REPORT OF

THE CRIMINAL BAR ASSOCIATION

WORKING GROUP ON COURT CAPACITY

December 2nd 2020

This report contributes to the public debate on proposals to increase courtroom capacity in the criminal courts and is the response of the Criminal Bar Association to the HMCTS 'Consultation with Legal Professionals on Covid Operating Hours in the Crown Courts', commencing on 27th November and closing on 10th December 2020.

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INTRODUCTION

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.

2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.

3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

EXECUTIVE SUMMARY

Court capacity needs to be increased to reduce the backlog of jury trials in the Crown Court and to prevent 'burnout' due to excessive sitting hours in the Magistrates Court. The professions want to work with Government towards this common goal, to the benefit of complainants, witnesses, defendants and the public interest.

The waiting list of Crown Court cases is anticipated to exceed 53,000 by the end of this year, having grown to 51,595 by the week ending 25 October, according to the latest available Government data. This is due to cost-cutting measures imposed by Government prior to the pandemic, primarily a restriction in judicial sitting days, now exacerbated by (not caused by) the pandemic. Albeit the backlog in the magistrates is presently starting to reduce, this is only being achieved by working hours that are unsustainable in the short to medium term. [1]

We put forward five positive proposals that would assist with temporarily increasing court capacity and observe that if recent reports of an imminently available vaccine prove reliable, capacity in the existing estate may improve during the course of next year, if social distancing requirements can be relaxed.

The criteria that we have applied, which we suggest best summarise the public interest ('public interest criteria') are:

[1] Findings of the Crest Advisory Report published October 2020: https://www.crestadvisory.com/post/a-perfect-storm-why-the-criminal-justice-system-is-facing-an-existential-crisis: 'The courts backlog (as per our definition) was already significant before the pandemic hit (total of 104k cases). Furthermore, given the long-term rise in police recorded crime based on historical trends, the uplift in police officers which is likely to increase sanction detection levels, the long term impact of Covid-19 on unemployment, which will in turn push certain types of crime upwards and the current time frames for dealing with cases at court that are baked into the system. Without any further action, the court backlog – defined as all cases waiting to be processsed in courts – is projected to rapidly increase and reach an unmanageable level by 2024. Based on modelling the main nine categories of indictable and triable either way offences (excluding fraud and summary offences), the Crown Court backlog is projected to increase from c.45.5K in 2019 in to c.195.5K (x4) in 2024 and the magistrates' court backlog is projected to increase from c.58.6K in 2019 to 580.3K (x10) in 2024 compared to the pre-Covid backlog.'

- Contribution to increasing jury trial capacity and capacity for hearings in the magistrates
- Minimising public health impact
- Practicality
- Speed of implementation
- Cost of implementation
- Contribution to diversity of the professions (with reference to s.149 Equalities Act 2010)
- Impact on fairness of the ensuing trial/ interests of justice/ public scrutiny.

We do not endorse Extended Operating Hours ('EOH') as a policy to be pursued in either the Magistrates or Crown Courts. We find the contribution that it will make to increasing court capacity to be limited, and outweighed by a number of negative factors including but not limited to;

- Discriminatory impact (gender, race, religion, disability)
- Regulatory impact (BSB Equality Rules)
- Inflexibility as a listing model
- Disruptive impact on trials and increased cost per trial
- Increased opportunities for covid transmission across the court estate.

We draw particular attention to:

a) The Bar Council Female Retention Panel Statistics (**Appendix A to this report**) which show that in 2019 women at the Criminal Bar earned on average 39% less then men. Men undertook 67% of the work but earned 77% of total earnings. Women undertook 33% of the work but earned only 23% of total earnings.

b) The racial disparity in earnings highlighted by the BSB report 'Income at the Bar by Gender and Ethnicity' November 2020 that states, *'Income differences are particularly stark when looking at gender and ethnicity together, with female BAME barristers the lowest earning group, and White male barristers are the highest earning group.'* [2]

[2] See p.4 of Executive Summary https://www.barstandardsboard.org.uk/uploads/assets/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf

This is the context in which we raise concerns about the introduction of a discriminatory working practice, EOH, and the foreseeable and aggravating impact on diversity at the Criminal Bar as proposed by HMCTS in the 'Consultation with Legal Professionals on COVID operating hours in the Crown Court' undated but provided to us on 27th November 2020. The Consultation is open for 13 days (closing 10th December 2020). We observe that 13 days is not a meaningful consultation process and that in any event, the 'consultation' is no such thing, HMCTS having already set a date for implementation of the scheme (January 2020).

We advise:

- that legal advice is taken on the lawfulness and length of the 'consultation' process
- the proposed scheme is referred to the Equality and Human Rights Commission for assessment of the indirectly discriminatory impact on all groups with protected characteristics.

There should be no wider implementation of the scheme and cessation of the 'pilot' schemes pending legal advice upon it's lawfulness as an inherently discriminatory system of work which cannot be appropriately mitigated in the context of the criminal courts.

We observe that the 'consultation' document and accompanying assessment report and draft public sector equality duty statement are fundamentally flawed. The discriminatory impact of the scheme is accepted by HMCTS who seek to 'mitigate' the impact by suggesting that advocates impacted by the scheme could request to 'opt out' by providing their 'reasons' to a judge, it then being a judicial decision, on a case by case basis, as to whether caring commitments provide an appropriate reason to avoid listing a case in an EOH court. We observe that this proposed 'mitigation' is both unworkable and itself discrimatory, effectively placing barristers with caring responsibilities (which HMCTS accept will be disproportionately female) in the invidious position of a conflict with their lay client in relation to proximity of trial date, and of ventilating their personal circumstances in public criminal proceedings. This is unacceptable.

There is no proposed end date to the scheme[3], intended for implementation at 65 courtrooms, across the crown court estate, from mid-January 2020. We do not accept that this will be a temporary system of work confined to the pandemic. We have reviewed the history of attempts by HMCTS to implement 'extended' or 'further' operating hours in recent years (most recently in 2010, 2012 and 2017 see **Appendix C to this report, 'A Short History of Extended Operating Hours and the Sale of Criminal Courts').** The 2017 proposal was the same as the 'Covid' proposal (shift AM and PM courts, operating out of the same courtroom) and abandoned because unworkable and discriminatory. We place this in the context of the public policy of the last 10 years; sale of over 150 courts into the private sector for redevelopment as commercial premises in order to shrink the criminal court estate, which has impacted the administration of justice **(see Appendix C of this report for detailed breakdown of the sale of courts and profit generated).**

We are particularly concerned that specialist solicitor professional organisations (such as the CLSA and LCCSA) have not been brought into the 'consultation' process, nor have any Black barrister or solicitor organisations. No consultation process has been utilised for the Magistrates Courts, despite consistent evidence of EOH being used in those courts, causing burnout and fatigue for the legal processionals working within them. We express concern about the lack of meaningful consultation and particularly with the following:

- Women advocates
- Witnesses
- Victims Commissioner
- Specialist (criminal) solicitor practitioner associations
- Black, Asian and Minority Ethnic professional associations
- Disabled groups
- JUSTICE and other NGOs (fair trials)
- Equality and Human Rights Commission
- Court Staff / Trade Unions

[3] P.20 of the consultation document states the proposal should be 'time limited' but in fact there is no sunset clause within the proposal, only review dates. We have seen no material that reassures us this is not a scheme intended to permanently change court sitting times.

- Judges
- Probation Workers
- Jurors.
- CPS.

To achieve an immediate and cost-effective increase in Crown Court trial capacity; address excessive hours and overcrowding in the Magistrates Courts and to make a better and sustainable use of the court estate in the long term, now that remote working is embedded, we urge (our Proposal 1):

: improved utilisation of existing court estate premises- restricting premises with custody suites to custody work only and moving non custody work, particularly remote hearings, which demonstrably do not need cell facilities, to alternative premises.[4]

[4] We understand that the following principles to guide individual listing decisions have very recently been agreed by Resident Judges on the North Eastern and Western Circuits and are now under consideration on other circuits. We encourage their swift adoption to ensure unanimity of approach across the country and to consolidate the shift to remote working in circumstances where justice is not thereby impeded, allowing for better utilisation of listing in the court estate:

1/ Trial advocates must attend trials in person.

2/ Where a defendant is required to attend in person any hearing at which it may be necessary to take instructions in order significantly to progress the case then the instructed advocates will also be expected to attend in person (obvious examples are PTPHs, sentencing hearings, PTRs and triage hearings)

3/ Where a defendant attends a hearing by CVP then the instructed advocates may also attend by CVP unless their physical presence together at Court is likely to facilitate the effective management or resolution of the case. Please note that, if advocates are attending by CVP they will be expected to have obtained full instructions from their client and communicated with their opponent in advance of the hearing;

4/ Attendance by CVP should be the default position in any hearing that is administrative in nature, regardless of whether the defendant is required to attend (for example mentions, compliance hearings, directions hearings). However, if any instructions are likely to be necessary (for instance when re-setting dates) then advocates will be expected to have obtained such instructions and communicated with their opponent in advance of the hearing;

5/ Where the attendance of the instructed advocate is <u>essential</u> to the progress of the case, and that advocate is unable to attend in person as a result of another Court commitment in another Court

Further expansion could also be achieved by (our Proposals 2-5)

: increased use of Nightingale Courts and existing government owned premises.

We consequently echo and endorse the findings of the Justice Select Committee in July 2020 that an expansion of the criminal court estate is urgently required, but suggest that if a vaccine brings a change to Government guidance in relation to social distancing, it may be that making appropriate use of the existing court estate can provide that expansion (our Proposal 1) as a long term strategy, not solely in response to the pandemic, and is the better and more cost effective policy, now that remote working via the CVP platform is being utilised. [5]

Better utilisation of existing premises would deliver, relative to EOH;

- Significantly greater increase in sitting time capacity (each standard hours courtroom provides for an additional minimum of 5 and a half to 6 hours of sitting time per day, per trial. An EOH court sits for only 3 and a half hours per day, per trial, maximum. 85% of EOH courts in the pilot experienced delays, meaning only 15% achieved the maximum sitting time).
- Does not introduce a discriminatory working practice
- Does not increase the risk of virus transmission per court centre

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centre, than attendance by CVP may be permitted on application, to be determined on a case by case basis.

6/ With the exception of trials (see 1. above), attendance by CVP will always be permitted for any advocate who is shielding or who, for other proper medical reason, cannot attend Court in person.

Similar provisions are in place in the magistrates court, for example, the Live Link Framework for the South East allows for remote participation by advocates, clerks and defendants (including those on bail) as long as justice is not thereby impeded and it is being utilised to good effect but regrettably not as widely as it could be because it is not available in all courts and is not always easy for defence solicitors to access. We understand the Framework was recently reviewed and will remain in use given the escalating infection rates and the benefits of keeping footfall in courtrooms to a minimum. Applications for the use of the link should be made in advance but can be made on the day if prior notification has been sent to the court who then send the CVP link for use by the lawyers and the defendant but regrettably ease of and granting of applications to utilise the system needs improvement.

[5] Justice Select Committee Report – 30th July 2020
https://publications.parliament.uk/pa/cm5801/cmselect/cmjust/519/51908.htm

- Cost neutral compared to EOH.

EOH will increase refresher fees, Recorder fees and staffing fees per trial because EOH trials take longer (available sitting time per trial is reduced by approximately 27% per day).

EOH contravenes s.149 Equality Act 2010 and brings with it potential regulatory consequences for chambers and potential legal consequences for solicitors. The BSB Handbook Equality Rules (rC110(3)(i)) requires that the affairs of chambers are conducted in a manner which is fair and equitable for all members of chambers including the fair distribution of work. S.47 (6) Equality Act 2010 makes it unlawful for any person instructing a barrister, to discriminate against them. The Solicitors Regulation Authority Handbook 2011 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings.

We raise serious concerns about the legality of the proposed scheme and whether it complies with the Equality Act 2010 in relation to gender (indirect discrimination against women who are more likely to have caring commitments), race (the criminal bar and solicitor professions are more diverse at the junior end, who are more likely to be instructed in the cohort of cases EOH targets) and in relation to religious observance and disability (because of the extended late afternoon/ evening sitting hours).

EOH may also have an indirectly discriminatory impact on female witnesses and complainants because the cohort of cases that it targets, single defendant/ 1-3 day cases, comprise the majority of domestic violence and sexual assault cases. We observe that there has been no assessment of this impact undertaken by HMCTS and advise referral of this issue to the Victims Commissioner for further consideration.

Trials complete more quickly in ordinary court hours (which are longer than EOH and allow for flexibility to sit earlier or finish later). This is a better listing mechanism for complainants, witnesses, defendants, court staff, advocates and the judiciary all of whom will be impacted by the discriminatory features of EOH and its practical failings (detailed below).

From a public health perspective, better utilisation of court estate premises and remote working is a safer working model for all trial participants.

CBA members surveyed for the purpose of assessing the EOH pilots were overwhelmingly opposed to the nationwide roll out of EOH (**See Appendix B to this report).**

Policy in the criminal courts over the last 10 years has all too often been driven by wholly short-sighted objectives; to shrink the size of the court estate and number of prosecutions, rather than the delivery of a competently delivered and administered criminal justice system, operating in the public interest .

