

**September
2021**



The Bar Council

**The Bar Council
Spending Review
Submission**

About us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales and discharges its regulatory functions through the operationally independent Bar Standards Board (BSB). A strong and independent Bar exists to serve the public interest and is crucial to the administration of justice and upholding the rule of law.

Introduction

Little has changed for the justice system since our 2020 submission to the Treasury. In fact, the situation has worsened as a result of the pandemic and parts of the system in England and Wales are at a tipping point. Tackling this remains a key priority for the Prime Minister, yet it remains the case that too many victims are unable to achieve justice quickly or effectively. Public experience of this vital service is of severe delays, insurmountable backlogs, crumbling buildings and chronic underfunding – a position which has seen further decline over the past decade. The impact on individuals – victims, witnesses and defendants and their families – is as great (and sometimes far worse) as for those waiting years for routine surgery on the NHS.

The current state of our justice system is clearly not what the Government seeks to promote either domestically or internationally, but it is sadly accurate. It is imperative that systemic failings are addressed so that citizens can access justice domestically. Internationally, our justice system should be deserving of the label “great”. Legal services *are* great, but in many areas, they are running on empty and rely on the goodwill of those who work in the courts to keep them afloat. The reputation of the justice system domestically is under threat which, in turn, threatens our reputation as a leading international legal centre.

This Spending Review should properly consider a long-term settlement for justice that examines what is required to ensure the entire system (from beginning to end in every jurisdiction) can operate efficiently and effectively in the interests of justice, and of maintaining public confidence in law and order. Investment will pay back: without it, the state of criminal justice will worsen and public harm will increase further. Failure to address this will create a two-tier justice system that is the polar opposite of “levelling up”. Confidence that the state will provide a system that enables every citizen to achieve their rights will erode further, with severe social consequences.

Summary

This submission responds to the priorities that the Chancellor set out for the Spending Review in his recent letter to Departments.¹ Implementing the recommendations below will pay back in terms of efficiency and effectiveness, faith in the justice system and the Government's ability to manage it, clearing the backlog of trials, and savings in other Government departments. Taken together, they will help to achieve the aims of the Government's *Beating Crime Plan* and complement the investment in 20,000 additional police officers and prosecutors. If ignored, the situation will only worsen and become even more costly to address.

Recommendations

Ensuring strong and innovative public services:

- **Sufficient resource: Invest in the justice system by an additional £2.48bn each year – an extra 22p per person per day.²**
- **Create more court and tribunal buildings, adequately equipped to hear cases remotely and in person.**
- **Provide access to early legal advice to support the most vulnerable and prevent the need for costly hearings.**
- **Ensure all prisons have enough functioning video links to conduct remote hearings.**
- **Make non-means-tested legal aid available for all domestic abuse cases.**

Levelling up:

- **Regenerate towns and cities by providing local access to justice through a larger court estate.**
- **The Government should implement recommendations made by the Criminal Legal Aid Review that will ensure there are enough criminal practitioners and support the sustainability of criminal practices for barristers and solicitors.**
- **Urgently launch a recruitment drive for judges, recorders, and magistrates to help clear the backlog of cases.**
- **Improve pay and conditions for HMCTS staff to enhance quality and prevent churn.**
- **Invest in 'tech ushers' to help court and tribunal users with technology in all courts by 2023.**
- **Urgently resource HMCTS data systems and facilitate regular and consistent reporting of key administrative data.**
- **Continue to engage with the MoJ's new "Data First" project and look to engage legal professionals and external stakeholders with the data linking work.**

- Produce modelling to demonstrate how and when the court backlog will be cleared and provide a clear assessment of what an acceptable standing backlog in each jurisdiction will look like.
- Ensure the youth justice system is adequately funded to help prevent reoffending.

Leading the transition to net zero and Advancing Global Britain:

- Commit to the legal sector being a net zero contributor.
- Boost England and Wales' position as a leading global legal centre.

Ensuring strong and innovative public services – *making people’s lives better across the country by investing in the NHS, education, the criminal justice system and housing:*

- **Sufficient resource: Invest in the justice system by an additional £2.48bn each year – an extra 22p per person per day.³**

1. England and Wales as a jurisdiction has endured a decade-long series of cuts. In 2019, annual justice spending in England and Wales (Ministry of Justice [MoJ] budget plus Crown Prosecution Service [CPS] budget) was £144 per person, or 39 pence per person per day. This represents an overall 29% reduction in spending per person in real terms between 2010-19. Within that, the CPS and the Legal Aid Agency (LAA) were particularly hard hit. The CPS saw a 39% reduction in spending per person in real terms between 2010-19 and the LAA a 37% reduction. The effect of underinvestment is not limited to criminal justice; the entire justice system has suffered – civil, family and criminal alike. England and Wales is a European outlier in slashing justice spending; in the last decade, it has experienced by far the largest percentage reduction in justice spending compared with other European countries.⁴

