

# **The impact of the Covid-19 pandemic on the criminal justice system – a progress report**

May 2022

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## Foreword

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The Covid-19 pandemic and high infection rates continue to have a major impact across the criminal justice system (CJS) in England and Wales. Last year, we reported on the many changes that had been introduced in a short space of time to comply with new laws/restrictions and to protect the health of individuals.

The impact of the pandemic on the criminal justice system, as with other aspects of public and private life, was unprecedented. However, now that restrictions have eased, some parts of the CJS are not responding quickly enough to reverse changes or restore performance to pre-pandemic levels. Throughout the pandemic, restrictions have differed between England and Wales. While the constraints on daily life have now been dropped, the CJS is a long way from recovery and in some parts continues to operate at unacceptable levels. Prisoners still spend 22.5 hours a day in their cell; hundreds of thousands of hours of unpaid work go uncompleted in the Probation Service; and Crown Court backlogs remain high. The public expects the Crown Prosecution Service (CPS), police, prisons, probation and youth offending services to work seamlessly, efficiently and effectively to prevent and respond to crime, and in so doing to protect them. We have found that justice is delayed, denied or disrupted in far too many instances.

This is against a backdrop of an increasing demand on the CJS. From 01 October 2020 to 30 September 2021, the overall crime rate increased by 14 per cent compared with two years previously.<sup>1</sup> This was fuelled by a major increase in fraud and computer misuse, but also included the highest number of rapes and sexual offences ever recorded by the police in a 12-month period. Police forces have made good progress towards the government's ambition to recruit 20,000 new police officers by March 2023, but this will do little to address the lack of experienced detectives and digital forensic specialists that are much needed today. Workloads remain high, and the thin blue line stretched.

As a result, while the police may be effective and efficient in bringing some offenders to justice, some very material concerns remain over the low numbers of investigative outcomes for many crime types. It is therefore important that the police get upstream of offences, and intensify their efforts to prevent crime, in partnership with the other agencies and emanations of the state, and the public.

The Covid-19 pandemic has also exacerbated existing resource challenges in the CPS, prisons and probation services. In the CPS, staffing budgets had increased, but some Areas struggled to recruit and to cover for staff leaving or abstracted for the same reasons as affected all the criminal justice agencies, such as illness, shielding or home schooling. The work of inducting, training and mentoring new staff added to the burdens of managers and more experienced colleagues. The nationwide recruitment for prosecutors is ongoing and the CPS reports that while a small number of Areas continue to struggle to recruit, at the end of March 2022 the CPS had an overall vacancy rate for Senior Crown Prosecutors of 1.5 per cent.

Many junior barristers left the independent bar in the early days of the lockdown and have not returned, hampering the ability of the CPS to cover court hearings with external advocates. This results in the CPS having to use its own staff to deal with the significant increase in casework from rising caseloads and court backlogs, as well as covering courts that in the past would have been covered by external advocates. This is adding significant burden. In the magistrates' courts, backlogs have reduced, and some Areas, but not all, have seen live caseloads reduce back to pre-pandemic levels. The CPS published data for Q3

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<sup>1</sup> [Crime in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/crimeandjustice/crimeandjusticeinenglandandwales)

(October to December 2021) indicates that the magistrates' courts live caseload has dropped at an average rate of 11.5 per cent over the past year. In the last quarter receipts outnumbered case finalisations, even so overall caseloads in the magistrates' court remain about 20 per cent higher than pre-pandemic levels but geographically there are major inconsistencies.

Last year, we also reported on significant Crown Court backlogs. By the end of December 2021, 25 per cent of cases (14,612 cases) had been waiting for a year or more to come to court.<sup>2</sup> The number of cases waiting longer than a year has increased by more than 340 per cent since March 2020.<sup>3</sup> When Crown Court trials get under way, the average (mean) that a case has been outstanding is 282 days. The latest CPS data shows a live Crown Court caseload some 54 per cent higher than its pre-pandemic caseload, and trial effectiveness rates are not as good as before the pandemic, meaning that many cases are adjourned - thereby increasing the overall backlogs.

The prospect of waiting years for justice is likely to be traumatising for victims and their families and has a damaging impact on justice itself, making it more likely that victims will drop out of cases. The burden on police, the CPS and court staff of the live caseloads and backlogs in the courts is immense. Ensuring, over extended periods, that cases are and stay ready for trial, that serious or complex cases and custody cases are prioritised, and that victims and witnesses are kept on board is very challenging.

Probation services have undergone a major structural change over the past year, as all services across England and Wales have been unified and are now delivered by a single, public-sector organisation. The new Probation Service has inherited issues from its predecessors, including a lack of qualified and experienced probation officers in some regions. Although the Probation Service was able to make some return to 'normal' working over the course of 2021, large numbers of court orders remain uncompleted and progress in tackling these backlogs has been disappointingly slow. Concerningly, inspectors continue to find that public protection remains the weakest area of performance and early inspections of the newly unified service have been disappointing.

Youth offending services seem to have dealt better with the pandemic, with over two-thirds of those inspected in 2021 rated as 'Good' or 'Outstanding', helped by smaller caseloads and greater flexibility over local operating models. However, while the number of children given a caution or sentence may be falling, the needs of the children coming into contact with the CJS have become more acute. The pandemic has made life even harder for these children, many of whom already have complex and multiple needs. Leaders have reported problems in accessing mental health services and in supporting children to engage with education and training.

In prison, recovery from the pandemic has been slow and inconsistent. The lengthening time it takes to dispose of cases in the Crown Court means that defendants are having to spend longer waiting for a conclusion to the proceedings against them, and for those in custody, the impact is particularly acute. Too many prisoners are still spending 22.5 hours locked up every day – in sharp contrast to the lifting of restrictions beyond the prison walls. The lack of social contact, including with families, has had a dire effect on the wellbeing of prisoners. Long spells locked up have also limited opportunities for education, training or rehabilitation. There must be greater expectations of what can be achieved. If prisoners are successfully to rejoin the wider community when they are released, they need to be educated and trained for work, allowed to maintain contact with their families and given the

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<sup>2</sup> [Criminal court statistics quarterly: October to December 2021 - GOV.UK](#)

<sup>3</sup> Committee of Public Accounts. (2022). *Reducing the Backlog in Criminal Courts*. Available at <https://publications.parliament.uk/pa/cm5802/cmselect/cmpublic/643/report.html>.

support they need to address their offending behaviour by an effective and well-trained staff team.