Victims, witnesses and defendants are failed consistently, due to endemic mismanagement, lack of accountability and underfunding of the system (outside of the scope of this paper). That the system functions at all is through the good will and commitment of the people working within it. It cannot excel without investment and reform. Good will, unpaid labour and 'EOH' cannot plug the gaping holes.

PROPOSALS FOR BETTER UTILISATION OF THE COURT ESTATE AND TO INCREASE JURY TRIAL CAPACITY

Proposal 1 – Triaging of court work across the entire court estate (at point of entry to the CJS and for review at every hearing) to remove hearings that do not utilise custody facilities from courtrooms with custody facilities (from Magistrates Courts to the Appellate Court) and prioritising those facilities for use in jury trials.

- All hearings across the court estate that do not utilise custody facilities, particularly remote hearings[6], should be moved out of custody facility courtrooms and jury trials given pre-eminence in any courtroom that can either accommodate social distancing or accommodate the installation of screens.

- Moving 'non-custody' work (whether because remote, defendant not required to attend, or because custody not engaged, as per many magistrates court cases) into premises across the civil and tribunal estate, available civic buildings and crown court courtrooms not approved for jury trials, many of which are now under-utilised further to whole or partial transition to remote working, and avoidance of 'mixed lists' (custody and non-custody work in same courtroom) would better utilise the estate and make immediately available a number of magistrates courtrooms for use as jury trial premises (with no expenditure required where social distancing is feasible, and limited expenditure where screens are required. Additional but limited further costs would be installation of Darts machines and electronic screens).

[6]There are presently courtrooms across the court estate deemed unsuitable for social distancing that have remained shut (e.g. Hatfield Remand Court). These could still be used as predominantly virtual courts. Initially, all Hatfield cases were being sent to Luton (resulting in Luton being the only remand court for Bedfordshire and Hertfordshire). Now, Hatfield cases are being heard at Stevenage magistrates court by virtual court. This takes up one courtroom at Stevenage which could be used to deal with bail cases.

- Consideration of utilising appeal courts across the RCJ and all appeal court premises (particularly those with docks) given that much of that work is now remote, advocate only, or where appellants appear in person, they are either at liberty (civil cases) or linked in remotely from prisons (criminal cases).

- Lists that comprise entirely remote hearings (usually case management) do not need to be in courtrooms with custody facilities. They need to be in hearing of a Darts machine and allow for public scrutiny either in person or linked from another room (with adequate security facilities as per ordinary courtrooms). CVP link may also be suitable for public scrutiny of remote case management lists if adequate procedures for judges to establish identity if needed, check age, ensure no prejudice to future trials, promptly terminate the link if necessary (akin to physically ejecting a person from a courtroom) and other similar considerations can be addressed.

Proposal 2 – Utilisation of Civic Buildings 'Nightingale Courts'

- Continued development of 'Nightingale' courts (re-purposed civic buildings) with a particular emphasis on buildings that still have cell accommodation having been used as Magistrates Courts in previous decades. In conjunction with Proposal 1, this project could be simplified if the emphasis was on seeking premises for non-custody cases to accommodate, for example, the large percentage of Magistrates Court cases that do not need custody facilities and where custody is never a consideration. This would make conversion of civic premises a speedier and more cost-effective exercise and better utilise custody suites at existing courthouses as per proposal 1. Other examples of buildings within the public and private sector, that may potentially be suitable for non-custody cases are those which already house 'mock' courtrooms (Police Training Academies and University Law Schools).

Proposal 3 – Conversion of Immigration Removal/ Detention Centres

- Re-purposing of the Immigration Removal Centres (which already have cell capacity and are secure premises with facilities for custody vehicles and secure entry/ exit) as criminal courts. There are 9 of these centres in the UK. We understood that further to the bailing of the majority of immigration detainees at the start of the pandemic many of these buildings are now chronically under-utilised. They should be re-purposed in the national interest. We suggest many will already have many of the features needed for custody jury trials and therefore the cost of conversion is proportionate.

Proposal 4 - Renovation of Existing but Inactive Courthouses

- Integration of former courthouses back into the estate where not yet sold, or where sold but not yet converted into commercial premises[7], by way of, commercial rental agreements, voluntary agreement to 'buy back' from the private sector or, in the long term if required, Compulsory Purchase Orders.

Proposal 5 – Utilisation of Army Premises / Government Owned Land

- Consideration of the utilisation and adaptation of residual or previously mothballed Court Martial premises for use as civilian criminal courts, as well as any available vacant buildings on Ministry of Defence land or other government-owned land capable of being converted at proportionate cost.

- There are many large buildings and rooms within the Ministry of Defence estate currently sitting empty and unused, such as drill halls. There is clearly scope for these buildings to be adapted for use as Nightingale Courts.

[7] Blackfriars Crown Court, said to require EOH to manage the workload and limit delays in listing in 2017, was subsequently sold off by the government for profit in 2019 after being deemed so below capacity as to be insufficiently utilised. Nine courtrooms consequently now sit empty and unused. No development of the site has yet been approved (see http://blackfriars-crown-court.co.uk/#welcome). This was part of a concerted policy to sell off criminal courts for profit, primarily magistrates courts- over the course of the last decade- see Appendix B to this discussion paper. We do not know the outcome for all of these buildings and invite HMCTS to disclose the present use to which each building is being put.

OUR RECOMMENDATION

We observe that Proposal 1 is, if not cost neutral, then of limited cost (limited to installation of screens where needed, darts machines, and electronic screens made compatible for use with clickshare) and proportionate to the costs of EOH (which increases spend per trial in fees and on court staff by lengthening trials).

Proposals 2-5 incur differing levels of cost. Government owned premises, of which we have identified two alternatives, IRCs and army premises or premises on government owned land, are likely to be cheaper and faster to modify than civic buildings. However, a number of Nightingale Courts are now operational for criminal work in former civic buildings. Modifications have been achieved quickly and have proved affordable. We recognise that the utility of proposals 2-5 may substantially decrease if vaccination proves effective in the coming year but there will remain in the long term (Proposal 1) a need to better utilise the court estate, and not only to reduce the backlog in the short term.

All of the proposals 1-5 have the following advantages:

- could be quickly implemented
- can be easily relinquished as and when the pandemic recedes
- deliver a significantly greater increase in courtroom capacity relative to EOH
- have no discriminatory impact
- are unlikely to materially increase opportunities for virus transmission at one court centre (by better spreading trials across the court estate and alternative premises) thereby prioritising public health.

We do not know what criteria HMCTS have utilised to assess EOH and we have seen no disclosure to indicate that it has been assessed relative to other workable proposals. Applying the 'public interest criteria' EOH is the least effective (would not contribute significantly to sitting time compared to the proposals 1-5) efficient or attractive proposal for increasing trial capacity and the only proposal to carry a clearly identifiable harm; it is a discriminatory working practice.

ANALYSIS OF HMCTS DATA AND CBA DATA

During the preparation of this report we have been provided by HMCTS with three tranches of documents:

- Document 1: 'Covid Operating Hours – Liverpool Crown Court' compiled by the 'HMCTS user experience and insight team', dated 12th October 2020. We do not have the permission of HMCTS to make this document public.

- Document 2: 'COVID Operating Hours –Crown court pilot assessments- Interim MI' Report dated 5th November 2020. We do not have the permission of HMCTS to make this document public. [8]

- Document 3: Consultation with Legal Professionals on Covid Operating Hours in the Crown Courts (made available on 27th November 2020, closing date 10th December) comprising consultation document, assessment report and public sector equality duty statement. [9]

We make the following observations in relation to Document 1:

1. This document does not provide data that supports the introduction of the EOH scheme.

2. The criteria by which EOH has been assessed by HMCTS is opaque (relative to other proposals or in isolation).

   This documents contains no evidence of consideration of its discriminatory impact on advocates or evidence of consideration of its discriminatory impact on complainants, witnesses, court staff, judiciary or any other persons engaged in the court process.

[8] HMCTS refers to EOH as 'COH' ('Covid Operating Hours') and non-EOH Courts as SOH 'Standard Operating Hours'.

[9] https://www.gov.uk/government/publications/court-and-tribunal-recovery-update-in-response-to-coronavirus#details – closing date for responses 10th December 2020.

3. The data compiled in the document is based on only 10 questionnaire responses from jurors and 12 responses from legal professionals and even fewer qualitative interviews.[10] This is insufficient for analysis of the nationwide roll out of a scheme across the criminal court estate.

4. The document flags up difficulties encountered in the administration of the Liverpool pilot which we consider to be 'red flags' for the introduction of the scheme nationally including:

    -More delayed starts relative to ordinary sitting hours.

    -Inflexibility as a listing model.

    -Impact on individual trials; of witnesses not being called, or going part heard overnight, because the model cannot accommodate flexibility of sitting hours in the way ordinary sitting hours do.

    -Average sitting time of 52 % in EOH courts (a projected sitting time of 2 hours per trial per day).

    -Concerns raised by court staff (we note that most clerks and all ushers did not volunteer to work in the EOH court. Some agreed because it was temporary and they did not have childcare responsibilities).

    -Concerns raised by participating advocates which included reference to the discriminatory impact.

5. We have seen no economic evaluation of the increased cost of running EOH courts.

[10] Only 2 'legal professionals' were interviewed by HMCTS for the purpose of collating qualitative data. We do not know how 'legal professional' was defined for the purpose of the data capture.

6. The pilot at Liverpool, from which the data was collated, was designed to 'edit out' collation of the discriminatory impact by allowing for 'opt out' by counsel unable to work EOH hours.

7. The document refers to 1 qualitative interview with a witness. The subsequent 'consultation' document refers to 4 qualitative interviews with witnesses. We do not accept this constitutes a thorough analysis of the potential impact on complainants and witnesses of the impact of EOH hours which we suggest will raise many of the same issues for complainants and witnesses with caring responsibilities as we highlight for those working in the sector. We draw particular attention to the cohort of cases the scheme targets – 1 -3 day single defendant cases. Most domestic violence, harassment and sexual offending cases fall into this category, as such, female complainants and witnesses will be disproportionately impacted by the scheme. We have seen no analysis or awareness of this impact by HMCTS and advise a referral to the Victims Commissioner for consideration, analysis and wider consultation.

We make the following observations in relation to Document 2:

1. This document quantifies the number of trials undertaken by the (at time of release of the document) incomplete pilot presently running in 6 EOH courtrooms (at Liverpool, Stafford, Hull, Reading, Portsmouth and Cardiff) relative to SOH courtrooms (we do not know which SOH courtrooms at the respective court centres, or what trials, were used for comparison purposes).

2. Given the lengths of the respective trials are not recorded, no meaningful analysis can be made because, <u>as the document records, simpler, shorter trials were listed in the EOH courts</u> with the inevitable consequence that EOH courts disposed of more trials than the SOH courtrooms (used by HMCTS for comparative purposes) where more legally complex, longer trials were being heard.

Document 3: We make the following observations in relation to the Consultation, assessment report and public sector equality duty statement:

1. The professions have been given 13 days, from release of the 'consultation' documents, to provide written responses. We suggest this is unreasonable and does not constitute a true consultative exercise. We suggest it is a 'sham' consultation intended to lend legitimacy to a scheme which has been pre-determined for implementation.

2. Despite acknowledging in Document 2 above, that the pilot did not generate date that allowed for any meaningful comparison between EOH and SOH courts, because different types and lengths of cases were being tried in each courtroom, HMCTS have, in the consultation documents portrayed the increased number of cases disposed of by the EOH pilot courts (because taking shorter cases) as a significant 'gain' in capacity between an SOH and EOH court (3.5 trials per week as against 0.9 trials per week). A more careful reading of the consultation document reveals that a speculative comparison of an EOH versus SOH courtroom, if trying the same type and length of cases, is estimated by HMCTS to generate an average disposal rate of 3.5 trials (EOH) as against 2.5 (SOH) trials per week.

3. We do not accept this estimate, which has no evidential basis because like for like was not tested during the course of the pilots. EOH courts are particularly vulnerable to the impact of delay. With only 3 and half hours of available sitting time per day per trial, delay at the start of the day (which happened in 85% of the pilot EOH courts)[11] and the greater vulnerability to going short at the conclusion of the sitting day (because of appropriate reluctance by the judiciary to allow witnesses to be called if they will not conclude their evidence in that day's session, and

[11] P.11 of the HMCTS Consultation Document

instead be forced to go part heard during the currency of what would, in an SOH court, have been evidence concluded in one day- a particular problem in EOH courts because sitting hours are fixed, generating a 'hard stop' to each session) means EOH courts are, of necessity, inefficient because they cut the available sitting time, per trial, per day by between 3 and 3 and a half hours a day. This means trials take longer and we suggest, once late starts and early finishes to protect the integrity of witness evidence are factored in, they will not generate the estimated '1 additional trial per week' (2.5 v's 3.5) that HMCTS speculatively suggest.