2. Parts of the justice system are now buckling under the pressure of systemic underfunding, under-resourcing and increasingly complex criminal cases. When the Government implements its welcome proposals on police numbers and CPS and sentencing reform, the strain on the courts and legal professionals will be even more pronounced.⁵ Investment needs to be made throughout the system. Without additional funding, particularly to legal aid, access to justice will be further threatened. To bring the budget to a level where it can efficiently deliver an adequate service, the Government needs to provide an extra £2.48bn (29%) of annual spending on the justice system.⁶ That equates to an extra 22 pence per person per day.⁷

Court reform and digital

- **Create more court and tribunal buildings which are adequately equipped to hear cases remotely and in person.**
- **Provide a dedicated fund to train and support all court users with remote technology, particularly but not exclusively for the digitally excluded.**
- **Ensure all prisons have enough functioning video links to conduct remote hearings.**

3. The court estate has been reduced by 32% in the last decade.⁸ As a result, during the pandemic Nightingale Courts were urgently needed to ensure that there would be sufficient premises to hear cases in a socially distanced way.⁹ As social distancing measures ease, we hope that the combination of the remaining court estate supplemented by a targeted use of remote hearings and the retention of some Nightingale premises should provide adequate court space. However, particular regions and particular court buildings within those regions present challenges which will be very difficult to overcome. It may well be the case that some areas require additional Nightingale courts or a more permanent solution i.e., additional permanent court capacity. We have put forward a more detailed proposal in Appendix A at the end of this document.

4. In addition, the court buildings where cases are heard are often sorely in need of repair and struggle to provide adequate facilities to users. Despite HMCTS spending £90 million on estates reform as of the end of March 2019, plus £40 million on video hearings and completed roll-out of Wi-Fi to all civil and family courts and tribunals, Covid-19 has shown that more investment in the existing court estate and its expansion is desperately needed.¹⁰ At a time of crisis, the court estate was unable to deliver without the addition of 60 Nightingale Courts. More are still needed. The court estate requires more buildings, not fewer, and all of these should be equipped with the facilities for digital and remote working.

5. The need for modernisation and digitisation in the courts is being called for at the highest levels of the judiciary,¹¹ but it is imperative that momentum is not lost post-Covid. The lower courts are still vastly under-resourced and inefficient. The central element of this lack of resourcing is reliable technology.

6. Investing in both physical court buildings and IT would enable a fully functioning justice system.¹² Whilst remote hearings may help to reduce the shortfall in the availability of courtrooms, they should not be used as a ‘sticking plaster’ and certainly should not be used in cases where there are vulnerable parties or witnesses (this includes children and Litigants in Person who do not have adequate access to their own technology) or jury trials. There needs to be appropriate research and consultation on the use of remote hearings on a permanent or mandatory basis. Used effectively and appropriately, remote hearings can contribute to “levelling up”, offering more efficient services to court users, showing taxpayers value for money and allowing the justice system to become a key player in the digital future.

7. The judiciary should also be offered training and guidance on how to determine when a case is suitable for a remote hearing and how to use new technology. We do not consider that judges should be expected to be self-taught in a new age of remote justice. If judges are well-versed in using technology, the time spent grappling with ‘tech’ issues on the day of a hearing will be cut – cases will take less time; money will be saved.

8. It is also paramount that all prisons have functioning video links so that some hearings can be heard remotely where it is in the interests of justice. The transportation of prisoners caused issues during Covid-19, and the situation may arise again whereby, either for public health or other reasons, prisoners need to have parts of their cases heard remotely. The Police, Crime, Sentencing and Courts Bill, which is anticipated to receive Royal Assent in January 2022,¹³ makes provision in section 169 for use of a live link in criminal proceedings.¹⁴ There now seems no reason, therefore, why any prison should not be able to offer the use of a functioning video link.

9. We also support the roll out of e-filing across all courts. There is no reason why some jurisdictions should have access to e-filing, while others do not.

10. The decision on allocation of Crown Court sitting days each year is based on the modelling of anticipated case numbers provided by the Ministry of Justice, consideration of judicial resource and the acceptable standing backlog of cases, as well as systems considerations.¹⁵ It was apparent in early 2020 that additional sitting days were required to

reduce the court backlog.¹⁶ The Bar Council welcomed the announcement in April 2021 that the cap on sitting days would be lifted, meaning that in practical terms there could be an unrestricted number of sitting days available.¹⁷

11. However, in the context of a declining pool of judges to hear cases, the removal of the cap on Crown Court sitting days may prove to be a cosmetic measure.¹⁸ Strategic funding, recruitment, staffing and support must underpin unlimited sitting days.