Staff shortages in prisons and secure training centres have limited the ability of staff to deliver meaningful and constructive relationships with those they care for. In both prisons and probation services, the shortage of trained staff has hampered the delivery of rehabilitation programmes. As a result, people are leaving prison and/or finishing community sentences without addressing their offending behaviour – this is both a wasted opportunity and a failure to deliver the will of the court.

While there are still many issues as a result of the impact of the pandemic, we have seen instances where the pandemic has brought about a greater degree of strategic thinking, across agencies, about the challenges that Covid-19 presented. For example, joint recovery boards established by local criminal justice boards helped to bring local criminal justice agencies together, with a clear common purpose in the face of the pandemic. However, there does not seem to be an overarching plan for how the CJS will recover to pre-pandemic levels. Instead, each part of the system is operating in isolation and left to determine its own course. Taken together, this presents a very mixed picture.

We commend the hard work and commitment of staff delivering these services over the past two years. Their work is often unglamorous and unsung. We hope this report, and our ongoing inspections, continue to highlight areas of effective practice as well as providing senior leaders with recommendations to rebuild and restore our CJS.

## 1. Introduction

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1.1. In January 2021, we published a 'state of the nation' report<sup>4</sup> on the criminal justice system (CJS), based on our combined inspection findings over the previous year, when the Covid-19 pandemic severely disrupted services.

We took the view that:

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

1.2. We reported that the police had mobilised a national coordination centre and implemented a national learning programme. The Crown Prosecution Service (CPS) took advantage of digitisation to enable remote working, and prisons swiftly put in place measures to contain the spread of the virus. In addition, probation services had implemented exceptional delivery models in order to prioritise work, and courts had made more use of video technology.

1.3. It was clear, however, that services had suffered because of the pandemic. For example, in prisons, education was severely curtailed and rehabilitation programmes in the community were suspended.

1.4. We also found that many of the challenges had clearly already been there prior to the pandemic, and that underfunding and previous structural problems had been exacerbated by the pandemic. Working from home had had an impact on wellbeing for some people and service users had had considerably less face-to-face access to criminal justice agencies.

1.5. The greatest concern, however, was the situation in courts and the consequential effect this had had on all our inspected sectors, and for victims and witnesses. We concluded that there was a need to take urgent and significant action to reduce and eliminate the chronic backlogs in cases and to make sure that courts were secure and safe for all who attended and worked in them.

1.6. Our inspectors have spoken to many practitioners, managers, specialists and support staff throughout 2021 – the commitment and resilience of staff has been clear to see. We would like to put on record our thanks to all those who have kept services running throughout the pandemic.

1.7. This report provides an update to our original report and is based on our combined inspection findings during 2021. The structure follows the flow of work through the CJS from policing to prisons. It sets out findings from our inspections, as well as cross-cutting themes, and highlights the successes of the CJS, but also the challenges that it has faced and still faces.

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<sup>4</sup> Criminal Justice Joint Inspection. (2021). *Impact of the Pandemic on the Criminal Justice System*. Available at [www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf](http://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/01/2021-01-13-State-of-nation.pdf).

## 2. Crime and criminal justice caseloads during the pandemic

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### Overall estimates of crime

2.1. The police recorded 5.8 million crimes in England and Wales in the year ending September 2021; this is a two per cent increase compared with the previous year. However, the number of offences fell one per cent (to 4.9 million) when excluding fraud and computer misuse.

2.2. These figures also mask a lot of other variation by crime type. Most of the fluctuations can be attributed to the introduction and subsequent easing of national lockdown restrictions throughout the year (alongside more normal seasonal variations for some crime types). For instance, the lowest levels of crime were during the first part of the year. This coincides with the reintroduction of tighter restrictions on social contact and the national lockdowns put in place between January and March. The number of offences began to rise from March 2021 onwards as national restrictions began to ease. Levels of crime between July and September 2021 returned to levels similar to those seen in July to September 2019.

2.3. The Office for National Statistics (ONS) reports that sexual offences recorded by the police were at the highest level recorded within a 12-month period (170,973 offences) in the year ending September 2021, a 12 per cent increase from the same period in 2020. Rape accounted for 37 per cent of these offences, and the year ending September 2021 saw the highest recorded annual number of rape offences to date (63,136 offences).

2.4. Within these annual figures, the number of recorded sexual and rape offences were lower during periods of lockdown, but there have been substantial increases since April 2021. However, caution is needed when interpreting the level of police-recorded sexual offences. Changes in the figures may reflect a number of factors, including the impact of high-profile cases and campaigns to increase victims' willingness to report incidents.

### Court caseload and backlog data

2.5. This section draws on published court and CPS caseload data. It should be noted that the Ministry of Justice (MoJ) reports on a calendar year basis – meaning that quarter Q1 is January to March, Q2 is April to June, Q3 is July to September and Q4 is October to December. This is different from CPS reporting, which is on a financial year basis – meaning that Q1 is April to June. The CPS also reports caseloads by defendant numbers while the MoJ reports on case numbers – those cases with more than one defendant will count as a single case for MoJ statistics but will count per defendant for the CPS.

2.6. The MoJ, on 31 March 2022, published data<sup>5</sup> for the period October to December 2021 which shows that:

Magistrates' courts:

- There were 359,261 outstanding cases at the magistrates' court at the end of Q4 2021, which represents a 4 per cent increase on the previous quarter (346,021). This was, however, a 6 per cent decrease on the previous year and a 15 per cent decrease on the peak in Q2 2020 (422,176). The quarterly increase was largely due to an 11 per cent increase in 'summary motoring' cases. Overall disposals remain 22 per cent below levels seen pre-Covid-19.
- The trial listed volumes were below levels seen pre-Covid-19, reversing a recent positive trend. There were 21,416 trials listed for Q4 2021, a 15 per cent decrease

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<sup>5</sup> [Criminal court statistics quarterly: October to December 2021 - GOV.UK](#)

on the previous quarter (25,192). It should also be noted that Covid-19 infection rates had also increased between October and December 2021.