4. An EOH courtroom generates a maximum of 7 hours of potential sitting time per day (not including delays) but only 3 and a half hours of sitting time per trial per day, because of the need for a thirty minute break within each 'shift'. SOH courts generate on average 5 and a half to 6 hours of available sitting time per trial per day but this may increase, to accommodate the needs of a particular trial at critical junctures, eg by sitting earlier, sitting into the lunch adjournment, or sitting late at the end of the day. EOH courts cannot sit earlier and cannot finish late, there is no flexibility beyond the allocated hours. SOH courts are, therefore, inherently more flexible and efficient, allowing sitting time to accommodate the needs of the case and as such, cases progress more efficiently and expeditiously. If there is delay at the start of the day, it can be balanced out with later at in the trial, in consultation with all participants.

5. The consultation suggests no one individual would be required to participate in a morning and afternoon shift court (ie court sitting from 9am to 6pm). However during the currency of the pilots HMCTS's own assessment is that courts did precisely that, with one court using morning sessions for resolution of issues with advocates (ie legal

argument) and afternoons with the jury. There is no mechanism built into the scheme to prevent this practice. The implementation of the scheme, and adaptation of it, is left to the discretion of Resident Judges.

6. At present there are insufficient court staff to staff EOH courts because double the number of staff are required per day (for each session). The reality is that both advocates and court staff (and if two shifts are used for one trial, as happened in the pilot) judges and defendants, will be exposed to 9am-6pm court sitting time, with legal conferences and work on other cases to be undertaken before court sits and after it concludes.

7. Evidence from 5 witnesses was gathered for the purpose of the assessment. We suggest this falls significantly short of an appropriate analysis of the impact on witnesses.

8. 52 'legal professionals' were surveyed by HMCTS of which 68% were male and 41% rated their experience as 'poor or very poor' of which 40 had participated in the pilots[12]. The Criminal Bar Association has 3500 subscribing members. There are approximately 5000 barristers practising in criminal law in this jurisdiction, this does not include solicitors with higher rights. At the level of call for the case type targeted by the scheme (1-3 days cases) the gender split is approximately 50/50 (marginally more women than men are presently recruited to the criminal bar from pupillage, but are not retained, significantly more men than women continue to practice at the senior level). We do not accept that the survey was sufficiently wide-ranging and observe that is was gender biased against the group most likely to be impacted by the scheme's introduction (women).

[12] P.17 of the consultation document.

9. By contrast, HMCTS were, by the time of the pilot assessment in possession of the following data[13]:

- North Eastern Circuit Women's Forum Report, 'Extended Operating Hours – A Risk Assessment'. 80% (474 of 594) of respondents said earlier starts would have a negative impact on them, rising to 88% (519 of 587) for later finishes and 86% (510 of 595) for longer afternoon sessions. Over half of respondents (55%) said it would lead them to consider leaving the Bar, with 62% saying they would consider reducing the days/hours they work.

- Midland Circuit Women's Forum Report on Court Extended Operating Hours Proposals : "More women than men expected to have to turn down instructions if extended operating hours are introduced: for example, if 9am starts are introduced, 58% of female respondents as against 46% of male respondents expected to have to turn down instructions; if 6pm finishes are introduced 63% of female respondents as against 50% of male respondents expected to have to turn down instructions, demonstrating the discriminatory impact of these proposals." (Base numbers are not stated, but there were 224 responses to the survey, with 46% of respondents identifying as male and 50% as female).

- A report from a Women in Criminal Law survey breaking down the reasons that women advocates gave for opposing EOH (88% of respondents being opposed to extended operating hours):
  - Impact on childcare or other caring arrangements (107, 41%)
  - Impact on mental and/or physical health (33,13%
  - Impact on work/life balance 113 (43%)
  - (The percentages are based on the 262 of 480 responses)

This comprises survey responses from over 1200 barristers, overwhelmingly opposed to EOH because of it's discriminatory impact and making clear that it would force women out of the profession if introduced. This compares to the

[13] P.3 of the public sector duty equality statement.

13 women and 27 men surveyed by HMCTS.[14] In a survey of CBA members in June 2020, which received 2358 responses, 72.09% opposed courts sitting outside of ordinary sitting hours (10am-4.30pm) and 95.04% were in support of the use of additional buildings, outside of the court estate. We suggest that the HMCTS survey is inadequate and that the survey results provided by the professions, and supplemented by the data compiled for the purpose of this report (**see Appendix B)** make the discriminatory impact very clear. EOH will push women out of the criminal bar.

9. The CBA have undertaken their own qualitative and quantitative research into the operation of the 2020 EOH pilots.

10. Upon reviewing the CBA data the stand out feature is the overwhelming concern of advocates, with experience of the current pilots, about the workability, efficiency and inherent discrimination of EOH. **<u>See Appendix B of this report for CBA data.</u>**

11. The Consultation suggests that despite the overwhelming evidence of indirect sex discrimination, conceded by HMCTS, it can be mitigated by that they call the 'blended model'. This is summarised as follows: [15]

    "The key mitigations to these impacts include:
    The proposed approach to COH will blend each COH Court with one or more standard operating hours court in each Crown Court centre. In this blended approach, there will be significantly more courts operating standard operating hours than COH, which means that many cases will continue to be heard in standard operating hours. Legal professionals will be able to request , through the usual channels, that cases are listed into a court that is operating standard hours rather than in one of the COH AM or PM sessions, where that is more suitable or practical. Parties attend Future Trial Reviews in advance of trial where a judge reviews whether a case should be listed into a COH court or a standard hours court and are able to make representations about which of these listing approaches is suitable. There will be additional provisions in place for practitioners to make an

[14] P. 3 of the public sector equality duty statement at paragraph 19
[15] P.5 of the public sector equality duty statement

application to move a case listed in a COH court should attendance at a COH court subsequently become impractical , supported by reasons.

12. We observe this illustrates at best a wilful naivety of how criminal courts operate, and at worst, that no consideration has been given to the regulatory and legal consequences that flow from such a proposal. We do not know what 'the usual channels' referred to are. There is no mechanism for legal professionals to move trial dates to accommodate their availability, either because of professional, or personal, commitments during the course of this pandemic. No such accommodation exists in the criminal courts at this time, and historically, it is very unusual for trial dates to accommodate the availability of advocates, the pressures on listings are too great. Once a trial date is fixed, it will remain so unless factors relevant to the case, not the advocates, cause that fixture to be broken. There are good reasons for this. Defendants and witnesses need proximate dates, custody time limits apply, trial dates are not an inexhaustible commodity. There is no mechanism by which a more flexible approach can be achieved for EOH courts and particularly not at the present time. Defendants are already being allocated trial dates into 2022. Nor is it right that private family matters are ventilated in public courts, in order that women might argue to retain instructions on a brief. Whether this is done in writing, or orally in court, it falls to be disclosed, and requires instructions from the lay client. The proposal by HMCTS is an ill- informed approach. It is also, in itself, a discriminatory one, leaving primary carers and advocates seeking to opt out of the scheme for reasons of religious observance, or disability, to seek a judge's permission to be able to retain instructions in a case.

13. We set out below, under the heading 'The Regulatory Consequences of EOH' why 'mitigating' the discrimination through a 'blended model' is unworkable and unedifying.

DISCRIMINATORY IMPACT OF EOH (GENDER, RACE AND PROCTECTED CHARACTERISTICS)

Women continue to carry the primary caring responsibility for young and old within society. Although we refer primarily to advocates, the discriminatory impact (where applicable) extends to carers sitting on juries, attending as witnesses, as complainants, working in the courts and within the judiciary. Men with similar caring responsibilities will also be unfairly impacted. If a listing practice cannot operate in a non- discriminatory way for all it should not be utilised.

Context

- The Bar Council protocol on sitting hours states what are deemed ordinary court day hours; 10am – 4.30pm (as opposed to ordinary working hours, which far exceed this)[16]. The protocol advises that no variation should be imposed upon counsel in a case who cannot accommodate the variation in sitting hours without consultation. There was been no consultation prior to the imposition of the pilots in the crown courts and no consultation with solicitors prior to extension of sitting hours in the magistrates. No one should be compelled into a system of work that is discriminatory.

- We draw particular attention to the Bar Council Female Retention Panel Statistics (**Appendix A to this report**) which show that in 2019 women at the Criminal Bar earned on average 39% less than men. Men undertook 67% of the work but earned 77% of total earnings. Women undertook 33% of the work but earned only 23% of total earnings. This is the context in which we raise concerns about the introduction of a discriminatory working practice and the foreseeable and aggravating impact on the issue of diversity at the Criminal Bar.

[16] https://www.ibc.org.uk/wp-content/uploads/Sitting-Hours-Protocol-final.pdf

Gender Discrimination

- Pilot EOH courts in the crown court were allocated short, usually warned list, cases. These are cases listed at short notice (usually the night before) and therefore often result in returns. [17]

- If called in through the warned list system as a return case, the court cannot know whether counsel who is going to do the trial, can accommodate the shift hours at short notice. They may well be unable to take the case, meaning that the fee goes to a barrister who can accommodate the shift pattern. Discrimination supposedly 'edited out' of the pilot, is in fact endemic within it because it is built into the EOH scheme.

- The pretext of the pilot, that the discriminatory impact can be mitigated through 'notification to the list officer of counsel's personal difficulties' is unworkable and unsustainable. List officers work under enormous pressure. This regularly results in an inability to accommodate counsel's availability, even if counsel has worked on a case for months.

- It is inappropriate to expect women, or any carers, to have to ask for special treatment. Many members of the Bar, as per the wider population, endeavour to keep sensitive, private and personal family matters away from the context of their work, but have, in the context of CVP applications and EOH pilots, been expected to provide details to Judges and listings officers in order to keep instructions. Those details are then often recorded on the DCS file, accessible to many. Work in a courtroom has a public element that does not and cannot replicate the protections of employed office work.

[17] HMCTS refer in the consultation document to endeavouring to give 2 weeks notice for EOH listing . HMCTS are not presently achieving this for trials listed as fixtures (which should expect to come to trial on a fixed date). Fixtures in short cases are often presently being ignored as courts, understandably, list cases for trial if there is a trial vacancy. We do not accept there is any legitimacy to assurances that EOH courts will operate with a higher standard of notice for trials than SOH courts presently do. If anything, we predict that if introduced, they will be used for warned list cases.

- We operate in a profession where 'special treatment' is viewed as a weakness. It leads to isolation and undermines a counsel's confidence over time to be repeatedly the person to stand up and ask for it. We repeatedly lose young women to this vicious cycle and particularly so when they are just returning to practice after having children.

- Listing decisions can make or break a carer's practice when s/he returns from, e.g. paternity or adoption leave, and often does, as s/he tries to finance childcare out of what s/he earns. We have received an example, in confidence, of such an impact during the course of the operation of the pilot scheme, involving counsel being placed in the egregious position of having to provide details of personal family matters in an effort not to lose instructions in two criminal trials within a very short period of time.

- It is not possible to put in place ad hoc suitable childcare arrangements and it is particularly difficult at very short notice[18] (returns usually take place between 5pm and 6pm in the evening) whilst also preparing a trial for hearing the following morning. There are cost implications to doing so, not met by the EOH scheme. A trial beginning at 9am requires counsel to be at court for 8am (for example for liaison with their opponent, a conference with the lay client, to speak to witness care, test electronic compatibility of equipment). An afternoon shift court, finishing at 6pm, means counsel will often not leave court until 7pm, further to a conference with the client, liaison with their opponent in relation to the next day's trial work, updating those instructing and actioning work needed for the following day.

[18] Nurseries usually open at 8am and close at 6pm. Wrap around childcare for school age children follows similar hours. Early drop off and late pick up can sometimes be extended to 7.30am or 6.30pm but this obviously falls far short of ideal for young children in any event and incurs additional costs. Nannies working hours cannot be changed from one week to the next because they are fixed by an employment contract entered into at the outset. In any event, no one reliant on the legal aid income earned from 2-3 day cases can afford to pay for a nanny and nor can the average court worker or juror. Grandparents are not available as they were pre-Covid. Childminding arrangements are similarly impacted and also not amenable to wholly unpredictable and late/ early working hours.

- Nurseries, breakfast clubs and after school clubs, relied on by working mothers to accommodate 'normal' working hours do not start and finish late enough to accommodate shift court working.

- Carers, whether of young or old, do not all have partners or family able to provide wrap around care, and particularly not according to a wholly unpredictable and short notice working schedule (unlike, for example, nurses, or doctors or other shift workers, there is no certainty of or advance scheduling for criminal lawyers and specifically not for the cohort of cases targeted by EOH).

- Criminal solicitors, a significant number of whom undertake short, warned list cases further to acquiring Higher Rights, also navigate police station calls outs and magistrate court attendances. Their morning or afternoon 'off' would not be as partners within those firms, under inordinate pressure to maintain the financial viability of firms during the pandemic, utilise every working hour of an associate to limit the number of staff employed.

- In the Magistrates courts solicitors and full-time judges are exhausted and burning out in part due to the 'silent' imposition of EOH hours. The working hours in the Magistrates Courts, particularly for junior solicitors, balanced alongside police station attendance, are unsustainable. They are also discriminatory for the women compelled to navigate them.

