at 13 December 2020, court backlogs were as follows:

- Total live CPS post-charge caseload: 67% higher than the pre-Covid baseline. This equates to 67,679 extra cases, taking the total to 169,419.
- Magistrates' court live caseload: 83% higher. Of these, 19,500 are estimated to be trials, equating to a 57% increase since February 2020.
- Crown Court live caseload: 44% higher. Of these, 27,700 are estimated to be trials, a 65% increase since February 2020.

**4.3.** The Criminal Courts Recovery Plan<sup>7</sup> – established by Her Majesty's Courts and Tribunals Service (HMCTS) – contains a range of measures designed to help the courts return to normal operation as soon as possible, and minimise any delays in delivering justice. The plan includes a number of measures:

- employing 1,600 court staff to carry out recovery measures
- maximising the efficient use of the existing physical estate, for instance through introducing plexiglass screens to separate members of juries to enable the safe use of more court rooms
- increasing capacity through 'Nightingale Courts' – an initial ten are up and running, with a further eight planned to open shortly
- using video technology wherever appropriate, allowing more cases to be heard remotely
- operating new 'Covid operating hours' – increasing the number of hours that court buildings can be used for trials outside the standard weekday times of 10am-4pm. This time-limited measure attempts to maximise the efficient use of HMCTS's own estate, while ensuring no one party is required to attend court for longer than necessary.

**4.4.** A major £142 million investment across the courts system has also been announced to speed up technological improvements and modernise courtrooms.

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[assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/915493/HMCTS401\\_recovery\\_overview\\_for\\_crime\\_WEB.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915493/HMCTS401_recovery_overview_for_crime_WEB.pdf)

**4.5.** The impact of the growing backlog in the courts is of real concern to all agencies.

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspectors found numerous examples of serious cases that had been cancelled at short notice, despite the offences having taken place a long time before. Police officers and staff at all levels expressed significant concerns about the backlog of cases and its impact on victims and witnesses. Apart from affecting the confidence of victims in the CJS, it is likely that some victims will become unwilling to support prosecutions because of the delays.

Inspectors were told by the CPS that after a period of increasing cases in the magistrates' courts up until early August 2020, caseloads have started to be finalised and cleared at a rate greater than receipts. However, in the Crown Court, the position is worse. Social distancing has meant that jury trials have been harder to conduct. In line with its plans, HMCTS met its target to open 250 rooms suitable to hear jury trials by end of October 2020. Much of this was made possible by new safety measures being introduced across the estate. This includes employing extra cleaners and fitting plexiglass screens which allow jurors to safely sit closer together. The translucent barriers are being installed in 160 courtrooms and 80 jury deliberation rooms throughout England and Wales.

Even with the measures in the Criminal Courts Recovery Plan, the backlog of cases in the Crown Court continues to grow. The Law Gazette (9 October 2020) remarked that it is not unusual to find trials being listed into 2022 and the backlog continues to grow. On 14 December 2020, HMCTS released data showing that the backlog of Crown Court cases has increased to more than 53,000. The Lord Chancellor told the Justice Select Committee in December 2020 that cases were being listed in 2022, but that he hoped additional funding would allow listing officers to bring some trials forward.

Increased time spent on remand will inevitably add to the anxieties and frustrations of individual prisoners. A growing and increasingly-frustrated remand population has the potential to have a serious adverse effect on the stability of reception prisons.

The National Probation Service is under pressure as court hearings resume – both in terms of providing sentencing advice and handling an increase in the number of people receiving community sentences. The government's campaign to recruit 20,000 more police officers will lead to many more people coming before the criminal courts and will increase workloads further. This will be a landmark year for probation services, with the National Probation Service taking

over all offender management in June 2021. The timetable for the transition period has always been ambitious and the pandemic will cause additional strain.

Some youth offending services will also see a significant increase in their workloads as cases begin to progress through court. Between April and June 2020, there was a 55% increase nationally in the live youth caseload, compared with the same period in 2019.<sup>8</sup>

**4.6.** The inspectorates welcome the additional funding given to the CJS as part of the recent spending review: the recent funding for 20,000 additional police officers and 400 prosecutors, and the additional funding for the court service. However, this has the potential to add to court backlogs as more cases enter the system.

**4.7.** Our inspection evidence establishes that there remain very significant strains on the CJS. Police officers express concern that, with these considerable delays, victims will become less willing to support cases. There is evidence from our other work that delay is often a driver of victim attrition rates. In Crown Court units in some CPS Areas, cases per prosecutor have increased by over 90%. Cases are listed which will plainly not be heard because of lack of court time. Nevertheless, each case has to be prepared, and victims and witnesses must be warned, in case it goes ahead. All this takes place as the number of prisoners on remand rises due to custody time limits increasing to cope with the delays.

**4.8.** These unprecedented and very serious court backlogs constitute the greatest risk to criminal justice and, as this section shows, the ripple effects across all agencies are profound. Agencies – and the committed individuals working in them – will do all they can to cope, but we have grave concerns that this will be at much personal and organisational cost. The problem is a whole-system one, not only a court one. It is the responsibility of government to respond on a whole-system basis.

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<sup>8</sup> Provisional data on youth defendant live caseloads; CPS; 2020 (unpublished).



## 5. Concluding remarks

**5.1.** It is a real testament to the criminal justice system (CJS) that in spite of the pandemic, any service was maintained. Even though very little was known about the virus and how it would behave, many people in the CJS continued to provide services at personal and individual risk. This is something that should not be forgotten.