- The effective trial rate is still worse than pre-pandemic but remains steady from the last quarter. Of trials listed for Q4 2021, the proportion that were effective was 41 per cent. Correspondingly, the ineffective (23 per cent) and cracked trial<sup>6</sup> rates (36 per cent) also remained unchanged. For comparison, of the trials listed in Q4 2019, the proportion that were effective was 46 per cent, with 16 per cent ineffective and 38 per cent cracked.

### **Crown Courts:**

- At the end of Q4 2021 there were an estimated 58,818 outstanding cases at the Crown Court, down by 2 per cent on the previous quarter (60,049) and by 3 per cent from their peak in Q2 2021 (60,893). The volume of outstanding cases fell by 2 per cent for both 'for trial' and sentencing cases on the previous quarter, while appeals against magistrates' decisions were up by 5 per cent.
- The duration (length of time between reporting and cases being heard) of cases has continued to increase in the Crown Court. At the end of Q4 2021 there were 14,612 cases that had been outstanding for a year or more (with 3,597 of these cases outstanding for over two years). This has increased sharply during the pandemic and represents 25 per cent of all outstanding cases in the last period, up on the previous quarter (23 per cent) and is the highest proportion seen since 2014. The average number of days that a case had been outstanding in Q4 2021 was 267 days, and for trials it was 282; both are higher than Q3 (by six per cent).
- The median waiting time for defendants dealt with in 'for trial' cases continued to increase sharply, from 11 weeks in Q4 2020 to 20 weeks in Q4 2021 – a series peak. The waiting time estimates have increased across all plea types and there were continued increases in waiting times for defendants who enter a 'not guilty plea', up 14 per cent from 35 weeks in Q4 2020 to 40 weeks in Q4 2021 – a series peak.
- In Q4 2021 there were 5,877 trials listed at the Crown Court – down slightly on the previous quarter but above pre-Covid-19 levels. However, the ineffective trial rate was 27 per cent, up from 25 per cent in Q3 2021 and above levels seen between 2014 and 2019.

### **The MoJ and HM Courts & Tribunals Service (HMCTS) work to support recovery**

HMCTS told us that:

- HMCTS invested £250 million to support court recovery in the last financial year. The Spending Review provides an extra £477 million for the CJS, to help reduce Crown Court backlogs caused by the pandemic.
- The limit on the number of days that the Crown Court can sit was removed for the 2021/2022 financial year. Plexi-glass screens were installed into over 450 rooms and around 70 courtrooms were reconfigured to hear trials with multiple defendants. HMCTS have extended 22 Crown Nightingale courtrooms until the end of March 2023 and opened new 'super courtrooms' in Manchester and Loughborough for multi-handed trials. Thirteen other Nightingale court rooms at eight sites have closed.

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<sup>6</sup> These are trials that conclude on the day of trial, without going ahead either by way of guilty pleas being entered or the case being dropped.

- Over 70 per cent of all courtrooms are now equipped with the video conferencing hardware to run the Cloud Video Platform (CVP). At full capacity this would enable over 13,000 cases to be heard virtually every week. HMCTS expects to be able to list 20 per cent more Crown Court cases in the next year than pre-Covid (116,700 in 2022/2023 compared with 97,000 in 2019/2020).
- The government is set to recruit 4,000 new magistrates, in a bid to make magistrates' courts more representative and cut the court backlog. Magistrates' sentencing powers will also be extended from six to 12 months for a single triable either-way offence. It is expected that this will result in a permanent reduction in annual Crown Court receipts, because it is anticipated that many of these cases will be retained in the magistrates' courts.

2.7. While the above measures are welcomed, the impact thus far is minimal and the ambition to reduce the Crown Court backlog to 53,000 cases by March 2025 will do very little to improve matters. More needs to be done across the CJS to enable all parties to work collectively to address the issues. For example, increasing the capacity of the courts is one factor in addressing the backlogs but without an increase in resources for prosecution and defence, they will be required to cover increased volumes of cases with the same resources.

2.8. While limits on the number of Crown Court sitting days have been removed, utilising them relies on courts having enough physical and judicial capacity. A shortfall in the number of judges recruited means greater reliance on part-time recorders to fill increased sitting days. Recorders typically work as criminal barristers and are not sitting as many days as hoped, and when they do sit, they are taken away from their core work.

2.9. The CVP is an important innovation to allow cases to progress with virtual hearings but there needs to be a consistent approach across England and Wales. Currently, there are differing practices and some judges wanting to return to all hearings taking place in person. Further, some problems have been experienced with the system, including slow processing at times.

2.10. In March 2022, the government published its criminal justice scorecards for all crime and adult rape offences. The scorecards bring together data from the police, CPS and courts, and report on volumes through the system, attrition and timeliness. This data is presented both quarterly and on a rolling annual basis, and there are differing breakdowns by local police forces, CPS areas, and local criminal justice boards. This is a welcome initiative, making national and regional performance comparable and transparent. As with all scorecards, they focus on what can be routinely quantified, and the government should be alert to possible unintended consequences – for example, driving improved timeliness at the expense of the quality of the services provided.

### **CPS caseloads**

2.11. The table below compares CPS published data to September 2021 with pre-pandemic data:

<b>Caseload and finalisations data</b>	April 2019 to March 2020 (most recent pre-Covid-19 data available)	October 2020 to September 2021 (most recent published data available)
<b>Magistrates' courts finalisations</b>	389,009	385,282
<b>Magistrates' courts live caseload*</b>	64,201 (as at 31 March 2020)	76,990 (as at 31 September 2021)
<b>Crown Court finalisations</b>	62,037	60,260

<b>Crown Court live caseload</b>	45,268 (as at 31 March 2020)	69,843 (as at 31 September 2021)
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\* Live caseload is the volume of live cases that the CPS has at that point in time.

2.12. Area variations are apparent. Crown Court teams across all Areas have higher caseloads than pre-pandemic. While the live caseload has reached its peak and is now reducing (dropping from 69,843 in Q2 2021/22 to 68,046 in Q3 2021/22 with finalisations outnumbering receipts), some CPS Areas (including CPS London North, CPS London South, CPS South East and others) continue to see their live caseloads increase. These Areas have significant live caseloads that are higher than other CPS Areas. Other Areas have seen Crown Court backlogs stabilise and there are some which are reducing the backlog.