Early legal advice

- **Make non-means-tested legal aid available for all domestic abuse cases.**
- **Substantially increase the funding for early access to legal advice for welfare related issues.**

12. Evidence suggests that dealing with legal problems early saves money in the long run.¹⁹ A new report from the Community Justice Fund establishes that the average net benefit to Treasury for each client helped with early legal advice is £8,000, while the average cost of advice provision is just £510 per person. This direct net saving is in addition to increased employment and decreased reliance on state benefit payments for those helped. ^{2021[OBJ]} Many of the legal problems that people experience could be addressed well before the point at which they enter the court system, and before the problems compound and become more serious. This could be done through proper resourcing of early legal advice, which would be of great benefit to justice, the public purse and the courts.

13. Barristers tell us that when cases that could have been resolved simply with early advice eventually reach them, their work becomes, “stressful, unnecessarily complicated and firefighting in nature” as they try to find a solution, often under significant time pressure. They also find that having unrepresented people in court (Litigants in Person) who have been unable to secure appropriate legal advice “can have an exhausting effect on the [justice] system”.²²

14. A telling example of this is in the area of domestic violence. Since 2012, legal aid expenditure on civil domestic violence cases has been cut by 41% in real terms (between 2012/13 and 2019/20), according to Ministry of Justice data compiled by the House of Commons Library.²³ Furthermore, legal aid expenditure on civil domestic violence cases has been declining ever since 2008/09 from its peak of £65,229,000, resulting in a 51% reduction to 2019/20.²⁴ This decline in funding cannot be attributed to a reduction in need; the Family Court received a 49% increase in domestic violence cases starting since 2012 (17,563 starts in 2012/13 to 26,093 starts in 2019/20).²⁵ Data received since the start of the pandemic indicates that cases and reporting are likely to continue to increase, meaning we can expect a continued increase in the number of cases in court, with the United Nations calling domestic violence a “shadow pandemic”.²⁶ Given the Government’s commitment to helping victims of domestic violence, immediate action must be taken to ensure that all domestic abuse cases can access the appropriate legal help.

15. We welcome the decision that early legal advice in social welfare law has been identified for funding via the Shared Outcomes Fund as part of the previous Spending

Review. Over the last decade, the 93% reduction in cases coming forward for welfare related issues²⁷ shows that the system (established to help those who did not have the means to pay for advice or representation but needed to enforce their legal rights) is now providing support for a significantly smaller proportion of the population. Therefore, it is imperative that this first round represents an initial commitment to sustained funding for early legal advice in this area.

16. Individuals and organisations across the legal services sector agree that early legal help for social welfare issues saves considerable hardship and suffering by preventing legal issues from escalating.²⁸ The Bar Council recognises the crucial function offered by local law centres, advice agencies and specialist welfare advisors, particularly for people with disabilities. Our position is that access to early legal help and advice is an essential and cost-effective pillar of the justice system.²⁹ As the Law Centres Network has argued, late legal advice forces “people and their families [to] endure adversity which affects their health, work, accommodation and social relations.”³⁰ Since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), over half of the not-for-profit law centres or agencies offering free legal advice have been closed.³¹ Where law centres remain, much of the specialist advice available for social welfare issues (including debt, employment, welfare benefits, housing and immigration – many of which have been significantly exacerbated by Covid-19) has been removed.³² As the Equality and Human Rights Commission has reported, legal need is often simply going unmet.³³

Levelling up across the UK to increase and spread opportunity; unleash the potential of places by improving outcomes UK-wide where they lag and working closely with local leaders; and strengthen the private sector where it is weak.

Criminal Legal Aid

- **The Government should implement recommendations made by the Criminal Legal Aid Review that will ensure there are enough criminal practitioners and support the sustainability of criminal practices for barristers and solicitors.**

17. For several years now, the Government has been in receipt of clear and consistent information that the publicly funded criminal legal services market is on the brink of collapse. As the Justice Select Committee concluded in 2018, criminal legal aid is so desperately underfunded as to threaten the right to legal representation under Article 6 of the European Convention on Human Rights (ECHR).³⁴

18. Derisory fees and poor working conditions have led to an exodus of specialist criminal legal professionals; since 2015/16, there are 11% fewer full-time specialist criminal barristers and 22% fewer full-time specialist criminal QCs.³⁵ This is in addition to a drop of almost 45% in criminal legal aid solicitor firms since 2010 and a decline in the number of qualified legal executives who choose to undertake criminal work.³⁶

19. The criminal Bar was hit particularly hard by the pandemic. 38% per cent of all criminal barristers dropped an income band during 2020/21 and many endured up to six months where, due to court closures, they were unable to generate any new work.³⁷ In December 2020, 83% of the criminal Bar told us they had incurred personal debt or used savings to support their practice through the pandemic; over a quarter (27%) had taken on personal debt of over £20,000.³⁸

20. Our latest survey data from April 2021 indicates that 24% of criminal barristers actively want to leave the Bar — the highest of all areas of practice. Only 11% were happy with their working conditions.³⁹

21. It is unclear how the Government expects legal professionals to service the record backlog of criminal cases in the courts under these circumstances, even though legal professionals are a crucial part of the recovery. We are already seeing trials being delayed due to a shortage of barristers, judges and recorders.⁴⁰