Race Discrimination

- The discriminatory impact on gender will extend to race through intersectionality- the crossover and compounding of different strands of discrimination. EOH will compound race and gender discrimination. We raise a particular concern on behalf of Black women, who are poorly represented in the higher echelons of the professions (partnership level of firms, Silk at the Bar and within the judiciary) and in the context

of the racial disparity in earnings highlighted by the BSB report 'Income at the Bar by Gender and Ethnicity' November 2020 that states, *'Income differences are particularly stark when looking at gender and ethnicity together, with female BAME barristers the lowest earning group, and White male barristers are the highest earning group.'* [19]

- Every person involved in every case deserves the same degree of respect and courtesy. We observe there is no proposal to extend EOH to lengthy or 'complex' cases. We question whether is because HMCTS recognise that the scheme cannot be justified and is likely to run into difficulties, (small cases do not attract the publicity of larger ones). We also question this strategy from the perspective of racial disparity. The professions and judiciary are predominantly white and male at the more senior levels (dealing with more complex cases) and more diverse in the magistrates and at a junior level for counsel in the crown court. We question why a discriminatory working practice is being foisted onto a targeted section of the criminal justice system workforce.

- The advancement of racial diversity within the legal sector is a particular cause of concern further to the Lammy review and the Black Lives Matter Movement and the emerging consensus on the need to address institutionalised racism in all sectors. HMCTS has failed to have regard to the fact the criminal bar and criminal judiciary remain disproportionately white institutions, through which pass disproportionately high numbers of Black defendants. Any public policy, including EOH, must be viewed through that lens. The failure to do so is discriminatory. It strongly suggests that securing diversity within the professions at the highest levels, is not presently considered a priority by HMCTS. Diversity within the legal sector is in accordance with the public interest. Barristers and solicitors are the pool from the which the future judiciary is drawn.

[19] See p.4 of Executive Summary https://www.barstandardsboard.org.uk/uploads/assets/1ee64764-cd34-4817-80174ca6304f1ac0/Income-at-the-Bar-by-Gender-and-Ethnicity-Final.pdf

Protected Characteristics

We have seen no, or no adequate consideration, within the consultation documents, given to the impact on other groups with protected characteristics, for example on the grounds of disability or religious observance, which may by impeded by the extended afternoon/evening hours. We advise referral to the Equality and Human Rights Commission for a thorough assessment of the discriminatory impact for all people with protected characteristics.

Finally we observe that by curtailing the scope of the pilot, HMCTS purposefully targeted the most financially vulnerable members of the defence bar and the very backbone of the prosecuting authorities; counsel and in house advocates, who undertake the highly skilled and very tiring work of back to back prosecuting in relatively short trials, week in, week out and those working in the magistrates courts. HMCTS has singled out the advocates who earn the least, and who, after many months of no income as a result of the virtual cessation of criminal trials during lock down, can be anticipated to have the least financial reserve, to stand up to the EOH proposal.

THE REGULATORY CONSEQUENCES OF EOH

The pilot afforded the opportunity for any advocate to 'opt in or out' of the scheme. If a case had been allocated to an EOH Court, there remained an option available to the advocate to apply to the court to remove the case from the scheme. The ability of an advocate to request not to participate in the pilot was necessary and desirable to protect those advocates who would be unfairly prejudiced by inclusion in the scheme due to care commitments, family life or any of the other issues identified in this document and by respondents.[20]

It does, however, carry a very real danger of placing advocates who are unable to participate in an EOH court in conflict with their clients, professional or lay.

All members of the Bar are required by the Codes of Conduct to act in the best interests of their clients (Core Duty 2) and must not accept instructions where there is a conflict of interest, or *real risk of conflict* of interest, between their own personal interests and the interests of the prospective client in respect of the particular matter (Rule C21.2). Where an advocate has accepted instructions to act but a conflict, *or real risk of conflict*, arises, an advocate must cease to act and return their instructions promptly (Rule C25).

If inclusion of a case in an EOH court would result in a trial date being offered in advance of the available date in a non-EOH court, an advocate cannot know whether declining to participate in an EOH scheme places them in conflict with their client, or carries a real risk of conflict arising, without obtaining specific instructions from each client on a case-by-case basis. Instructions would be needed from both lay and professional clients to allow a decision to be made on the risk of conflict and to advise appropriately.

Some clients may prefer to retain instructed counsel even where to do so would result in a delay. Others may not, and particularly so in the present circumstances where many defendants are now remanded under Custody Time Limit Extensions[21] in prison operating a

[21]Custody Time Limits have recently been further extended by The Prosecution of Offences (Custody Time Limits) (Coronavirus) (Amendment) Regulations 2020
https://www.legislation.gov.uk/uksi/2020/953/contents/made

23 hour 'bang up' (locked into cells) regime. A conflict would then arise which would *require* a return of existing instructions.

In order to know whether new instructions *could* be accepted in any case, it would be necessary to clarify this issue in advance of accepting instructions in every new case being offered to counsel. In order properly to advise a client of the potential additional delay to their trial as a result of instructing an advocate who is unable to participate in an EOH Court, detailed data would need to be made available by each Court centre operating an EOH Court.

The effect is likely to lead to a reduction of work available to any advocate whose personal interests would not permit them to act in a case that was placed, or *might be* placed, in an EOH court. The likelihood is, as this response identifies, that those most significantly prejudiced would be women.

In the current climate, where many firms of solicitors have been significantly financially impacted by the Covid-19 pandemic, the financial imperative of being able to conclude and bill trials is likely further to prejudice advocates unable to participate in EOH Courts by incentivising firms of solicitors to instruct advocates who can participate in EOH Courts. Again, the prejudicial effect of this is most likely to be felt by women.

A failure by counsel who is unable to participate in an EOH Court to obtain specific instructions on these issues in every case in which they are, or are intended to be, instructed would amount to a breach of the Codes. This would place a very significant additional administrative burden on every advocate unable to participate in an EOH Court, a burden not placed on advocates who are able to participate.

The net result is that those unable to participate in EOH Courts are at increased risk of breaching their professional duties under the codes, disadvantaged both by a likely reduction in available work and the likely need to return existing cases, *and* will find themselves burdened with a significant increase in administrative work necessary simply to be able to practice. Again, the group most likely to suffer will be women.

There is a regulatory requirement on chambers to give effect to 'fair allocation of work' and a legal duty for instructing solicitors not to give effect to discriminatory instructions.[22] Neither will protect counsel from the discriminatory impact of EOH because the discrimination will derive from the listing process and sitting hours, implemented by HMCTS.

We are consequently of the view that the assessment for the pilots is inaccurate in suggesting that the indirectly discriminatory impact of the scheme can be appropriately mitigated, which is likely to render any nationwide rollout liable to legal challenge under the Equality Act 2010 / Judicial Review. [23]

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[22] See BSB Handbook – Equality Rules https://www.barstandardsboard.org.uk/uploads/assets/eb082d32-1522-4995-980aa797a14cf2b4/4720f5e7-8d61-46e1-bd930c490b7f7897/02020403-Supporting-Information-for-Chambers-BSB-Handbook-Equality-Rules.pdf 'rC110(3)(i) requires that the affairs of chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees. This includes, but is not limited to, the fair distribution of work opportunities amongst pupils and members of chambers.' …'S.47 (6) Equality Act 2010 makes it unlawful for any person in instructing a barrister, to discriminate against them. This includes clients, clerks and solicitors. In addition, the Solicitors Regulation Authority handbook 2011 prohibits solicitors from discriminating unlawfully against any person in the course of their professional dealings. Such dealings will include the instruction of barristers.'

[23] 149 Equalities Act 2010: Public Sector Equality Duty:

(1)A public authority must, in the exercise of its functions, have due regard to the need to—
(a)eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
(b)advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
(c)foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
(2)A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
(a)remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
(b)take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
(c)encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

We therefore observe that any attempt to introduce the scheme is likely to result in litigation because of the legal and regulatory consequences for the solicitor and barrister professions, in light of the discriminatory impact identified.

Litigation would be unhelpful at this time. We invite the Government to pursue the more effective policy for reducing the backlog; utilisation of suitable premises.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
(a)tackle prejudice, and
(b)promote understanding.
(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
(7) The relevant protected characteristics are—
age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
(8)A reference to conduct that is prohibited by or under this Act includes a reference to—
(a)a breach of an equality clause or rule;
(b)a breach of a non-discrimination rule.

(9)Schedule 18 (exceptions) has effect.

PUBLIC HEALTH IMPLICATIONS OF EXTENDED OPERATING HOURS

EOH has not been considered through the lens of public health. No evidence of a PHE or HSE public health impact assessment has been released by HMCTS who state in the consultation documents that 'building risk assessments' (for which HMCTS not PHE are responsible) would be 'updated' if the scheme was introduced.[24] We are not satisfied this is sufficient to mitigate the health risks of having two groups of persons (in two different trials) using the same room each day. Courtrooms having no external ventilation. We ask for independent assessment, evidenced by a written report from PHE and disclosed. The potential contribution that EOH will make to increasing opportunities for viral transmission within the criminal courts, public spaces into which jurors and other members of the public are required to enter has not been properly considered. The exemption of courts from the lockdown imposed on 5th November 2020 makes the need for reducing and managing footfall across the court estate even more acute and it will remain so throughout the winter months, present reports indicating that vaccination is unlikely to be widespread before next year and the accuracy of projections for its efficacy, availability and take up, are as yet unknown. [25]

We are particularly concerned that footfall in any given court centre is increased, not decreased, by shift courts with obvious increased footfall at 'crunch' points in the day [26].

A case that could have been completed in 1 or 2 ordinary sitting days, increases to 3 or 4 sitting days in an EOH court. This increases the number of potential opportunities for virus transmission (lunches, coffees purchased, travel undertaken etc) increasing each person's personal exposure. Similarly, the volume of people passing through the court, particularly at the 'cross over' (1 hour between morning trial ending and the next starting in the same

[24] P,23 of the consultation document.
[25] https://www.bbc.co.uk/news/uk-54882091

[26] Despite admirable efforts of court staff, physical space is a significant issue at some courts with reports from magistrates courts of lawyers told to wait outside court buildings on occasion, impacting the ability for client consultations pre-hearing and likely to be aggravated by any attempt to fit more cases into the same courts through EOH.

courtroom in the middle of the day) increases, a particular issue in relation to numbers in the robing room, entering / exiting the cells and jurors/ witnesses and public entering / exiting the site – security queues at many courts do not allow at present for speedy court admission meaning all participants have to arrive early.

No consideration has been given to maintaining safe working practices which have been established on the basis of limiting the numbers in attendance at any one court centre at any given time. From a public health perspective the aim must be to better utilise the court estate and Nightingale Courts to spread footfall across premises, rather than concentrating it in 'bottle necks' at the mid-day cross over point foreseeably generated by EOH shift courts.

Government owes a duty of care not to impose unsafe working conditions or create unsafe public buildings. A number of courts have already been afflicted by covid cases, as have some prisons. Public health safety must be the paramount consideration and EOH is incompatible with that public priority.

Regrettably HMCTS to date has not earned the trust of the professions having a track record for public health failings:

- PPE has only just been introduced to cells, cell staff having worked throughout lockdown and across the summer months with no PPE provided / enforced and in close proximity to barristers and defendants entering and departing the cells where social distancing is often impossible. [27]

- The operation of City of Westminster Magistrates Court was recently strongly criticised and remains under review by the Health and Safety Executive for working practices which fail to take account of the risk of virus transmission. HSE reiterated

[27] https://www.theguardian.com/business/2020/oct/25/uk-serco-staff-told-to-wear-masks-in-courts-and-cells-after-coronavirus-social-distancing-complaints?CMP=Share_iOSApp_Other

the warning of courts having the potential to operate as sources of transmission not only for staff, but to the general public. [28]

- There were recent reports of a 'walk out' by lawyers at Bristol Magistrates Court after remote hearings were withdrawn and concerns were raised that HMCTS had failed to provide for adequate social distancing, WiFi in the cell area, Covid compliant meeting rooms, risk assessments or ventilation.

We do not have confidence that HMCTS is the right organisation to conduct a public health assessment of the impact of EOH on transmission rates. We have seen no independent assessment.

[28] https://www.standard.co.uk/news/uk/westminster-magistrates-court-warned-breaking-social-distancing-rules-coronavirus-a4573220.html

EXTENDED OPERATING HOURS IMPEDE THE ADMINISTRATION OF JUSTICE

EOH would impede the administration of justice in the following ways:

- **In the HMCTS consultation document a judge comments:**

  "The PM court is not equal to the AM. Nobody wants to be there. The energy is negative, people are very flat and tired" (Judge).

- There is no analysis within the consultation document of the consequent issues for Article 6 (right to a fair trial) and potential for undermining the calibre of evidence from witnesses and complainants. These are serious issues which could impede the administration of justice. Trials require, above all else, complete concentration by all participants at all stages. Jurors, defendants or witnesses, who have, for example, been required by their employer to go to work in the morning, before attending at court to sit 2-6pm may be impeded in giving full concentration to the proceedings.

- An ordinary courtroom sits for between 5 and half to 6 hours a day with a jury, and has the capacity to sit earlier or later when required for legal argument absent the jury and to compensate for unanticipated delays to keep a trial within the allocated timeframe. EOH courts sit for 3 and a half hours a day and have no flexibility to sit earlier or conclude later. Legal argument must be completed within the specified hours and must complete before a trial can continue with the jury present, further reducing the available sitting time.