2.13. CPS magistrates' courts teams have generally seen backlogs reduce across the board, and some Areas have seen live caseloads reduce back to pre-pandemic levels. However, this is not the case for all Areas, and the national live caseload in Q3 2021/2022 remains higher than pre-Covid-19. Additionally, many Areas have experienced more pressure in their magistrates' courts teams, especially since most new starters tend to be placed in these teams. Their relative inexperience, with the need for training and support, causes an additional burden. The CPS's nationwide recruitment of prosecutors is continuing.

2.14. The CPS published data shows that charging receipts have remained lower than pre-pandemic levels. In Q2 of 2021/2022, the CPS received 48,178 suspects for charging decisions and finalised 44,550 pre-charge suspects. In Q4 2019/2020 (the final quarter before the pandemic), the CPS received 61,179 and finalised 56,260. The highest number of suspects received was 64,007(Q1 2020/2021) and the highest finalised was 55,564(Q4 2020/2021).

### **Youth offending service and Probation Service caseloads**

2.15. Youth offending service caseloads further reduced during the pandemic period, particularly for court-ordered work. Case managers in inspected services were typically supervising fewer than 10 cases each. This has enabled services to spend more time on prevention activity or with each individual child.

2.16. These trends are evident in the national statistics too. Data for the pandemic period, from April 2020 to March 2021, shows huge falls in the volumes of youth cases coming into the youth justice system compared with 2019/2020. Arrests of children under 18 were at their lowest level in the time series – down 19 per cent compared with the previous year; 'sentencing occasions' at court were down 28 per cent on the previous year. There were 8,800 first-time entrants to the youth justice system across England and Wales, and the youth custodial population proportionately fell by the greatest amount in one year since records began, to 560 in March 2021, a drop of 28 per cent on the previous year and down from 2,000 in 2011.

2.17. The total probation caseload at the end of September 2021 was 234,827, which is a five per cent increase from September 2020, and as such has remained relatively stable. As will be detailed later in the report, the bigger issue facing the Probation Service is the backlogs in delivering unpaid work and accredited programmes.

### **Prisons**

2.18. The prison population increased by one per cent between December 2020 and December 2021, to 79,092. The remand population increased by six per cent over the same period. More specifically, the 'convicted unsentenced' population rose by 16 per cent and the

'untried' population rose by one per cent. Despite these increases, the overall prison population was still five per cent lower than in December 2019.<sup>7</sup>

2.19. Safety in custody statistics published in January 2022 reported that, in the 12 months to December 2021, there was an increase in self-inflicted deaths from 0.8 to 1.1 deaths per 1,000 prisoners compared with the previous year. This was highest for prisoners aged between 21 and 24 and between 30 and 39, both with a rate of 1.4 deaths per 1,000 prisoners. The rate of self-inflicted deaths for those on remand also increased, from 1.7 to 2.5 deaths per 1,000 prisoners, over the same period. Following a drop in the 12 months to December 2020, these increases meant that the rates of self-inflicted deaths of both the total prison population and those on remand were now similar to pre-pandemic levels (1.0 and 2.5 deaths per 1,000 prisoners, respectively, in the 12 months to December 2019).

2.20. In the 12 months to September 2021, self-harm incidents had decreased by 11 per cent, to 52,726, compared with the previous year. Specifically, incidences had decreased by 12 per cent in men's prisons and five per cent in women's prisons. Over the same period, the rate of self-harm incidents decreased by nine per cent in men's prisons (545 incidents per 1,000 prisoners) but increased by five per cent in women's prisons (3,713 incidents per 1,000 prisoners). In comparison with pre-pandemic levels, the rate of self-harm incidents per 1,000 prisoners was 10 per cent lower than in the 12 months to September 2019 (which were the highest levels seen in the last 10 years). More specifically, the rate of self-harm incidents had decreased by 14 per cent in men's prisons since September 2019 but increased by 23 per cent in women's prisons over the same period.<sup>8</sup>

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<sup>7</sup> Data accessed from *Offender Management Statistics Quarterly: July to September 2019* (available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2019>) and *Offender Management Statistics Quarterly: July to September 2021* (available at <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2021>).

<sup>8</sup> Data accessed from *Safety in Custody Quarterly: Update to September 2019* (available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2019>) and *Safety in Custody Quarterly: Update to September 2021* (available at <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2021>).

## 3. Recovery: Police

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### To what extent has practice returned to normal?

3.1. In an April 2021 inspection report on the police response to the pandemic in 2020, HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) concluded that, although there were some inconsistencies, in general, police forces took immediate and decisive action to respond to the extreme circumstances of the pandemic.

3.2. HMICFRS also found that, during the first lockdown, the demand on policing changed. There were fewer reports of some crimes, such as theft and robbery, and an increased need to support the work of other frontline services as well as enforcing lockdown restrictions. This change meant that forces utilised their resources differently compared with the pre-pandemic situation. For example, some forces were able to clear backlogs of outstanding arrest warrants.

3.3. Since then, crime, which fell sharply at the start of the first lockdown, in March 2020, has risen to pre-pandemic levels. In fact, compared with the pre-Covid-19 year ending September 2019 there was a 14 per cent increase in total crime. This was, to a large degree, driven by a 47 per cent increase in fraud and computer misuse.

3.4. Trends in crime seen before the pandemic accelerated, with higher levels of online crimes, and more in private spaces or online. This included a rapid increase in cyber-stalking. The HMICFRS *Violence Against Women and Girls* report<sup>9</sup> stated that this trend has created several problems for police forces, such as the need to increase the provision of digital forensic services to retrieve evidence.

3.5. While demand on policing therefore continues to shift and change, inspectors generally find that practice is back to normal. This is unsurprising, given that policing overall maintained its services to, and protection of, the public during the pandemic. The service stepped up and stepped in during the Covid-19 period, policing our streets, investigating crimes and protecting the vulnerable – as well as enforcing new regulations related to the pandemic.

3.6. However, inspections frequently find a continuing effect on the workforce. For instance, the pandemic resulted in a significant decrease in training provision. Many forces are struggling to respond to this, given that demands on them are now increasing. The significant workloads carried by detectives are also still a problem of considerable concern, reflecting what forces told us in their force management statements – that they are still concerned about the shortfall in detective numbers.<sup>10</sup> Both of these areas were already a challenge before the pandemic, and remain so.

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<sup>9</sup> [Police response to violence against women and girls – Final inspection report - HMICFRS \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk)

<sup>10</sup> A force management statement is a self-assessment that chief constables (and London equivalents) prepare and give to HMICFRS each year. It is the chief constable's statement and explanation of the demand the force expects to face in the foreseeable future.