22. Despite the investment of an additional £23m into the AGFS scheme at the end of 2018, fees received by advocates have been reduced significantly in real terms since 2010.⁴¹ Recent Bar Council analysis shows that the gross fee income of men at the self-employed criminal Bar has declined by 33% since their peak in 2006. For women, gross fee income has declined by 22% since their peak in 2005.⁴² The Bar Council, Criminal Bar Association and the Law Society are all in agreement that the solution to the crisis in the legal aid services market lies in a substantial increase to legal aid rates, particularly in the Magistrates' court and Youth court, to ensure a sustainable market.⁴³

23. We also agree that an independent fee review body should be established, in order to guarantee that fees received by legal professionals keep pace with inflation and respond to the evolving nature of work and the market. Self-employed criminal barristers in their first three years of practice took home an average (median) pre-tax profit of £12,200 in 2019/20. More experienced barristers earned more, but still took home a median pre-tax profit of £58,300 in 2019/20.⁴⁴ This is without any job security and before pension provision, unpaid leave, sick pay, national insurance contributions or debt repayments have been deducted.

24. Specialist criminal barristers can add £25,000 to their annual pre-tax profits by taking on some work in another, better-remunerated area of law, and an additional £35,000 on top of that by leaving criminal legal aid practice entirely.⁴⁵ We are asking for a significant injection into legal aid fee schemes in order that working in this area of law, which is essential to the functioning of a democratic society, is a viable and sustainable career choice for all and especially for those without independent financial means.

25. It is also important to maintain parity between fees paid to advocates who defend and prosecute criminal cases. The legal aid fee paid to an advocate defending in the Crown Court is currently broadly comparable to the fee paid to an advocate prosecuting the case for the CPS. However, the Criminal Legal Aid Review (CLAR) has received ample evidence that these fees are too low for the profession to be sustainable, and, as more barristers cease to specialise in criminal work in order to earn a living, there will not be enough criminal barristers available to reduce the backlog left by the pandemic.

26. Currently, the two fee schemes are broadly comparable in that in 2018-19 (the last year before figures were impacted by the pandemic), the average payment per case by the Legal Aid Agency (LAA) for the defence advocate/s under AGFS was £2541 and by the CPS for the prosecution advocate/s was £2531. Any increase in defence fees requires an equivalent increase in prosecution fees to maintain parity, so that we do not create a skewed justice system where the best advocates only appear on one side of a case.

27. In 2018-19, the LAA spent £218m in payments under the AGFS to represent defendants in 86,000 cases. The CPS spent £104m in payments to advocates under its graduated fees scheme for 41,000 cases (the other cases were prosecuted by CPS staff on a contract of employment, who are paid a salary and do not appear under the GFS figures). Therefore, each x% increase in defence fees will need to be matched by an x% increase in CPS fees. In cash terms, each £1m injected into AGFS will require a balancing £0.5m injected into CPS GFS.

28. We can no longer endure a system where legal professionals are expected to take on considerable personal risk, stress and debt in order to make up for the Government's refusal to properly invest in the publicly funded criminal justice system.

29. Legal aid lawyers are often motivated by a deep sense of vocation, but they still have bills to pay. If we do not see significant investment in the system very soon, we cannot ensure there will be enough legal professionals to clear the backlog in the criminal courts and to guarantee the equitable and sustainable provision of justice in the criminal courts. We await the overdue report of the Independent Review of Criminal Legal Aid and hope that sensible

recommendations are made and then implemented with a view to ensuring the long-term sustainability of legal aid work.

Sitting days/judicial time

- **Urgently launch a recruitment drive for judges and magistrates to help clear the backlog of cases.**
- **Improve pay and conditions for HMCTS staff to enhance quality and prevent churn.**

30. There is a record backlog of cases in the court system. Urgent funding must be given to the three components of the court system that come together to provide the court “sitting days” so that cases can be heard: court premises, court staff, judges, recorders and magistrates.

31. The Institute for Government estimates that: “In practice, it will be difficult to substantially reduce the Crown Court backlog while social distancing remains in place. To get the backlog to pre-crisis levels would require a year in which Crown Court sitting days – the number of court days that the government funds – reached 111,000, a 33% increase on 2019/20 levels and similar to the 109,000 sitting days in 2015/16.”⁴⁶

32. We believe that, instead of just one year in which Crown Court sitting days reach 111,000, this historically high level should become the numerical ‘floor’ for sitting days, with the expectation of further rises in 2022 and 2023 to combat the backlog.

33. A critical part of an effective response will be a recruitment drive for judicial posts and magistrate roles and ensuring that those posts are sufficiently well-supported and remunerated to attract and retain suitable candidates.