- Trials take longer in EOH courts which increases refreshers, Recorder fees and staffing costs per trial and increases the opportunity virus transmission per trial (with each jury being required to travel to and from the court estate more times).

- Opportunities for trials to 'de-rail' increase because, for example, a participant has fallen ill, or for a Covid related reason cannot attend court. It is an unacceptable waste of public funds to have to re-try cases that have de-railed because tried in a protracted shift court, which could have concluded more quickly, and without incident, during

ordinary sitting hours. All trials benefit from 'momentum'. Juries that are kept waiting, feel their lives are being intruded upon more than necessary because trials are proceeding at an unacceptably slow pace (as is necessitated by an EOH court) or are tired at the conclusion of the afternoon shift (perhaps because of work commitments in the morning or childcare commitments, followed by court attendance) lose focus, to the detriment of both complainants and defendants.

- Standard court sitting hours allow for the listing of backers. EOH sitting hours are so short they mitigate against backers thereby introducing more, not less, delay, into the listing system.

- An EOH court starting at 9am would require attendance at court by all professionals and court staff by 8am (earlier for security and cell staff). The afternoon shift would require court staffing as late as 7pm (or later). Advocates still need to meet with defendants for conferences after court a) to take instructions ahead of the next day's work and b) if they attend in the morning for conferences they will be in the cells with the 'morning' shift counsel, providing yet more opportunities for virus transmission and resulting in wholly predictable waits for conference rooms, further delaying trials.

- Complainants and witnesses required to give evidence at 9am will also be needed on site much earlier, similarly, will need to arrive at court in advance of the start time of 2pm and may leave as late as 6pm. We refer to the discriminatory impact (above) but also raise a concern about witness and complainant participation, and quality of evidence, particularly in relation to female complainants and witnesses, foreseeably impacted by the scheme.

- There is no protection in the system for court staff, or lawyers, working both shifts. The purported protections are unenforceable and illusory, fail to understand the pressures on list officers and the sheer impossibility of ensuring that counsel is not, for example, at court hearings in the morning and trialling in the afternoon (as happened to a participant in the pilot – see Appendix B).

- There is a knock-on effect for the working hours of litigators. An advocate finishing in court at 6pm and concluding a post court conference with a defendant by, for example, 6.30, may then require work to be completed by the litigator ready for the next day of the trial. If that work extends to warning witnesses to attend at court for the following day, it cannot be left until the following morning.

- Witness summonses issued at 6pm will be difficult to give effect to and cause considerably more inconvenience than is necessary if served on the morning of the day that attendance is required.

- List offices are chronically understaffed and overwhelmed. EOH will add to their administrative burden and generate more work. In the Magistrates Courts phonelines to enquiries desk are virtually non-existent with responses to emails varied. This negatively impacts the granting of CVP applications (thereby increasing footfall across the court estate as lawyers and defendants attend unsure whether they have permission for a CVP link).

- Court hours are not working hours for anyone working within the criminal justice system. Most work is done outside of court hours, preparing for the next day of trial which may encompass, in a short case, working over night to write a closing speech, drafting legal argument or, preparing cross examination based on evidence heard for the first time in court that day or, in the case of a judge, writing a summing up for delivery to the jury the following day.

- Courts are already understaffed, and court staff overworked and underpaid. Running two trials out of every court room requires double the number of court staff per day (increasing the flow of people per day per court centre and associated journeys, which is contrary to the government's own guidance to reduce journeys in all areas to better protect public health). There has been no undertaking that ushers, for example, or court security guards, will be protected from 'double shifting.'

- Prison vans do not arrive for timely starts to the court day. This will be aggravated in EOH courts which will require earlier arrival by prison vans (e.g. 8am to allow time to get prisoner from van, booked into cells and into legal conference ahead of 9am start).

Prison regimes and the availability of prison vans are fixed and inflexible. Prisoners are often transported significant distances for trials. It is not unusual for prisoners, including youths, to be brought to court without having been fed. This is not conducive to effective trial participation. Such difficulties and late starts will become more commonplace.

- Keeping defendants in cells at courts for longer periods of time mitigates against remand prisoner welfare which may impede the fairness of trials. Prison vans are not in limitless supply. Further to a post-trial conference with counsel prisoners from the morning shift court will be kept until the next available prison van likely to be the van that comes at the conclusion of the court day. The proposal will extend that court day finish to around 6.30pm (for post-trial conferences to complete).

- Prisoners arriving back at prison after 7pm will have missed the evening meal (prison regimes are inflexible) and opportunity for a shower. This is not an unusual event under the present system. It is not conducive to effective trial participation.

- Lawyers detained in court late for the afternoon shift court have limited and often no opportunity to work on other cases; for example urgent advice often provided in the late afternoon ahead of court hearings scheduled for the following morning.

- Chambers clerks are subject to employment contracts which cannot be varied unilaterally at short notice. Their services cannot be compelled outside of the long hours that they already work, and the majority start work at 9am and finish at 6pm. Counsel regularly need to liaise with their clerks before the court day begins and after it finishes. Removing that possibility impedes the overall efficiency of the system, particularly in relation to necessary liaison with listing officers in relation to other cases.

- There are alternatives in the Magistrates Court to EOH that relieve pressure on the system: a triage system to deal with disclosure/plea/case management issues has been trialled with some solicitors firms for use in magistrates courts, in an effort to ensure trials are effective and that any acceptable plea cases are resolved. This has proved effective and is undertaken virtually with the CPS and legal advisor but not yet widely

available. There is also a pre-plea PSR protocol, for suitable cases, being rolled out in the SE magistrates courts, in an attempt to get cases which are a plea at the first hearing sentenced on the same occasions (no adjournment) to reduce footfall.

THE IMPACT OF EOH ON COMPLAINANTS AND WITNESSES

EOH may also have an indirectly discriminatory impact on female witnesses and complainants, not only because they would be impacted, albeit to a lesser degree (because of relative frequency of court attendance) by the same factors we have identified for legal professionals, but because the cohort of cases that EOH targets, single defendant/ 1-3 day cases, comprise the majority of domestic violence and sexual assault cases, of which, the majority of complainants are female. We observe that there has been no assessment of this impact undertaken by HMCTS, or on witnesses within other groups with protected characteristics, and advise referral of this issue to the Victims Commissioner for further consideration and analysis. We have not had adequate time, by virtue of the 13 days allocated by HMCTS for written responses to the consultation, to research this aspect of the impact of the scheme in sufficient depth but strongly recommend that it is necessary. We note that HMCTS have responses from only five witnesses to their assessment. This is insufficiently representative for any meaningful inferences to be drawn.

CONCLUSION AND ANSWERS TO THE CONSULTATION QUESTIONS

The predominant issue for the court estate in the short term is achieving sufficient capacity for effective trials during an acceptable timescale in a public health compliant way. In the long term, it is efficient utilisation of the court estate. The mechanism by which to deliver this, having regard to the need for public health safety as the primary consideration in the short term, is better utilisation of existing premises in conjunction with remote working; and an extension of premises (in the short term), if necessary. This will deliver a significantly greater increase of court capacity than EOH; has limited cost implications (the same as or less than EOH); does not have a discriminatory impact; will not negatively impact complainants, witnesses and defendants and therefore will not impede the administration of justice.

We welcome the Government's categorisation of criminal lawyers as key workers. We welcome the Government's commitment to keeping the criminal courts open, and working, through the winter months. We want to work with Government proactively to increase court capacity quickly and submit our paper for public debate as a contribution to that endeavour.

In answer to the consultation questions we submit as follows:

1.How do you think we could improve the proposed COH model?

We submit, for the reasons set out in our report, that EOH is an inherently inefficient and discriminatory system of work which impedes the administration of justice, in the context of the criminal courts. This cannot be properly mitigated, either by the 'blended / opt out' model (itself an inherently discriminatory system of work), or at all. The scheme should not be introduced. We advise referral of the scheme to the Equality and Human Rights Commission and the Victims Commissioner.

2.What features of the COH model work well and should be strengthened?

EOH is not suitable for the criminal courts, for the reasons set out in our report.

3.What would we need to consider in the transition and roll out of COH?

We do not accept that a consultation that presupposes the introduction of the scheme subject to the consultation, is a meaningful consultation. We are fortified in our opinion by the fact the consultation period has been limited to 13 days for written responses.

4.Are there other user groups in the Criminal Justice System that we should consider, and why?

- Women advocates
- Witnesses
- Victims Commissioner
- Specialist (criminal) solicitor practitioner associations
- Black, Asian and Minority Ethnic professional associations
- Disabled groups
- JUSTICE and other NGOs (fair trials)
- Equality and Human Rights Commission
- Court Staff / Trade Unions
- Judges
- Probation Workers
- Jurors.
- CPS.

5.Do you agree that, should we proceed with further roll-out, the operation of COH should be reviewed in April 2021, and what do you consider are the key points the review should focus on?

We perceive the failure to identify the circumstances in which the scheme would conclude as confirmation that there is no such intention. As per efforts to implement the scheme in 2017 (finally abandoned in 2018) which intended a permanent introduction, the failure to build in an end point is indicative that once introduced, the scheme will become systemic and effect a permanent and deleterious change to the working conditions of the criminal courts and the administration of justice. In any event, it's inherent discrimination, which cannot be effectively mitigated, means it should not be deployed, even on a temporary basis.

CRIMINAL BAR ASSOCIATION WORKING GROUP ON COURT CAPACITY

2nd December 2020

MEMBERSHIP OF THE CRIMINAL BAR ASSOCIATION WORKING GROUP ON COURT CAPACITY

Lucie Wibberley (Chair) – Garden Court Chambers

(Alphabetically)

Rachel Cooper, Lincoln House Chambers

Hussain Hassan, Lawton Solicitors

Fatima Jichi, Garden Court Chambers

Sarah Magill, Lincoln House

Sandra Paul, Kingsley Napley Solicitors

Dan Prowse, Exchange Chambers

Julie Taylor, Fifteen Winckley Square Chambers

Zachery Whyte, Montague Solicitors and Legal Sectors Workers United

Lisa Wilson, 25 Bedford Row

APPENDIX A

Re-produced with permission from the Bar Council from data compiled from the Bar Mutual Statistical Data for 2019 showing (on this page) how criminal work is:

i) distributed between men and women (pie chart)
ii) remunerated (small circles).

This chart, presented by the Bar Council using Bar Mutual statistical data, shows how the gross fee income of self-employed barristers in 2019 is split by gender in Criminal. It shows the proportion of work men and women bill in each practice area, and therefore how work is distributed and remunerated. This doesn't reflect seniority or working patterns so can't be interpreted as showing that women and men in comparable situations are necessarily being paid differently. Despite over half of new barristers being women, there are many more senior men, and these figures demonstrate that we are a long way off equality at the Bar. We will be tracking this data over time as it will indicate whether we are moving towards equal access to work for women at the Bar.

APPENDIX B

SUMMARY OF CBA SURVEYS OF EOH PILOT 2020

RESPONSES TO NATIONWIDE SURVEY

The CBA surveyed members involved in the pilot courts. Responses were received from barristers in relation (predominantly) to cases at Cardiff, Hull, Liverpool, Reading and Snaresbrook Crown Courts utilising EOH courtrooms.

Quantitative Data

Interim data collated as of 5th November 2020 is as follows:

- 15% of the cases started late because the defendant was brought late to court.
- 15% of cases started late because the court was not ready
- 34% of cases started late for another reason.
- Only 27% of cases in EOH courtrooms surveyed started on time.
- In 69% of cases there were breaks in the proceedings (so not all court time was sitting time, breaks are necessary within 4 hours of court time and to comply with public health guidance).
- 70% of responses received so far raise concerns about the utilisation of EHO for reasons of impediment to the smooth running of trials and the discriminatory impact on carers.

Qualitative Data

A sample of issues raised by advocates in relation to the operation of EOH courts in response to the survey (as of 5th November 2020) (all anonymised):

"Another problem with the follow-on trial was that it could not commence until the jury returned on the first trial, due to need to use jurors from the same pool and the same jury room facilities. In the long term I would not wish to frequently have such sitting times, as I did not get home until around 20:30 which meant I did not have the opportunity to settle my children to bed. Numerous CPS caseworkers with childcare responsibilities complained to me that both the early and late sittings caused them great difficulty with childcare arrangements. I imagine the same will be true for primary carers at the bar."

"Witnesses were at Court from 1:30pm. As soon as they could be released for the day they were. One of the witnesses was required to stay to assist the police with enquiries. After 4pm the witness care officers left (as they are not contracted to work the EOH court) and an usher

took over. The usher left at 5pm when the jury were sent home, despite the witness still being in the Court building and required to assist the police with ongoing enquiries. The witness (understandably) left without being released by the CPS rep which meant that the enquiries could not be immediately completed and resulted in further disruption to the witnesses' evening as the police had to arrange for the witness to attend the local police station. All could have been avoided if the usher had remained with the witness as had been expected."

"Limited opportunity given because client was late to take instructions. My clerks asked me to cover 3 other matters in the morning list before the afternoon slot, so it was a 14 hour day door to door."