## Signs of progress

3.7. In early 2021, HMICFRS stated in their *Policing in the Pandemic* report<sup>11</sup> that problems that existed before the pandemic, such as backlogs in the examination of forensic exhibits and digital media, had worsened.

3.8. Police forces have responded to the increase in demand for digital evidence retrieval by increasing the size of the teams that do this, outsourcing and introducing mobile phone 'kiosks'. These are digital hardware products that can be positioned throughout force areas and used by officers and staff who have received training. However, the kiosks are only suitable for use in relatively simple cases, and where officers can already gain access to the phone through its security features.

3.9. In other areas of policing, we have found some evidence of practices introduced, or whose use was accelerated, because of Covid-19 being continued and having wider benefits. For instance, court video-link facilities in custody suites, which allow cases to be heard virtually, are still being used if a detainee is suspected or confirmed as having Covid-19 – but can also be beneficial if a detainee has a disability. During our custody inspection in Warwickshire, for instance, an individual who used a wheelchair was arrested on warrant and booked into a custody suite at 12pm. They then appeared promptly at court via the video link and were released from custody by 3.30pm. This shortened their time in detention and was a good outcome for the individual.

3.10. In October 2019, the Home Office announced an uplift programme, with more funding for the police service. This involved plans to increase police officer numbers by 20,000 over the following three years. In numerical terms, the effect of the uplift programme will broadly be to reverse a reduction in police numbers since 2010.

3.11. With this increase, the police service will be able to meet more of the demands it faces. In every sense, these benefits are very welcome.

3.12. However, it is not easy for the police to implement the uplift programme; recruitment on this scale is a major undertaking. In this respect, the police's efforts and achievements deserve credit.

3.13. Between October 2019 and September 2021, the police received 166,615 applications.<sup>12</sup> By the end of September 2021, forces had recruited an additional 11,053 officers<sup>13</sup> and appreciably improved diversity. Of these, more than four in 10 new recruits were female and more than one in 10 (who stated their ethnicity) identified as belonging to a Black, Asian or other minority ethnic group.<sup>14</sup>

3.14. While these increases in numbers and diversity should be applauded, it is not certain that the police will meet the programme's objective of completing the 20,000 uplift by March 2023. In addition, the service's ability to retain its new recruits, particularly those from minority ethnic backgrounds, remains to be seen.

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<sup>11</sup> HMICFRS. (2021). *Policing in the Pandemic – The Police Response to the Coronavirus Pandemic during 2020*. Available at <https://www.justiceinspectorates.gov.uk/hmicfrs/publication-html/the-police-response-to-the-coronavirus-pandemic-during-2020/>.

<sup>12</sup> Home Office. (2021). *Police officer uplift, England and Wales, quarterly update to 30 September 2021*. Available at <https://www.gov.uk/government/statistics/police-officer-uplift-quarterly-update-to-september-2021/police-officer-uplift-england-and-wales-quarterly-update-to-30-september-2021>.

<sup>13</sup> As before.

<sup>14</sup> As before.

## 4. Recovery: CPS

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### To what extent has practice returned to normal?

4.1. HM Crown Prosecution Service Inspectorate (HMCPISI) is carrying out a programme of inspections of the 14 geographical CPS Areas. Of the nine Areas inspected to date, all remain challenged from increased caseloads and other pandemic pressures. CPS London South and CPS London North are in a worse position than at the time of the last joint Covid-19 report, with Crown Court caseloads and backlogs continuing to rise.

4.2. Overall, CPS staff numbers have increased, as all Areas have been recruiting, but that has come at the cost of extra work in induction, training and mentoring. In one Area inspection, HMCPISI were told that across the course of a year, half the staff were new in post (new to the CPS, new to the Area or taking on a new role within the Area). Areas have also faced challenges with changes in the legal manager and senior management cadres and retaining staff. While an overall turnover rate of 7.4 per cent (CPS figures) for prosecutors nationally is not especially high, there are variations in Areas. Internal movement of skilled and experienced staff to other parts of the CPS is felt keenly in some Areas. Recruiting and moving staff around to cover vacancies and absences, or to deal with rising workloads, has led to many staff, including managers, being inexperienced in their role.

4.3. Remote working brings challenges in the induction and training of staff. Staff can feel more isolated, although there have been clear strategies in Areas to address this. HMCPISI has found that the CPS has a very well-structured national induction programme, which was adapted for remote working, and all inspected Areas are following it. Induction of new starters to an Area is generally handled better than the support and induction given when existing staff transfer to a new role within the Area. Remote working also brings a sense of isolation to staff, and many have had the pressures of home schooling, caring for the vulnerable or being ill themselves. The CPS and CPS Areas have continued to have a strong focus on staff welfare throughout the pandemic, but HMCPISI inspection has highlighted that continual pressure is beginning to cause 'burn-out' and some staff have left and retired earlier than they would naturally have planned. Staff turnover adds to the pressures on those who remain. Even with these challenges, the CPS scores in the civil service people survey carried out in October 2021 highlights that the results for indicators that measure employee stress and wellbeing are largely positive for the CPS, matching or exceeding the civil service benchmark. HMCPISI view is that this is as a result of the high degree of support and focus on welfare that the CPS had maintained during the pandemic.

4.4. Operational delivery staff, like prosecutors, have been facing significant challenges in managing increasing caseloads. The longer cases run, generally, the more case tasks there are to manage. Additional pressures during the pandemic are typified by the difficulties in preparing jury bundles; these have had to be prepared a week in advance, stored safely to avoid any contamination and then safely transported to the right courtroom. This process is made more difficult by late changes to the bundle or the court listing.

4.5. Some Areas have taken a deliberately light touch to formal performance management, owing to fears that staff are losing resilience and morale is weakening. The additional time spent by line managers on welfare is also having an impact on the time they have available to assure the quality of casework. While this is understandable given the context of the pandemic, HMCPISI findings highlight that more needs to be done to focus on the quality of casework.