34. Between 2012/13 and 2019/20, the number of judges (FTE) in England and Wales has fallen by 12% and the number of magistrates in the same time period by 44%. This is not simply a response to declining caseloads; judicial capacity has “fallen more steeply than the number of cases in the respective courts in which they operate.”⁴⁷

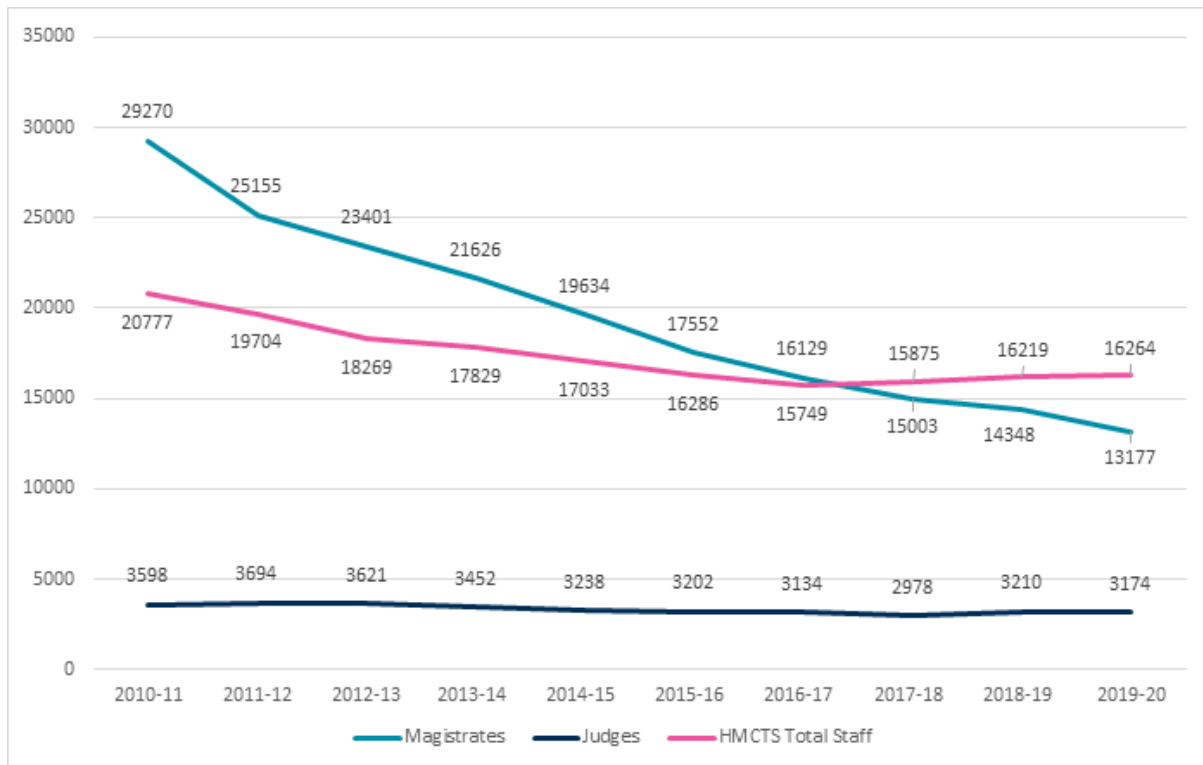


Chart 2: Declining numbers of Magistrates, judges and HMCTS staff in post since 2011.⁴⁸

35. Recruitment and retention for judicial posts is challenging. There is evidence that this is linked to salaries; judicial pay for some roles is 36% lower in real terms than a decade ago.⁴⁹ Most judges took a pay cut to take their judicial post.⁵⁰ The Review Body on Senior Salaries noted in 2020 that the significant and stable financial uplifts it had recommended in 2018 had still not been addressed by the Government in the form of long-term reform.⁵¹ We therefore believe that the government should outline a strategy for long-term, stable improvements in the remuneration of the judiciary, considering the recommendations of the Major Review of the Judicial Salary Structure submitted in 2018.⁵²

36. The Judicial Attitudes survey 2020 indicates systemic problems with the way the judiciary is treated by the Government over and above the issue of remuneration. 94% of judges in 2020 felt concerned about the loss of respect for the judiciary by the Government; 84% said this lack of respect may make them leave the judiciary early (before compulsory retirement age).⁵³

37. HMCTS staff recruitment and retention is a perennial problem in the justice system. Staff are poorly paid (in the bottom quartile of civil service pay) and have a turnover rate of over 10%. The courts are heavily reliant on agency staff.⁵⁴ A recruitment drive is seeking to create an additional 1,600 jobs, but this will not be sufficient to adequately support a rapidly evolving court system unless pay and conditions for court staff are improved.

Levelling up with technology

- Invest in ‘tech ushers’ to help court and tribunal users with technology in all courts by 2023.