**5.2.** But this commitment alone will not be enough to sustain the CJS as it attempts to recover from Covid-19. Nor should we expect it to be: this would put an impossible burden on those working on the justice frontline.

**5.3.** The system was already facing significant failings. The pandemic has intensified these. For policing, prisons, probation and youth justice services, demand was either steady, or is now back at pre-pandemic levels – but with Covid restrictions still affecting their ability to react. For instance, police custody suites are still unable to work at full capacity, because of the need for extra cleaning and social distancing. The CPS, through its developed digital capability, had at the outset of the pandemic been able to maintain service and reallocate resources to tackle case backlogs. Now, it is struggling to deal with backlogs. All sectors were already fragmented and significantly under-resourced. They now need to catch up on any backlogs built up through the pandemic, while also responding to new demands – and doing so in a way that responds to changing Covid restrictions and regulations. Without resource, time and support, this risks proving an impossible task.

**5.4.** Our greatest concern, however, remains the situation in courts, and the consequential effect this has on all our inspected sectors. The need to take urgent and significant action to reduce and eliminate what were already chronic backlogs in cases, and to make sure courts are secure and safe for all who attend and work in them, is urgent. Without this, the implications for victims, witnesses, defendants and prisoners are severe.

**5.5.** We have each as independent chief inspectors commented in the past on the risks of chronic and systemic under-resourcing across the CJS. As a chief inspectors' group, we now consider that Covid-19 has resulted in these risks becoming critical.

# Annex A

## Glossary

### **Crown Court**

A court sitting in England and Wales. Deals with serious criminal cases, for example murder, rape and robbery; also deals with appeals against a magistrates' court conviction or sentence and cases passed from a magistrates' court for trial or sentencing.

### **Crown Prosecution Service (CPS)**

The principal prosecuting authority in England and Wales, established by section 1 of the Prosecution of Offences Act 1985. Responsible for prosecuting criminal cases investigated by the police and other investigating bodies and, in particular, for deciding charges on cases for prosecution, reviewing prosecutions to ensure the right defendants are prosecuted on the right charges before the right court, preparing cases for court, and presenting cases in magistrates' courts, the Crown Court and higher court.

### **Her Majesty's Courts and Tribunal Service (HMCTS)**

The executive agency responsible for the administration of criminal, civil and family courts and tribunals in England and Wales. Sponsored by the [Ministry of Justice](#).

### **Her Majesty's Prison and Probation Service (HMPPS)**

The single agency responsible for prison and probation services across England and Wales. Established 1 April 2017.

### **Homelessness prevention team**

One of seven regional homelessness prevention taskforces set up by the National Probation Service to work with local authorities and other partners to find accommodation for individuals released from prison.

### **Multi-agency public protection arrangements (MAPPA)**

A mechanism through which local criminal justice agencies (police, prison and probation trusts) and other bodies dealing with offenders work together in partnership to protect the public from serious harm by managing sexual and violent offenders. Established in each of the 42 criminal justice areas in England and Wales by sections 325 to 327B of the Criminal Justice Act 2003.

### **Multi-agency risk assessment conference (MARAC)**

A locally-held meeting of statutory and voluntary agency representatives to share information about high-risk victims of domestic abuse. Any agency can refer an adult or child whom they believe to be at high risk of harm. The aim of the meeting is to produce a coordinated action plan to increase an adult or child's safety, health and wellbeing. Agencies that attend vary, but are likely to

include the police, probation, children's, health and housing services. Over 250 MARACs are currently in operation across England and Wales.

**National Police Chiefs Council (NPCC)**

A coordinating body that enables independent chief constables and their forces to work together to improve policing for the public. It works closely with the College of Policing to develop joint national approaches on issues such as criminal justice, value for money, service transformation, information management, performance management and technology, as well as staff and human resource issues (including misconduct and discipline). The NPCC is not a legal entity and has no statutory powers. It replaced the Association of Chief Police Officers on 1 April 2015.

**National Probation Service**

Provides services to courts and to manage specific groups of offenders, including those presenting a high or very high risk of serious harm and those subject to MAPPA in England and Wales. Established June 2014.

**Operation Talla**

An operation to lead the police response to Covid-19 in England and Wales, led by the Chair of the NPCC.

**TACT offender**

A person detained under the Terrorism Act 2000 or for terrorism-related offences under PACE.

**Victim**

In relation to an alleged or suspected criminal offence, the person who:

- says they are the person against whom that offence was or may be committed; or
- is said or considered by another person to be the person against whom that offence was or may be committed.

In using this term, there is no suggestion that the fundamental criminal justice principle of the presumption of innocence of a suspect or accused person is being disregarded. The use of the term "victim" in this report should be seen in that light.

**Young offender institution (YOI)**

A type of prison for people aged 15 to 21 (people under 18 are held in different buildings), run by the Prison Service and private companies. They house

between 60 to 400 people, split into 'wings' of 30 to 60. YOIs were introduced under the Criminal Justice Act 1988.

**Youth offending service/Youth Offending Team**

Local authority-funded services working with children and young people up to age 18 who get into trouble with the law. They look into the background of a young person and try to help them stay away from crime; run crime prevention programmes; help young people if they are arrested; help young people and their families at court; supervise young people serving community sentences; and work with young people in custody.

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