4.6. There is a broad consensus from non-London Areas that the availability of external advocates is a real issue, both for Crown Court cases and as agents in the magistrates' courts, at a time when the Areas need more of both. The pandemic resulted in many leaving the self-employed Bar and even as things return to normal, many have not returned. Recognising the issue, the CPS adapted its fee scheme during the pandemic to make some payments earlier in the case as a measure to support the Bar during the pandemic. It is apparent, however, that Covid-19 has accelerated an existing crisis in the criminal bar. The Criminal Bar Association reports<sup>15</sup> that *'the funding crisis ...has ... driven out hundreds of our colleagues who could no longer sustain a career on pay that has declined in real terms over the last 25 years'*.

4.7. Pressures on defence practitioners have not eased substantially. In the early stages of the pandemic, staff were furloughed, so engagement between Areas and the defence was very difficult. Problems persist, however, with the ability of defence practitioners to make arrangements to see clients on bail or in custody.<sup>16</sup> This has an impact on prosecutors' ability to engage with the defence team, to agree which witnesses are required to give evidence at trial (which has an impact on victims and witnesses) and agree the edits required to interview transcripts to be used in evidence (with the consequent burden on staff preparing cases). The ability to resolve cases early with acceptable pleas is also hampered, so an opportunity is missed to prevent cases going into long trial queues.

4.8. Areas also had much larger numbers of cases, needing extended custody time limits, partly because of backlogs in disposing of cases, but also because the statutory limits were extended as a temporary measure from 28 September 2020 to 28 June 2021. As Crown Court backlogs are still significant, and trials are already being listed into 2023, many custody cases will continue to need extensions. The CPS developed a specific national template, which contained relevant caselaw and common Covid-19-related reasons for making extension applications. HMCPSI found that prosecutors used the templates appropriately and made good-quality and timely applications.

## Signs of progress

4.9. The pandemic has engendered much more proactive cross-CJS relationships in CPS Areas where stakeholders are focused on dealing with backlogs. The CPS has an established operational recovery and improvement programme which brings together, under a clear governance structure, strands of work covering charging, magistrates' courts and Crown Court working, people, finance and data. The programme aims to co-ordinate both recovery and improvement across the service and engage with a range of cross CJS work strands. Actions and responses have been put in place to lead both recovery and improvement. The CPS business plan includes this programme of work as part of its priorities.

4.10. There have been various attempts to use innovative ways of working to tackle backlogs and other pressures; for example:

- All Areas deployed Crown advocates to carry out case review work at the start of the pandemic; HMCPSI inspections show that the results were mixed, but this was a worthwhile attempt to use resources differently when they could not be deployed as intended.

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<sup>15</sup> Criminal Bar Association. (2022). *Results of Survey on CLAR and taking Action*. Available at <https://www.criminalbar.com/resources/news/results-of-survey-on-clar-and-taking-action/>.

<sup>16</sup> HM Inspectorate of Prisons also identified this issue in some of its recent prison inspections, with fewer prisoners reporting that they could easily attend legal visits and communicate with their legal representative than at the previous inspection.

- One Area used its Crown advocates to peer review the oldest 250 bail cases and weed out any that were weak or unsustainable; they recommended that around one-third be discontinued and/or warrants withdrawn. This reduced the trial backlog.
- This Area, at the instigation of one of the Crown Court judges, also held resolution courts. The Area selected custody time limits cases where they thought a guilty plea ought to be entered, or there were acceptable pleas, and the court listed these for virtual hearings. This also reduced the outstanding backlog of cases.
- CPS headquarters suspended some national monitoring, to reduce pressure on staff, including individual quality assessments and feedback to the police on the quality of their files. The suspensions were not mandatory, and some Areas carried on with fewer, more focused individual quality assessments or monitored police file quality after the sixth edition of the Director's Guidance on Charging was issued.
- A number of Areas took barristers from the criminal bar as secondees – between July 2020 and December 2021 the CPS hired 65 Bar secondees. This gave the secondees a more rounded understanding of the CPS work and system, and also led to permanent recruitment in at least one rape and serious sexual offences team.
- The CPS at national level developed a template for custody time limit extension applications, which contained relevant caselaw and common Covid-19-related reasons for making the applications. A recent HMCPSI inspection of custody time limits found good use of the templates, and timely and good-quality applications to extend.
- The CPS launched its hybrid working principles in February 2022 to ensure that as the CPS progresses through recovery, it is able to support the health, safety and wellbeing of its people and assist in addressing the resourcing challenge by enhancing their employment offer, supporting recruitment and retention.

## 5. Recovery: Probation and youth offending services

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### To what extent has practice returned to normal?

#### The Probation Service

5.1. In June 2021, probation services across England and Wales were unified into a single, public sector service. Unifying probation services was a complex undertaking, with many moving parts. The new Probation Service required new structures, policies and processes, and around 16,000 staff from 54 organisations were brought together – all while ensuring continued supervision of more than 220,000 people.

5.2. Much of the planning for unification took place during the pandemic. This put some managers and senior leaders under pressure, as they attempted to run day-to-day services and plan for the future at the same time. While preparations were broadly on track ahead of unification, concerns remained over the lack of qualified probation officers and specialist services in some areas.

5.3. As the pandemic progressed, it became clear that probation services would not return to pre-pandemic normality in 2021. When the pandemic began, in March 2020, probation services put exceptional delivery models in place, which set out key priorities and ways of working to comply with Covid-19 restrictions on face-to-face contact and social distancing. These arrangements, which had a severe impact on the ability to deliver certain core functions, such as the supervision of unpaid work orders, operated until November 2021. Services then started operating under new business-as-usual national standards. In January 2022, however, exceptional delivery models were brought back again, following a wave of cases of the Covid-19 Omicron variant and the imposition of the government's 'plan B' restrictions.

5.4. In practical terms, the lifting of lockdown restrictions led to more in-person supervision during 2021. At the start of the year, nearly three-quarters of contact was by telephone. By November, probation practitioners had returned to face-to-face contact with people on probation for more than 60 per cent of interactions. Some people on probation have expressed a preference for supervision by telephone but, on balance, HM Inspectorate of Probation welcomes the return to face-to-face contact. Probation services involve building constructive and challenging relationships; practitioners can often build rapport more quickly in person and can pick up on physical cues and body language.

5.5. People on probation are sometimes required to complete accredited programmes as part of their supervision. These aim to address offending attitudes and behaviours, and often take place in person, in groups. In March 2020, the face-to-face delivery of accredited programmes in groups was suspended, to comply with the first national lockdown. Programmes were adapted for remote one-to-one delivery, and smaller, in-person, socially distanced groups restarted as lockdown was lifted. By November 2021, the delivery of accredited programmes was at around 70 per cent of pre-Covid-19 levels – but there had been many dips along the way.