"A 17-year-old witness (complainant in a sexual assault, albeit a minor one) was left part heard overnight."

"The OIC did not arrive at court until 9.30 because he had had to go to the Property Store in Romford to collect the exhibits. The Property Store is not opening until 10am at the moment. We were in a warned list and the OIC only received the notification to attend on Friday evening. He could therefore not get to the store in advance of today. He managed to persuade someone to let him in at 9am, otherwise he would have been very late. As the defendant changed his plea, it was not an issue but it would have otherwise delayed the start of the trial."

"We finished the first day early as it was a child complainant and we did not want to call her at 5pm. All other days we went until 1740-1800. The only day we finished early 1720 was Monday 21.09.20 as Jury were clearly flagging during summing up. It was felt that jurors may still have to get up early and sitting until 6pm is a long day. Also D was convicted at 5.20pm on 22.09.20 and judge moved direct to sentence and gave D 4 years at about 1750. Cells not happy about this and there was clearly an issue of staffing and them not "signing up to this EOH". I was unable to see D after sentence as it was so late and the cell staff did not want to accept him – but they had to. I don't know what the result of this incident was – cells were saying that the verdicts should have been adjourned until the following day! On a personal level I found this exhausting. My day does not start any later due to a late start of trial. I have 2 relatively young children (9 and 11) and I was getting home between 7.20-8pm depending on the trains and tube. Seeing my children so late was very disrupting to them as it was bedtime when I got back. The trial itself had no difficulties with witnesses. However I would not wish to conduct a trial like this again. I was able to source family for childcare for this one off but it will financially cost me if this was the normal. School wrap around care is only until 6pm in the evening and starts at 7.30am in the morning. I have to pay extra for this wrap around care and even on these times I could not get to court in time for a 9am start or obviously get home for a 6 pm pick up if court is finishing at 6pm. Who do I get to cover a

start time so early or a finish so late? I did this case as I am working mother and wanted to try it to give proper feedback. It was as I expected very tiring and not good on my family – we coped as a one off but I would not be volunteering myself for this again. The issues as to discrimination of working outside normal hours will and did impact me as a working mother."

"The trial cracked following advice from the Defendant's advocate. I am of the view that the early listing system was inconvenient and unhelpful. Both defence counsel and I had to leave our homes at 6:30am. Court staff had been at court since 7:50am and had to take this shift because they were unable to work in the late shift. It was merciful that in this case the only Crown witness was a police officer. It would have been highly regrettable to force a witness to attend very early at court only for it to crack. It was not abundantly clear how the use of one court over two sessions was better than two courts in one session. Reading Crown Court is a large building. There are many court rooms where social distancing is possible. On the day in question it appeared that many of the courts were not in use. The trial which was listed could have been easily dealt with in one day of normal sitting hours. Had it been effective it would have likely lasted two days because of the truncated court day and the lack of time at lunch for preparation of any legal arguments, speeches or summing up. These would have either had to happen during sitting time or at the close of the court session. This would mean that prosecution counsel's fees for the case would have gone from £735 to £1,165 and defence counsel's fees would have gone from £750 to £1,150. That would be an increased spend on counsel alone of £830. Additionally I am deeply concerned that the efforts of the EOH are more to force a way into being able to shut courts, not deal with a backlog. HMCTS and MoJ may see it as being a way of using the same estate for twice as many trials, regardless of the risk that trials may increase in length. The EOH has a discriminatory effect upon those with caring responsibilities. It seems to be part of previous similar plans conducted at Blackfriars and Croydon (reports on which have not been published). It fails to understand how our criminal justice system works, treating time not in court as "dead" as opposed to recognising the significant amounts of work done by counsel, judges, solicitors, court and prison staff outside of normal court hours."

"Having arrived at 8AM it became apparent that the defendant who was coming from a prison in Leicestershire was not going to arrive in time for the AM court session. Complete waste of a day."

QUALITATIVE SURVEY OF THE NORTHERN CIRCUIT

How the survey was conducted:

Members of the Circuit were asked the following questions by fellow members of their Circuit (from within the Working Group) to obtain as many responses as possible from a large geographical area that included an EOH pilot area.

Participants had a very short timeframe to respond (1.5 working days and 2 weekend days in October / November 2020)

The survey was conducted using this request:

"As fellow members of your Circuit, we are appealing for your assistance in relation to the potential further rollout of this scheme.

We would be grateful for the following:

d. *We are keen to hear from you in respect of the pilot in Liverpool. We welcome feedback whether positive or negative, including as much detail as you are able to provide. Specific examples would be helpful.*

d. *If any members of circuit, including those who did not participate in the Liverpool pilot have a view in relation to EOH and are willing to articulate how it would affect you if it were to be rolled out nationally, please would you provide us with this information.*

d. *If you have any suggestions for alternatives for HMCTS to consider by way of utilising the existing Court estate, or suggesting other buildings not presently part of the Court estate, etc. Please provide us with these."*

All responses have been anonymised:

"I just wanted to write with some thoughts re. the extended opening hours. I have not been involved in any cases in Liverpool so I do not have experience of the pilot. I am however, very concerned about a potential roll out of this system. I will explain my situation as it might put into context the problems that other caregivers might face.

My children's nursery opens at 8am. 7.30am if I pay more. School early morning club opens at 8am. Again, I will have to pay for that privilege. I live an hour from Manchester Crown Court, Chester Crown Court and Bolton Crown Court and two hours from Sheffield Crown Court – if there is no problem with the traffic. These are the Courts I predominantly practice at. My parents are not on hand to help during this period to the extent that they were before, due to Covid. If I drop my child at school at 8am, I will *just* make it to Court for 9am. This allows me no opportunity to speak to the lay client/counsel for the other side. Even if school extended early morning club and I was able to drop her off half an hour earlier, this would

only allow me at the most, half an hour before court to speak to the defendant and/or counsel for the other side. The new timings seem to ignore the fact that we require discussion with defendants and other parties before trial. This discussion inevitably expedites matters during trial.

It might be said that we can just do conferences in advance of trial, and indeed we already regularly do, however, obviously these conferences are unpaid and require additional time taken out of court (not to mention the increased difficulties of even arranging these at the present time!). These conferences also do not negate the need for discussion on the morning of trial.

As it stands, my eldest goes on a school bus to my youngest's nursery, where they wait until 6pm for us to collect them. They go to bed at 7:30pm. If trials are finishing at 6pm, this again creates huge difficulties on a personal level. It also means that the part of the day where I can see them currently (albeit for an hour or so) disappears completely.

It could potentially mean that my trials further afield (for example Sheffield) would have to be returned if I could not ensure that someone was available to drop/pick up instead of me. I should say that I am lucky that I have a partner to assist (although the unreliability of his job also makes it difficult for us to know that there is childcare in place). I am not a single parent – I have no idea how this policy will work for single parents with no support whatsoever.

This is going to not only create huge practical and logistical difficulties, it will also require a greater financial outgoing for formalised wraparound care, but it also puts additional pressures on the already difficulty and at times impossible task of balancing this job with having children.

As it is, we make sacrifices in this job – we work during weekends, we miss nativities/parents' evenings/shows. As it stands I often don't see the children in a morning/evening (or I see them for less than 10 minutes), I often stay away if I have a trial in a court far away like Hull or Carlisle, I miss school holidays and have flown out late to family holidays abroad. My eldest complains continually that I do this job. But prior to Covid, at least I had more people able to assist with childcare to whom I could turn.

I know that many mothers, myself included, at times have felt that we cannot balance the two and the only option is to leave this job. Many of my female friends who are mothers have already made this move to employed practice, or away from the Criminal Bar. The EOH provisions put more pressure on mothers and will inevitably impact upon female retention at the Bar. I know that Courts and Judges say that requests can be made for our trials not to be included in this system and that this will be accommodated. I doubt this will happen.

I have asked for accommodation from Court listing offices pre-Covid to allow me to attend things relating to my children and these requests were not accommodated.

I also anticipate scenarios where trials will be pushed back considerably if they are not in the EOH provisions. This will mean that if solicitors want trials to go ahead, or as undoubtedly will be the case, defendants want their trials to go ahead, then scenarios will occur where

counsel will simply be replaced. This will discriminate against caregivers and ultimately women.

In any event, if trials are being pushed back if they cannot be accommodated in the EOH provisions, this will have a direct knock on effect on finances. Again, for individuals who cannot do the EOH cases – women and caregivers.

I also want to note that a lot of the delays that I am seeing in Court at the moment are not directly related to counsel/Covid. I was involved in a serious and complicated sentence in which the defendant had been moved from prison in one city, so they arrived at 11am each day after they did all the drop offs to other prisons. There had to be a conference with an intermediary before we could even go into court, so we did not start before midday on any of the days. Court time could have been saved if she had been remanded to a local prison. I was also involved in a trial in which the section 28 of the complainant could not be played as no one had requested the 'pin' to view the footage and the telecoms operator required 48 hours' notice. The jury were sent away for two days. This extended the trial considerably. These issues could have been dealt with through effective communication between agencies/organisations and with some sensible forethought given to the issues."

Female Barrister, 11 years' Call

"I have not been involved in the Liverpool pilot and, in reality, I suspect that initially extended opening hours will not affect me as I am 19 years' call and have a well-established higher value PI and Clinical Negligence practice. However, I have 3 children and have had 3 maternity leaves in the last 12 years. I feel very strongly that the extended opening hours will potentially very significantly detrimentally affect younger women at the bar who are embarking on or returning from maternity leave. In an age where there is an acknowledged problem in retaining young women at the bar I cannot see that this will be anything other than another hurdle for young mothers attempting to return to or build a successful practice at the bar.

At the PI bar, the reality is that after any period of absence longer than 6 weeks, barristers start to lose work. Once you return to work, there is a need to build up your practice and start earning money (often to pay for childcare). In those circumstances, as I understand it, the sort of hearings being listed for extended opening hours are exactly the sort of hearings women returning from maternity leave will be attending.

With earlier starting times and later finishing times some of the problems that I anticipate are:

d) In relation to morning hearings, even without long distance travel (inevitable at the junior PI bar in some cases) – a 9am start means leaving the house at 6 or 7am to allow for travel to even the most local court and a conference with the client (of course this does not allow for last minute prep….). Without a partner who is at home or in a job which allows them to leave later for work, this is impossible as no nurseries are open before 7.45am at the absolute earliest. School breakfast clubs don't start until 8am.

b) Similarly in relation to evening hearings, the same problems arise. Most nurseries close at 6pm. At best they will fine you for not picking up at 6pm – at worst they will leave your child

outside the nursery in November! Again, without a partner who is at home or permitted to leave work earlier, it is impossible to collect at that time. Again, school breakfast clubs generally run until 6pm.

c) Depending upon the stage in career, it is simply not possible for a practitioner to earn enough to pay a full-time nanny (required if both parents are working these sort of hours). Nursery or school breakfast clubs simply do not work on the basis of "start early, finish early" or vice versa. Their hours are fixed and immutable and a very early start is just not manageable.

d) A 6pm finish in court would, in reality, mean not being home until 7.30pm again, even from the most local court which means dinner, bath time and bedtime has been missed for very young children and that dinner and homework is missed for older children. In my experience this has significant implications for both children and parents.

I suspect for many young mothers at the bar, this would be the final nail in the coffin of continuing or rebuilding a career at the bar after having children. I cannot emphasise enough – in my view it is already extremely difficult to have a full-time career at the bar and have children. It takes hard work and sacrifice on the part of both parents and children. I think when it is very hard to start with, these sort of working hours would deter women returning from maternity and struggling to rebuild a practice in any event."

Female Barrister, 19 years' Call

"They (national roll out of EOH) would be a disaster for me, and I assume most other members of the bar with (child)care responsibilities. The consequences will therefore undoubtedly disproportionately affect women who are much more likely to assume this role within the family.

It is already extremely difficult to make late returns and evening work possible with a young family. The extended hours will be impossible. I know of no childcare that would open sufficiently early/late to accommodate the start/finish time, aside from perhaps the crèche at the hospital which I understand prioritises places to NHS staff.

My husband's working hours would prevent him helping and my parents, although living nearby, are in their late 70s and unable to assist as regularly as would be required. Single parents, those with partners who work away or without wider family support stand absolutely no chance. We will lose work if defendants and solicitors are advised that the case will be heard next year with Miss X or could go ahead next week with a different barrister. Hugely unfair.

We have spent years and £1000s qualifying and gaining experience in this profession only to have to give it up if these hours are brought in. And what about defendants, victims, witnesses, ushers, clerks etc. and jurors? There is a reason we sit the hours we do and always have done. They work well. A huge amount of work is involved in a trial and that happens 8.30-10.30, 1-2, 4.30-6.30 etc already. The new hours make no allowance for this.

We are not like doctors, police etc who chose and trained for their roles knowing shift work was involved and who have arranged their personal and family lives in order that they can be accommodated. If these hours are forced in I, and many others, will be unable to make the changes needed to childcare and home life in such short order.

The existing court estate has plenty of buildings that could and should be being used to hear the backlog of jury trials during the normal court hours. Priority should be given to funding, recruiting, and training staff in order that these can be used."