38. HMCTS should also invest further in the recruitment of ‘Tech Ushers’ for major combined courts and all Crown and County Courts, who can be on hand to solve issues and support court users, including jurors, in handling technology. This issue is about to become particularly salient with the roll out of Section 28 video evidence across the criminal courts. We are aware that a digital support network for court users already exists, however, it is understood that they only work part-time. It is imperative that digital support officers are available throughout the entirety of the court day i.e., 10am-4pm, and arguably earlier (e.g., 9am) to ensure technological issues can be resolved *before* court sits and further delays can be prevented. There should also be adequate signposting to Tech Ushers for court users as well as clear instructions on how to get in contact with them and what support they can receive. Investment in Tech Ushers solves multiple problems: it allows the Government to meet the coming jobs crisis by expanding the sector and employing skilled IT technicians, and it will reduce the time spent by judges, legal practitioners and court users trying to get their tech working, which takes up valuable court time.

Improving the quality and availability of data

- **Urgently resource HMCTS data systems and facilitate regular and consistent reporting of key administrative data.**
- **Produce modelling to demonstrate how and when the court backlog will be cleared and provide a clear assessment of what an acceptable standing backlog in each jurisdiction will look like.**

39. It is very difficult to make accurate recommendations about what needs to change in the justice system because - as identified by Dr Natalie Byrom in 2019 – we are simply not provided with sufficient published data by HMCTS to allow us to fully understand what is happening in the court system or to evaluate the impact of reform or change.⁵⁵

40. We do not know how many trials take place on any given day; we do not know how many judges have sat and in which courts; we do not know how long cases are taking to get through the court system; we do not know how many remote hearings there are and in which jurisdictions; we do not have a sense of the comparative experience and justice outcomes of different groups of court and tribunal users; we do not understand the impact of judgements and sentencing decisions.

41. HMCTS acknowledges the deficits in its data systems, writing in late 2020: “Our data is currently held in fragmented systems (some of which are paper based records) and is often difficult to access.”⁵⁶ As the Lord Chief Justice observed recently in relation to the monitoring of the number of daily trials, “we are using clunking old systems that should frankly be in the Science Museum.”⁵⁷

42. We welcome the MoJ’s new “Data First” programme, with which we understand HMCTS is engaging,⁵⁸ and hope it will include close collaboration with legal professionals and external stakeholders on the data linking work.

43. We also welcome the June 2021 announcement that the National Archives will host a repository of judgements in an effort to make open justice a reality and allow monitoring of access to justice.⁵⁹ We also welcome HMCTS' attempts to engage with Dr Natalie Byrom's recommendations on the use of data.⁶⁰ We feel these and other projects and programmes designed to improve data collection and transparency should be adequately resourced by central government.

44. We welcome that data improvement has also been identified for funding via the Shared Outcomes Fund as part of the previous Spending Review. As outlined earlier, the first round of this funding should properly consider the resources required for sustainable investment to improve data and enable a stronger cross-departmental approach to evidence and data gathering.⁶¹

Youth justice

- **Ensure the youth justice system is adequately funded to help prevent reoffending, with a focus on:**
 - **Legal representation for youths at the police station should be mandatory or at least require an opt out.**
 - **Specialist training on youth advocacy should be provided to all lawyers working with children in the criminal justice system.**
 - **Career progression for lawyers seeking to specialise in youth justice should be rewarded under fee schemes, encouraging advocates to specialise and support expertise in this area for the benefit of vulnerable young people.**
 - **The use of the current system of "certificate for counsel" as default in all Youth Court cases which involve serious sexual and violent offences or where there are children with particularly complex psychological or psychiatric problems.**
 - **Addressing disproportionately low fee levels in the Youth court to provide a sustainable body of experience advocates.**

45. The number of first-time entrants to the youth justice system has fallen by 84% since the year ending December 2009, with a 12% fall since the year ending December 2018.⁶² New approaches to diverting children away from the criminal justice system have been successful. But this means that those cases that are left are often the most serious, with some of the most vulnerable defendants, victims and witnesses.

46. Poor remuneration for Youth Court work and lack of funding in the system in general impacts the ability of practitioners to build sustainable careers specialising in this work⁶³ and contributes to poor long-term outcomes for vulnerable children, particularly Black, Asian and white working-class boys.⁶⁴

47. We have found that advocates registered for Youth Court work are disproportionately younger, less experienced and earn less than their colleagues.

- In 2019/20, of 5,006 barristers in England and Wales (employed and self-employed) where their main area of practice was crime (over 50% of their work), 2,223 were registered for Youth Court work.
- 34% of barristers registered for Youth Court work had under five years' practice experience, compared to 19% of the Bar as a whole.
- Only 2% of barristers registered for Youth Court work were QCs, compared to 9% of the Bar as a whole.
- 44% of barristers registered for Youth Court work declared a fee income of under £60,000 a year, compared to 34% of the Bar as a whole.

48. Youth Court work is undervalued by central government, and we seek specific investment to ensure that legal professionals can deliver the highest levels of representation to children in court proceedings. We also note that none of the recommendations from the Lammy Review have yet been implemented and would encourage the Government to consider revisiting these.⁶⁵ Proper funding of representation in the Youth Courts and more of a focus on education and rehabilitation with a view to diverting youth offenders from reoffending as adults will undoubtedly benefit the public purse.