5.6. Getting accredited programmes back up and running has been a challenge, and a recovery plan is in place to address the backlog through alternative provision. Groups are far smaller than they used to be – often with a ratio of one facilitator to three participants. Where individuals are shielding or vulnerable, one-to-one sessions have taken place. Resources are under pressure, both in terms of appropriately trained and experienced staff and available meeting rooms that allow for social distancing. The Inspectorate has

recommended that the Probation Service monitors the use of alternative delivery methods closely and conducts an urgent evaluation of their effectiveness.

5.7. Accredited programmes can help individuals to move towards crime-free lives; if an individual's licence or order ends, the requirement to complete an accredited programme expires too (unless it is extended). HM Inspectorate of Probation expects to see more people start and complete accredited programmes as a part of their sentence in 2022, and to see fewer people 'timed out', but was concerned at the number of programmes that were yet to start in the inspections it conducted in 2021.

5.8. The pandemic also continues to have a major impact on the delivery of unpaid work court orders, also known as 'community payback'. Projects were paused between March and July 2020 and again from January to April 2021 to comply with national lockdowns. Schemes have had to make considerable adjustments – for example, running smaller groups to ensure that individuals can maintain social distancing while carrying out unpaid work and while travelling to and from sites in small vans. Some projects have been hampered by a lack of supervisors to manage individuals.

5.9. Consequently, the number of people who have been sentenced to unpaid work but who have not completed their hours within the 12 months allowed for this remained high over the last year. By the end of November 2021, over 13,000 individuals sentenced to unpaid work fell into this category – representing tens of thousands of hours of uncompleted work. Court approval for an extension beyond 12 months is required, and, while usually granted, this still represents an additional burden on an already overloaded courts service. Individuals then stay on the books until they complete their unpaid work hours. A new arrangement allows probation practitioners an element of discretion to terminate orders with fewer than 20 remaining hours.

5.10. HM Inspectorate of Probation has started to inspect the new probation delivery units. At the time of writing, in the two completed inspections, we found that Covid-19 significantly disrupted activity such as face-to-face meetings with people on probation and the delivery of accredited programmes and unpaid work. We expected work relating to risk and safety to be prioritised, but we saw limited examples of this taking place. In both areas, more work needed to be done to manage the risks posed by people on community orders, to bring standards in line with the management of people who have been released from prison or who have been assessed as posing a higher risk of serious harm.

## **Signs of progress**

5.11. The Probation Service will need to deliver substantially more hours of unpaid work supervision to clear the backlog – the Service estimates that delivery at 155 per cent of pre-Covid-19 hours will be needed over three years. This is no small ask. HM Inspectorate of Probation will be closely monitoring the impact of HM Prison and Probation Service's plan to increase the speed, scale and quality of unpaid work delivery. This includes negotiating large-scale projects with national partners, hiring 500 more supervisors and support staff, and modifying transportation.

5.12. The pandemic also inspired an innovative approach to ensuring that individuals with specific needs could still carry out unpaid work. A group of Community Rehabilitation Companies in the south of England, for example, developed an unpaid work 'project in a box', which could be sent to individuals who were shielding at home or could otherwise not attend external sites. Projects included making face coverings and greeting cards to strict industry standards, with the proceeds going to charity. The Probation Service has adopted this idea and will deploy it when individuals meet the qualifying criteria.

5.13. In August 2020, the Lord Chancellor at the time agreed with probation services, to prioritise the accredited programmes targeted at those who pose the highest risk of serious harm. This helped to focus the available resources more effectively. By November 2021, delivery of accredited programmes for those who had committed a sexual offence ran at 76 per cent of pre-Covid-19 levels, and the Building Better Relationships programme, for domestic abuse perpetrators, at 80 per cent.

## Youth offending services

5.14. Although HM Inspectorate of Probation's inspections of youth offending services in 2021 showed some strong results in spite of the pandemic, Covid-19 restrictions remained a challenge, and recovery continues into 2022. The Inspectorate interviewed the leaders of 16 local services at the end of 2021 and found that the motivation to provide the best possible support to children has not waned. However, repeated lockdowns and social distancing have had a negative impact on children and practitioners alike.

5.15. In terms of work with children, practitioners have had restricted access to facilities, and it has not been possible to run groupwork or use smaller meeting rooms. This has led to services taking interventions out to the child in the community, with an increase in one-to-one sessions, and the use of informal spaces such as parks and gardens, as well as community venues such as youth centres. This is a positive development, provided that confidentiality can still be assured and that alternative, safer arrangements are possible for children presenting a higher risk to staff.

5.16. In some instances, the pandemic exacerbated existing issues or made life even harder for children with complex and multiple needs. For example, some leaders reported that children who were already disengaged from school before the pandemic felt even more detached. Additionally, getting children into training and employment was hampered by a lack of entry-level jobs, due to closures in the hospitality sector and digital exclusion. Mental health provision was difficult for those dependent on Child and Adolescent Mental Health Services, with long waiting lists and a lack of in-person visits. Even with improved access to technology, some children were not engaging with education or training; social distancing rules prevented practitioners from transporting older children to training sessions or job interviews.

## Signs of progress

5.17. Two-thirds of the 33 youth offending services inspected by HM Inspectorate of Probation in 2021 were rated as 'Good' or 'Outstanding' – none were rated as 'Inadequate'. At a strategic level, there had been improvements to some youth offending service management boards. Prior to the pandemic, there was often patchy representation from local criminal justice, education and health organisations at board meetings, and board members did not do enough to advocate for children. Moving management board meetings online has improved attendance and strengthened relationships with partners in some cases. Referral panel meetings, which decide what type of service a child needs, were also moved online during the pandemic; this allowed older/vulnerable volunteer panel members to participate while shielding. We hope that youth offending services consider keeping hybrid arrangements, to ensure that the right people are around the table to make key decisions.

5.18. Overall, senior leaders in youth offending services report having smaller caseloads. However, these include high risk of harm and violent cases. Senior leaders also told inspectors that work with children subject to out-of-court disposals makes up an increasing proportion of their work and we found that the quality of this work had improved in 2021. Staff started to return to office buildings and face-to-face meetings in 2021, but this varied considerably from service to service, with many staff still having to work from home.