Female Barrister, 15 years' Call

"The move to call them COH rather than EOH is not simply to confuse, but to try and get these through as a Covid response measure rather than the plan they had all along. These hours are very difficult to cope with if you are the primary carer for children. We are being required to work these bizarre hours to make up for lost sitting days over the last few years and we shouldn't be playing ball in my view."

Male Barrister, 28 years' Call

"I did two short trials in Liverpool during the pilot, both in the AM slot. One went without issue, the other we did encounter problems. The defendant was serving a sentence in a prison in Leicester and nobody thought to bring him to Liverpool before the day of trial, so consequently at 9am we were told he was on his way but wouldn't arrive until after 1. It was a complete waste of a day. He arrived at 1.15 and was kept at Walton overnight so we could start on time the following day. I suppose the moral of the story is a bit of forethought is required.

The other issues are personal ones around childcare, I was able to do the trials only because my husband is currently working from home and helped to take the children to school. This will not always be the case and is not the case for many other parents. Breakfast clubs and after school clubs are not open early or late enough to accommodate the EOH times and there is concern that briefs will be lost because of this. The court can promise to accommodate, but we have all been in a situation where counsel's availability gives way to the court's desire to get the case listed, meaning counsel who can't make it in early or stay late will lose work, which none of us can afford to do."

Female Barrister, 18 years' Call

"The 9-1pm and 2-6pm would be disastrous for me personally. I have 2 young children both at nursery and no grandparents etc locally to assist with drop offs/pickups. The nursery hours are 8am -6pm. My home court is Liverpool, so even if I were there every day then with rush hour traffic, parking up, getting in the building, signing in, getting changed I suspect it would be pushing on 9am which would leave no time at all to speak to the defendant/witnesses.

The 2pm start would pose no difficulties but the 6pm finish I simply could not do as there isn't anyone else to pick up the children apart from my husband and I. In respect of cases that I have in Manchester, Preston, Bolton etc. I would not stand a chance of being able to do them. My husband predominantly works in Manchester so he cannot do the drop offs/pickups.

I feel very strongly that those hours are highly discriminatory against women and those with young families."

Female Barrister, 16 years' Call

"I think any measures that tackle the unacceptable backlog should be encouraged and supported."

Male Barrister, 27 years Call

"8 hours of adversarial court time are too much. The normal hours are tiring and stressful enough. I'm all for earlier sitting times for non-trial cases."

Male Barrister, 34 years Call

"I am the sole or main parent of two children under the age of 3. My husband works abroad for most of the year. My main Court Centres are Preston, Burnley, Carlisle, Bolton and Manchester. Manchester and Carlisle pose the most difficulty during trials in standard working hours, due to the travel and the incompatibility with childcare hours. In order for me to maintain my criminal practice, I have benefitted from a positive working relationship with the local Judiciary, who have exercised discretion around trial start and finish times and have always been supportive of my personal circumstances, making adjustments as and when needed. To them I owe a great debt.

I am at the 'junior junior' Bar, and a huge section of my work includes the sort of trials certain to be deemed suitable for these ½ day courts. The roll-out of Extended (or 'Covid') working hours to include my trials in my regular Courts would result in the forfeiture of judicial discretion and with that, any flexibility in respect of childcare.

This does not just affect me, but many other parents just like me, and those who look after their vulnerable parents at home or in sheltered accommodation. Put simply, nursery hours are fixed and inflexible, my husband and I are not paid enough to afford a Nanny and I have no one else at home to help. Our fees would need to be tripled at a minimum for me to be able to afford such a luxury – or I would need to leave crime. My income has depleted beyond recognition due to the loss of my larger trial cases during the pandemic this financial year, making childcare even less affordable than it was previously.

Defendants constantly tell me that they are fed up with the delays. They will most certainly choose the closest trial date, and it is improper for Counsel to be given the deciding vote without instructions being taken. The roll-out of extended operating hours would see me returning work, or not being selected as Counsel for that work. Either way, I would lose money at a time when I can ill afford to do so.

I am immensely supportive of greater use being made of our court estate and of civil buildings for trials. Magistrates' Courts are sitting partially used, in buildings where they have previously been used as Coroners' Courts. They can sit juries, yet they are sitting empty, either completely empty, or they are only being used a couple of days a week. With the use of plexi-glass and the installation of technology there is no reason for this. There are also plenty of

larger civil buildings such as cinemas, theatres and sports halls that could be adapted for bail trials.

Trials within standard operating hours can be extremely effective. As a good example of a smaller Crown Court operating in these difficult times, Carlisle Crown Court has managed to hear both longer jury trials and shorter jury trials already this Autumn, fixed from PTPHs that occurred this Summer, using a carefully considered warned list/fixed list management structure. They are not listing trials where there is a likelihood the matter will resolve.

Too many hearings are being held in courtrooms when the hearing could be entirely remote, simply because DARTS is required. Remedying this would free up more trial court rooms. There is plainly an ability for compliant recording to occur remotely, it is happening in jurisdictions other than crime and it is time that we moved with the market."

Female Barrister, 6 years' Call

The following Barrister sent in a fully drafted proposal which we have summarised as follows:

This proposal challenged the use of extended hours in trials because of the disproportionate disadvantage to those with family commitments, particularly women and but suggested that extended hours during the Covid outbreak are potentially workable but only if extended hours are deployed for everything **but** trials and only for **remote** hearings. The proposal also made suggestions for better utilisation of the court estate for remote hearings including a suggestion of extended use of link facilities across the court estate to facilitate public participation in remote hearings, whilst freeing up courtrooms for use in trials.

Male Barrister, 44 years' Call

"I am a barrister of 16 years call. I have 2 children, both of primary school age. I am married to a professional. Her working hours include nights and weekends. She has to be at work between 0800 and 0900. If, as happens with some frequency, she has not finished work by 1700, she must remain until she has finished. Practically, she cannot assist with childcare mid-week meaning that I am the main child carer.

The earliest I can drop my children off at school is 0845. My elderly mother is able, at the moment, to collect them at the end of the day but due to her age (and currently because my Dad is a cancer survivor and so can't be around them at all because he is shielding) I need to be back each night by 1745 to allow her to go home and care for my Dad.

Dropping my children off at 0845 allows me to be at Preston Crown Court by 0915/0920 on a good day. It allows me to get to Manchester, Chester or Liverpool by 1000. Provided the courts I am in don't sit before 1030 and don't sit later than 1630, I can undertake any work at any of my local Crown Courts whilst fulfilling my childcare commitments.

I have not had any case in the EOH Courts. My Clerks are in possession of the details above so that they can request that my cases don't go into an EOH court at all. Due to the general

nature of the cases in which I act (often more complex with longer estimates and multi-handed) I don't believe any of my cases have been thought to be appropriate for an EOH Court at the current time in any event.

To be clear, in the event that any case of mine went into an EOH court and the court could not be prevailed upon to remove it again, I could not continue to represent the party in the case.

I am very fortunate that, over the years, every time I have asked any court to accommodate a request to allow me to maintain a family life, the requests have been granted. By way of example, I represented the first defendant in an 8 week armed robbery conspiracy last year in which the Court agreed never to sit before 1030 to ensure I had time to do the school run then get to court with sufficient time for a conference before the court convened. Similarly, the Court agreed never to sit later than 1630 to ensure I had time to see my client after court then get home to collect my children.

Those courts that have accommodated me have invariably not had the additional pressure of only sitting AM or PM as the current EOH trial requires. I cannot see how the Court could have accommodated my commitments at each end of the day if the sitting time was extended as proposed.

As a male advocate, I do not face the kind of pressure that female advocates face who practice in crime when it comes to child care or other care responsibilities. The attrition rate of female advocates remains, sadly, very high the more senior they get. There is an understandable (and sadly very real and justifiable) concern amongst female advocates not to be seen to have to ask for accommodations to facilitate family life. There remains an imbalance in favour or female advocates defending sex cases and against being briefed to defend violent and/or complex offences such as frauds and drug importations. I rarely co-defend with female advocates in the sorts of serious and complex cases I appear. I personally know hundreds of very skilful, able, hard working and committed female advocates who would do a very good job in those sorts of cases, sometimes a better job than some of those who have been briefed. But for reasons that remain unclear to me, there remains a reticence to instruct those skilful and talented female advocates in those sorts of cases. The problem may be one of perception. Whatever the issue is, requiring a female advocate publicly to cite care issues in order to have a case not go into an EOH court or be removed from it is likely further to exacerbate the problem. Given that the majority of primary child carers remain female, EOH is likely to unfairly prejudice women, again further exacerbating the problem of retention of women at the Criminal Bar and so onto the Bench.

I also have grave misgivings at the risk the scheme poses to instructed counsel, whether defence or prosecution, of placing us in conflict with our professional or lay clients. Most lay clients and professional clients (be they solicitors or the CPS) want the cases in which they instruct us to proceed to trial at the earliest reasonable opportunity. What will happen if a trial in which I am briefed can be accommodated in an EOH Court at an earlier date than a non-EOH Court? It would be in my best interests to ask for the case to be removed otherwise I would have to return the brief. It may not be in the best interests of my clients, professional and lay, for it to be delayed to accommodate my caring commitments. At the present time, even the most loyal solicitors are facing significant financial hardship and cash flow problems

due to Covid. They may choose to brief other people instead of me to avoid the risk of me being unable to participate in EOH courts delaying their turnover. So must I inform all those who instruct me that I cannot participate in EOH trials before or when I am instructed?

Can I ask for a case to be removed from an EOH Court without disclosing to my solicitors and client that I am making that request? If I don't inform them and, for example, my client who is on remand awaiting trial and who is acquitted has spent longer in custody awaiting his non-EOH trial than he would have had he been tried in an EOH Court, can he complain to the Bar Standards Board about my conduct and be justified in so doing? Can he sue me?

All at the Criminal Bar will know that the enormous amount of work we all do outside of court hours can only take place once we have got home and sorted out whatever needs sorting at home. In my case that is my children's homework, reading, making their tea and clearing away, bath time, bed time, sorting their bags for the next day and making dinner for my wife and me. It is invariably the case that I can't start on the work I need to do for the next day any earlier than 2100. Most nights I am in a trial, I am rarely in bed before midnight. I know that is pattern replicated by others up and down the country.

I knew when I embarked upon a career at the Criminal Bar that it would be badly paid compared to other legal specialities. It's now badly paid compared to plumbers. I knew I would have to work very hard, often until late in the night, and with some frequency. I knew I would be dealing with very serious cases in which, if I was to do the job to the high standard expected, I would have to give a commitment of great care and time to every brief. I committed to a life at the Criminal Bar because I truly believe the work we do is absolutely vital to the life of our democracy. I also committed to it because I knew that whilst challenging, it would not be incompatible with having a family.

I have a 90% defence practice. I have represented people accused of some of the most disturbing offences it's possible to commit from murder and manslaughter to cases involving kidnapping and torture, child abuse and rape, slavery, terrorism and child cruelty and all forms of assault. I act in long and complex fraud cases with some frequency. I am currently briefed in a case involving the largest importation of drugs into the UK ever. Without committed practitioners of skill and ability, those charged with those terrible and serious crimes could not adequately defend themselves against the power of the State. One need look no further than the Guildford 4, the Birmingham 6, Stephen Downing, Barry George and sadly many others to see why it is vital that any citizen accused of a serious criminal offence be allowed experienced and skilled legal representation to challenge the accusation they face.

There is no way I could continue to practise at the criminal Bar if EOH became 'the norm' or sufficiently common place that there was a real likelihood of my cases being listed in those courts. The large amount of preparatory work I undertake on my cases is only possible for me to do because I am able to offset it against the fee that accrues when the case goes to trial. Because we cannot bill by the hour like most other professions, it remains absolutely vital that the work we do on cases in advance of trial be remunerated by the fee that accrues at the point of trial and that that be effectively guaranteed income. If I was forced regularly to return work that I had worked many hours to prepare because the case had gone into an EOH Court, it would become economically unviable for me to continue to work in the kinds

of cases I currently appear. I cannot be clearer: if EOH Courts become the new norm, I will almost certainly be forced to leave the profession I love and to which I have committed my entire adult working life.

The only suggestions I can make as alternatives is to enlarge the numbers of courts sitting by the use of alternative public or private buildings. Many theatres are not currently in use. The Lowry has demonstrated how they can be used to great effect. Many university lecture theatres are likely to be currently empty. For multi-handed trials where defendants are in custody, an increase in the use of video links to prison could be made to allow prisoners to appear for the trials without leaving prisons.

Male Barrister, 16 Years' Call

APPENDIX C

A SHORT HISTORY OF EXTENDED OPERATING HOURS AND THE SALE OF CRIMINAL COURTS

EOH, formerly proposed by HMCTS under the guise of Further Sitting Hours ('FOH') and now referred to in Government literature as 'COH' ('Covid Operating Hours) is a policy which government have repeatedly tried to implement and which has repeatedly been abandoned because of its unworkable and discriminatory impact. It is not a policy contrived in response to Covid.

Previous pilots in the criminal courts (there have also been pilots in the civil and family courts) include:

- 2002 - The Bow Street pilot, tested a limited scope of case work which does not reflect modern criminal practice.