Leading the transition to net zero *across the country and more globally;*
Advancing Global Britain *and seizing the opportunities of EU Exit:*

– **Commit to the legal sector being a net zero contributor.**

49. The UK is leading the way with its commitment to achieving net zero emissions by 2050. The law and our justice system can play an important role in countering climate change and helping the country towards achieving net zero. The law protects the environment and barristers are central to both developing the law and to applying it in our courts. A properly functioning and resourced justice system allows the Government, citizens, communities and business to enforce carefully developed environmental law, for the benefit of all.

50. The contribution can and should go much further than developing and enforcing the law.

51. When acquiring or building new court buildings, the Government should lead by example. We therefore propose that HMCTS applies the Government Property Agency's Net Zero and Sustainability Design Guide⁶⁶ when opening new courts, whether they be temporary or permanent. As law firms, banks and insurers strive towards operating net zero offices, our courts and tribunals should do likewise. Ahead of hosting COP26 this autumn, the Government has an opportunity to be bold and ambitious through the introduction of net zero targets which should include courts and tribunals throughout England and Wales. The aim should be for communities to have justice delivered locally in courtrooms which lead the way from an environmental perspective and form an important part of a "levelling up" agenda.

– **Boost England and Wales' position as a leading global legal centre.**

52. England and Wales' position as a leading global legal centre must be protected. The threat of a significant loss of market access as well as it's the jurisdiction's international reputation being at risk as a result of Brexit must be fought off. Competitor EU jurisdictions are accelerating efforts to develop legal centres in the likes of Paris, Amsterdam, Frankfurt and Dublin, all of which will aim to divert work from the UK. This is in addition to growing competition from newer global dispute resolution hubs such as Singapore and Dubai.

53. The Bar Council is working hard, in conjunction with cross-sector bodies, such as The CityUK and LegalUK and in conjunction with the Law Society to strengthen the brand recognition of English law and the dispute resolution offer.

54. What is missing though is a joined-up strategy to enable firms, and SMEs in particular, to export their legal services more effectively. Whereas the MoJ has access to some funding from the GREAT campaign, this is limited to a few key jurisdictions in West Africa and the UAE. But there is not a concerted effort to assist those closer to home, for example barristers' chambers outside London and the South East, to develop an export ability.

55. We suggest that as part of the DTI Export Strategy, which is currently under consultation, the system of Market Access Grants (available from DTI Regional Offices), is

revisited to minimise the risk of joining government-led business development missions and those run by the legal professional bodies. These grants were available in the past to support SMEs and used to be very effective. They helped a number of regional practitioners to develop international practices.

56. The Bar in particular is an attractive proposition for foreign professional clients due to its consultancy style of operation. The Bar provides an add-on service to foreign law firms and in-house counsel and does not – unlike solicitors – present a competitive threat. Hence it is an attractive entry point for selling English legal services and English law and a ‘quick win’ in terms of any government investment.

The Bar Council

30 September 2021

Annex A

Local justice in Leeds: the need for a new dispute resolution centre

What?

A civil justice centre in Leeds, to better serve the legal needs of individuals, businesses, legal professionals, the city and the wider Yorkshire and Humber region.

Why?

Ensuring Strong and Innovative Public Services: Leeds is the only Business & Property Court (BPC) Centre in the country without a dedicated civil justice centre. The combined population of the Leeds City Region alone is three million. The Leeds BPC serves a vast geographical area, which includes cities such as Hull, Bradford, York and Sheffield and a large number of towns in Yorkshire, including Huddersfield, Harrogate, Wakefield and Barnsley. The businesses in the region are diverse and Leeds itself is a significant and growing tech hub. Leeds BPC also has many judges who specialise in BPC work, led by a High Court Judge.

Currently, business cases in the region are conducted in the Combined Court Centre, at Oxford Row, which deals with predominantly criminal cases and jury trials. The current premises are so unsuitable that a significant amount of business court work, which could and should be done locally in Leeds, is having to take place in superior facilities in London or Manchester in addition to existing demands on those facilities. The setting up of a “Nightingale” court to deal with civil matters at Cloth Hall Court on Quebec Street has demonstrated that standard commercial premises can be easily adapted to be used for business court work (as well as a great deal of the other work carried out by the civil courts).

A permanent dispute resolution centre would mean that justice is more locally accessible for businesses in Yorkshire and the Humber.

Criminal backlog benefit: Taking civil cases and particularly BPC work over to the existing Nightingale Court, and in the long-term to a dedicated Dispute Resolution Centre, would free up more court room space in the Combined Court Centre for hearing criminal cases, thereby ensuring that the backlog of criminal cases is dealt with more quickly.

Levelling up, delivering growth and advancing global Britain: Recent calls have been made for the ‘levelling up’ agenda to be more targeted. This is a key opportunity to put this into action in Leeds with many benefits for people in Yorkshire and the Humber. The business and legal communities in and around Leeds are going from strength to strength. Many businesses have recently relocated to Leeds, including Channel 4, Sky and Burberry. This has added to the existing businesses based in Leeds that include Asda Group, First Direct, Dart Group PLC and BT. In addition, the UK Infrastructure Bank has opened in Leeds and the Bank of England and Financial Conduct Authority have stated intentions to open in Leeds, to add to the Government Legal Department, HMRC and DWP hubs already established. The city has many large, internationally renowned law firms and a specialist barristers’ profession, both of which are dealing with increasingly valuable and complex BPC work. With a new Dispute Resolution Centre businesses will be able to resolve disputes locally, more efficiently and with major cost savings compared to conducting that litigation elsewhere. There will be an increase

in work for the legal sector in Yorkshire and the Humber and ancillary businesses that benefit from increased activity around a court centre. The increase in high quality legal work in the region will result in more opportunities to attract and retain talent from the large number of universities in Yorkshire and the Humber.

Leading the transition to net zero: There will be a reduction in the need for travel to use other BPC premises in London and Manchester, reducing the environmental impact.

When?

This new hub needs to be up and running when the lease on the Nightingale Court at Cloth Hall Court expires. This would ensure continuity. Our understanding is that the lease for the Nightingale Court has been extended until April 2022.

How?

Agreement from HMCTS/MoJ is needed to identify and fund a new and permanent space for a Dispute Resolution Centre. Initial support has already been indicated by a wide range of partners, led by Leeds City Council (LCC). LCC are producing a document setting out the case for why this facility is needed and showing the broad support which the proposal has already attracted.

Possible costings

For illustration purposes only, information has been sought from the Asset and Regeneration department of LCC to establish estimated capex and future running costs, on the basis that there was use of an area in an existing building in Leeds, close to the CCC. Based on an indicative square footage of 2300m² and a unit rate of £2,098 m² the project cost estimate is £10,559,032 (plus applicable VAT). Estimated running costs (including rent, utilities and service charges are £600,000 per annum (plus applicable taxes)).

What are the BPCs?

The BPCs are a division of the High Court. These are the courts for the majority of high value and important business and property litigation in England and Wales. Most cases involve two parties, some involve many more. They cover all forms of commercial and company disputes, corporate insolvency and personal bankruptcy, technology and construction disputes, intellectual property, tax and real estate matters.

It is very much part of the ethos of the BPC that they exist to provide an efficient and cost-effective dispute resolution service to the business community, as well as overseeing all aspects of restructuring and insolvency with a view to preserving viable parts of businesses, saving jobs and maximising value for creditors.

The BPCs are based at the modern Rolls Building in Fetter Lane near the Royal Courts of Justice in London, and at seven regional centres in the main business hubs. These include Manchester, Liverpool, Leeds and Newcastle in the North.

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⁵ Johnson, B. (19 December 2019) "The Queen's Speech" https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019_-_background_briefing_notes.pdf

⁶ This figure does not include the police. An additional £2.33 bn would be needed to fund the police according to 2010 levels.

⁷ Chalkley, M and Chalkley, A (2020) "Small Change for Justice: Funding for Justice in England and Wales, 2010-2019" <https://www.barcouncil.org.uk/resource/small-change-for-justice-report-2020-pdf.html>

⁸ HMCTS' Court Estate Reform Programme, between 2010 and 2019, has seen a total of 295 court facilities closed: 162 magistrates' courts have closed, out of 323; 90 county courts have closed, out of 240; 18 dedicated tribunal buildings have closed, out of 83; 17 family courts have closed, out of 185; 8 crown courts have closed, out of 92. House of Commons Library (2019) "Court Closures and Access to Justice" Debate Pack CDP-0156.

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¹⁵ Kevin Sadler (18 June 2021) "'Sitting days': how are they decided?" <https://insidehmcts.blog.gov.uk/2021/06/18/sitting-days-how-are-they-decided/>

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Recommendation 17: The MoJ and Department of Health (DH) should work together to develop a method to assess the maturity of offenders entering the justice system up to the age of 21. The results of this assessment should inform the interventions applied to any offender in this cohort, including extending the support structures of the youth justice system for offenders over the age of 18 who are judged to have low levels of maturity.

Recommendation 19: Each year, magistrates should follow an agreed number of cases in the youth justice system from start to finish to deepen their understanding of how the rehabilitation process works. The MoJ should also evaluate whether their continued attachment to these cases has any observable effect on reoffending rates.

Recommendation 21: The prison system, working with the Department of Health (DH), should learn from the youth justice system and adopt a similar model to the CHAT for both men and women prisoners with built in evaluation.

Recommendation 33: The Youth Justice Board (YJB) should commission and publish a full evaluation of what has been learned from the trial of its “disproportionality toolkit” and identify potential actions or interventions to be taken.

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