- 2010 - The Croydon pilot - it is understood that limited data was compiled, there were mixed responses from participants and no cost benefit (economic) analysis was undertaken. The report has not been made public.

- 2012 - The Flexible Criminal Justice System (CJS) pilot evaluated weekend and evening work, as well as virtual hearings, but did not evaluate a nation-wide roll out.

- 2017 - A pilot testing different models of FOH (Flexible Operating Hours) at Blackfriars and Newcastle Crown Courts and Highbury and Islington and Sheffield Magistrates Courts, which ultimately led to the scheme being abandoned in the criminal courts in the face of huge opposition as it proved unworkable and discriminatory.[29]

- None of the data / pilots, more extensive than the present pilot, have resulted in a positive decision to implement EOH in the criminal courts.

[29] https://womeninjustice.wordpress.com/2017/10/13/court-sitting-hours-a-feminist-issue/

Blackfriars Crown Court, said to require EOH to manage the workload and limit delays in listing in 2017, a claim disputed criminal lawyers at the time, was subsequently sold off by the government for profit 2 years later in 2019 after being deemed so below capacity as to be insufficiently utilised; a claim also disputed by criminal lawyers at the time. It's nine courtrooms now sit empty and unused. No development of the site by the new private owners has yet been approved (see http://blackfriars-crown-court.co.uk/#welcome). It was but one of a spate of criminal court closures, (predominantly magistrates courts) in recent years, which has exacerbated the present crisis, as the Government has reduced the size of the criminal court estate in the face of consistent warnings from across the criminal justice sector of the injustice and difficulties that would result.

Data analysed by the House of Commons Library and published in May 2020 revealed that based on the available information between 2010 and 2020: [30]

- 164 magistrates' courts closed, out of 320 (51%)
- 151 constituencies contained a magistrates' court which closed, with 13 constituencies containing 2 courts which closed
- The sale of court buildings raised at least £223 million for the public purse.

These figures disguise a more complex breakdown. Courts in Central London raised large sums as the public sector was stripped of valuable assets. Courts in other areas of the country were sold off for considerably less and as little as £1 (Ely Magistrates Court in financial year 2013-14).

The following data, of the profits raised by the sale of crown courts and magistrates courts in the last decade, was released by Lucy Fraser MP, then a minister at MOJ, in answer to a Parliamentary Question from Richard Burgen MP in 2018[31]:

[30] https://commonslibrary.parliament.uk/constituency-data-magistrates-court-closures/

[31] https://questions-statements.parliament.uk/written-questions/detail/2018-02-08/127599

	Proceeds (£)
2010/2011	
ALDRIDGE MAGISTRATES' COURT	330,000
LEIGH COUNTY COURT	155,001
LOUTH MAGISTRATES' COURT	200,000
SLEAFORD MAGISTRATES' COURT	384,000
WIGAN COUNTY COURT	200,278
WORKSOP COUNTY COURT	151,335
BARNET MAGISTRATES' COURT	775,000
Total 2010/11	2,195,614
2011/12	
ABERTILLERY MAGISTRATES' COURT	81,000
ACTON MAGISTRATES' COURT	1,176,665
BLANDFORD MAGISTRATES' COURT	175,000
BODMIN COUNTY COURT	140,000
BRENTFORD MAGISTRATES' COURT	650,000
CAERNARFON CROWN COURT	30,776
CHESHUNT MAGISTRATES' COURT	540,000
COALVILLE MAGISTRATES' COURT	245,000
CULLOMPTON MAGISTRATES' COURT	235,000
EASTLEIGH MAGISTRATES' COURT	850,000
GAINSBOROUGH MAGISTRATES' COURT	315,000
GRAVESEND COUNTY COURT	100,000
HARROW MAGISTRATES' COURT	1,125,000
HORSEFERRY ROAD MAGISTRATES' COURT	20,755,860
MANSFIELD COUNTY COURT	342,500
PENRITH MAGISTRATES' COURT	174,600
STRATFORD-UPON-AVON MAGISTRATES' COURT	530,000
SUTTON MAGISTRATES' COURT	2,247,000
WITNEY MAGISTRATES' COURT	330,000
MILDENHALL MAGISTRATES' COURT	328,000
RHONDDA MAGISTRATES' COURT	470,654
WHITBY MAGISTRATES' COURT	400,000
CAERNARFON MAGISTRATES' COURT	30,776
MARYLEBONE MAGISTRATES' COURT	13,400,000
Total 2011/12	44,672,830

2012/13

ABERDARE MAGISTRATES' COURT	275,000
ALNWICK MAGISTRATES' COURT	20,000
AMMANFORD MAGISTRATES' COURT	90,000
BARKING MAGISTRATES' COURT	505,000
BARNSLEY COUNTY COURT	169,864
BARRY MAGISTRATES' COURT	250,000
BLAYDON MAGISTRATES' COURT	144,990
BRISTOL MAGISTRATES' COURT	1,800,000
CAMBORNE MAGISTRATES' COURT	137,500
CARMARTHEN COUNTY COURT	275,000
CONSETT COUNTY COURT	81,265
CONSETT COUNTY COURT,	13,735
GUISBOROUGH MAGISTRATES' COURT	275,000
HEMEL HEMPSTEAD MAGISTRATES' COURT	650,000
HEXHAM MAGISTRATES' COURT	102,500
ILFORD COUNTY COURT	1,313,013
ILKESTON MAGISTRATES' COURT	610,000
NEWPORT MAGISTRATES' COURT	59,000
NORTHWICH MAGISTRATES' COURT	260,000
PENZANCE COUNTY COURT	230,000
PORT TALBOT MAGISTRATES' COURT	225,000
PWLLHELI MAGISTRATES' COURT	131,013
SITTINGBOURNE MAGISTRATES' COURT	430,000
SUTTON COLDFIELD MAGISTRATES' COURT	440,000
TECHNOLOGY & CONSTRUCTION COURT	25,337,500
WOOLWICH MAGISTRATES' COURT	335,000
MARKET HARBOROUGH MAGISTRATES' COURT	291,500
NEWARK MAGISTRATES' COURT	404,464
RUGBY MAGISTRATES' AND COUNTY COURT	285,000
WEST BROMWICH MAGISTRATES' COURT	160,000
ABERAERON OFFICE SUNNYSIDE MAGISTRATES' COURT	225,000
Total 2012/13	35,526,344

2013/14	
BALHAM YOUTH COURT	2,000,000
CARDIGAN MAGISTRATES' COURT	48,910
DENBIGH MAGISTRATES' COURT	165,000
DEWSBURY COUNTY COURT	276,000
DIDCOT MAGISTRATES' COURT	400,000
ELY MAGISTRATES' COURT	1
GOSFORTH MAGISTRATES' COURT	378,000
HALESOWEN MAGISTRATES' COURT	314,250
HARWICH MAGISTRATES' COURT	352,500
IPSWICH CROWN COURT	360,000
KEIGHLEY COUNTY COURT	130,000
LISKEARD MAGISTRATES' COURT	380,000
NEWPORT MAGISTRATES' COURT	380,000
RETFORD MAGISTRATES' COURT	151,000
SALFORD MAGISTRATES' COURT	544,000
SWAFFHAM MAGISTRATES' COURT	155,000
TAMWORTH MAGISTRATES' COURT	437,500
THETFORD MAGISTRATES' COURT	231,550
TOWER BRIDGE MAGISTRATES' COURT	8,525,000
WAREHAM MAGISTRATES' COURT	290,000
WHITEHAVEN MAGISTRATES' COURT	200,000
WISBECH MAGISTRATES' COURT	151,350
ASHFORD MAGISTRATES' COURT	375,000
LAUNCESTON MAGISTRATES' COURT	87,500
MELTON MOWBRAY MAGISTRATES' COURT	147,000
RAWTENSTALL MAGISTRATES' COURT	135,000
SUDBURY MAGISTRATES' COURT	112,000
WOKING MAGISTRATES' COURT	1,050,000
Total 2013/14	17,776,561

2014/15	
CHESHIRE MCC COURT	195,865
CROMER MAGISTRATES' COURT	325,000
DAVENTRY MAGISTRATES' COURT	140,000
DEWSBURY MAGISTRATES' COURT	300,000
EPPING MAGISTRATES' COURT	750,000
HARINGEY MAGISTRATES' COURT	10,100,000

HONITON MAGISTRATES' COURT	183,000
LLANDRINDOD WELLS MAGISTRATES' COURT	34,400
NEATH MAGISTRATES' COURT	450,000
PONTYPOOL COUNTY COURT	200,000
REDDITCH COUNTY COURT	345,000
ROCHDALE MAGISTRATES' COURT	6,316
SELBY MAGISTRATES' COURT	186,000
BISHOP AUCKLAND MAGISTRATES' COURT	150,000
KNOWSLEY MAGISTRATES' COURT	250,000
MID SUSSEX MAGISTRATES' COURT	2,105,000
ROCHDALE MAGISTRATES' COURT	323,685
SOUTHPORT MAGISTRATES' COURT	304,000
Total 2014/15	16,348,266

2015/16

ANDOVER MAGISTRATES' COURT	537,500
BRIDPORT MAGISTRATES' COURT	693,460
BURTON ON TRENT COUNTY COURT	185,000
COLEFORD MAGISTRATES' COURT	170,000
FLINT MAGISTRATES' COURT	87,500
GOOLE MAGISTRATES' COURT	60,000
HOUGHTON LE SPRING MAGISTRATES' COURT	30,000
HOUGHTON LE SPRING MC	60,000
KNUTSFORD CROWN COURT	1,600,000
LEWES MAGISTRATES' COURT	1,900,000
MARKET DRAYTON MAGISTRATES' COURT	100,000
STOKE ON TRENT MAGISTRATES' COURT	200,000
WANTAGE MAGISTRATES' COURT	657,000
WIMBORNE MAGISTRATES' COURT	310,000
WITHAM MAGISTRATES' COURT	525,000
Total 2015/16	7,115,460

2016/17

BRIDGEND LAW COURTS	375,000
CARMARTHEN MAGISTRATES' & CROWN COURT	223,004
EAST BERKSHIRE (BRACKNELL) MAGISTRATES' COURT	1,000,001
FELTHAM MAGISTRATES' COURT	2,150,000

FROME MAGISTRATES' COURT	397,666
GRANTHAM MAGISTRATES' AND COUNTY COURT	112,000
GRANTHAM MAGISTRATES' COURT	448,000
PONTYPRIDD MAGISTRATES' COURT	350,000
SHERBORNE MAGISTRATES' COURT	250,000
SPALDING MAGISTRATES' COURT	270,430
SWANSEA CROWN COURT	774,528
TOTNES MAGISTRATES' COURT	237,000
Weston Super Mare Magistrates' Court	116,078
PONTEFRACT MAGISTRATES' COURT	205,000
BRIDGEWATER MAGISTRATES' COURT	167,652
Total 2016/17	7,076,360

2017/18

BOW COUNTY COURT	3,500,000
CIRENCESTER MAGISTRATES' COURT	450,000
DORKING MAGISTRATES' COURT	2,125,000
GREENWICH MAGISTRATES' COURT	12,005,000
HAMMERSMITH MAGISTRATES' COURT	43,000,000
HOLYHEAD MAGISTRATES' COURT	112,500
NEATH AND PORT TALBOT COUNTY COURT	250,000
REDHILL MAGISTRATES' COURT	6,550,000
RHYL COUNTY COURT	92,150
RICHMOND UPON THAMES MAGISTRATES' COURT	9,838,000
SOLIHULL MAGISTRATES' COURT	4,312,000
WALTHAM FOREST MAGISTRATES' COURT	3,471,040
WOOLWICH COUNTY COURT	2,555,000
CHESTER-LE-ST MAGISTRATES' COURT	100,000
TOTTENHAM (ENFIELD) MAGISTRATES' COURT	4,570,000
Total 2017/18*	92,930,690
Grand Total	**223,642,125**

The MOJ's statistics in relation to the backlog of cases in the criminal courts are: [32]

- In the Magistrates Court, the number of cases outstanding as of June 2020 (the second quarter of the year – April to June, for which statistics are available 'Q2') had risen by 44% to around 422,000 cases, compared to 292,871 in Q2 of 2019. This was across all case types with the most significant increase in the backlog of trials (of 66%).
- In the Crown Court the volume of outstanding cases increased by 25% compared to the previous year in Q2; around 34,277 in Q2 of 2019 to 42,707 in Q2 of 2020. This is the highest level of outstanding cases seen since the end of 2016 and continues the consistent increases seen since the first quarter of 2019. The increase can be seen across all case types to varying degrees, with a 29% increase in outstanding 'for trial' cases.

The backlog in jury trials has been exacerbated by covid, not caused by it as can be seen by the fact there have been consistent incremental increase in the trial backlog since Q1 of 2019. It was made particularly acute by a Government policy of restricted sitting days for judges during 2019.

The backlog in the Crown Courts is expected to exceed 53,000 by the end of this year, having grown to 51,595 by the week ending 25 October, according to latest available Government data.

END.

[32] https://www.gov.uk/government/publications/criminal-court-statistics-quarterly-april-to-june-2020/criminal-court-statistics-quarterly-april-to-june-2020