## 6. Recovery: Prisons

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### To what extent has practice returned to normal?

6.1. Inspections by HM Inspectorate of Prisons have found that recovery in prisons has generally been slow and inconsistent, leaving many prisoners frustrated as their life remains unchanged while restrictions in the community have been lifted. There has been disappointingly little progress to improve time out of cell, which in most prisons is far from returning to already insufficient pre-pandemic levels. Apart from the small proportion in work, for many prisoners, spending 22.5 hours a day locked in their cell is not unusual, nor is having to choose between completing basic domestic tasks or exercising. In the Inspectorate's adult prisoner surveys in 2020/2021, 49 per cent of respondents said that they spent fewer than two hours out of their cell on a typical weekday, which rose to 67 per cent at weekends.<sup>17</sup> In the 2019/2020 reporting year, these figures were 19 per cent and 26 per cent, respectively.<sup>18</sup>

6.2. Inspectors identified a great deal of variation in the amount of time out of cell in different prisons. For example, during an inspection of a category B local prison, they found that prisoners were unlocked for at least five hours a day, whereas at a category B reception and resettlement prison, over three-quarters of prisoners spent fewer than two hours a day unlocked on weekdays.

6.3. The provision of purposeful activity often remained poor and inspectors could see no reason for the differences in provision between different establishments. Inspections consistently identified a lack of education and work provision for the majority of prisoners. Education leaders were frequently too slow to restart the delivery of face-to-face lessons and often did not prioritise those prisoners who would benefit the most from this form of learning. In-cell education packs were mainly of poor quality and engagement by prisoners was low. There were some positive exceptions, where prisons had put in place clear recovery plans for purposeful activity or had kept prisoners engaged with some form of activity throughout the pandemic. Inspections of the children's estate continued to find that education provision had not recovered as quickly as in the community, which was concerning.

6.4. HM Inspectorate of Prisons identified multiple issues with staffing levels, some of which had been ongoing since before the pandemic. Within the children's estate, the high attrition rates of staff working in secure training centres was having an impact on the ability of children to form meaningful relationships with those who cared for them. In the adult estate, rehabilitation work was frequently hampered by staff shortages. Less than half of prisoners surveyed reported being supported by staff to achieve their objectives or targets,<sup>19</sup> and inspectors consistently identified a lack of prison offender managers (POMs), which resulted in high caseloads; frequent redeployment due to other staffing issues; or a combination of both. This meant that POMs were often unable to have consistent contact with prisoners to provide the necessary levels of support. In some prisons, there were high

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<sup>17</sup> Data from the analysis of the responses of adult prisoners (from men's and women's prisons alike) surveyed as part of full inspections published in the 2021/2022 reporting year.

<sup>18</sup> Data from the analysis of the responses of adult prisoners (from men's and women's prisons alike) surveyed in the 2019/2020 reporting year.

<sup>19</sup> Data from the analysis of the responses of adult prisoners (from men's and women's prisons alike) surveyed as part of full inspections published in the 2021/2022 reporting year.

numbers of new prison officers, who were recruited after the Covid-19 outbreak and had never seen a full regime in operation. Inspectors often saw inexperienced staff failing to challenge poor behaviour. Prisoners reported feeling frustrated by officers who applied rules inconsistently or were unable to deal with their queries.

6.5. The suspension of the key worker scheme, which is designed to enable staff to develop constructive, motivational relationships with prisoners and support them through their time in the prison, also reduced opportunities to build staff–prisoner relationships. The scheme has been slow to be reintroduced, limiting the opportunities for staff to assess the wellbeing of prisoners beyond conducting basic observations.

6.6. Recovery in the children’s estate has also been slow and inconsistent. While time out of cell and education had improved from the very limited offer at the start of the pandemic, outcomes in the area of purposeful activity were not good enough in all but one YOI. Most children spend five or six hours out of their cell each day during the week and far less at the weekend.

### **Signs of progress**

6.7. Inspections found some examples of innovative practice and work by staff to maintain morale and support prisoners through the difficult circumstances. This was particularly evident at three women’s prisons, where inspectors noted an individualised and proactive approach to caring for the most vulnerable women. Inspectors reported work by safer custody teams and mental health teams to assess and address individual risks for self-harm and to improve the general welfare of women.

6.8. One category C prison had maintained many prisoner-led activities. These involved giving individual prisoners the trust to use their initiative and run workshops, horticulture and support services for more vulnerable prisoners.

6.9. At an open prison, leaders had made highly effective use of the establishment’s resources and links with employers to maintain high levels of employment among prisoners both inside and outside of the prison. Given the disappointing lack of work in most prisons, this was positive to see and helped maintain the sense of community which underpinned the culture of the establishment.

6.10. While levels of violence have reduced, unsurprisingly, as a result of pandemic lockdowns, they are now only at the same level that they were for the first 15 years of the century – a time when prisoners spent much more time out of their cells.

## 7. What risks remain?

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7.1. While progress has been made at magistrates' courts, serious concerns remain at the Crown Court. The increased number of custody cases, and current trial listing in the Crown Court into 2023, will continue to present a challenge for CPS Areas to manage. The limited data publicly available suggests that the amount of time that defendants are staying in custody on remand is higher than pre-pandemic. In June 2019, six per cent of the remand population were held on remand for more than a year, whereas in June 2021 this represented 12 per cent of the remand population.<sup>20</sup> Estimates taken from prison receptions data suggest that the mean time spent on remand was fairly stable between 2015 and 2019 (ranging between 39 and 42 days), then increased to 51 days in 2020 and 61 days between January and March 2021.<sup>21</sup>

7.2. Pressure to list cases quickly to get them through the system, while understandable to address backlogs, has knock-on effects for agencies managing greater case numbers with limited resources. CPS staff pressures will be exacerbated if there are attempts to clear backlogs by listing too quickly or listing too many trials and other hearings. The Director of Public Prosecutions told the Justice Select Committee in June 2021<sup>22</sup> that: *"fatigue is a real factor in the Crown Prosecution Service."* The Probation Service will also come under pressure as the Crown Courts tackle their backlogs and the government recruits more police officers – both of which will, in turn, lead to greater demands for community sentences and sentence management.

7.3. The fatigue of staff after two years of working through the pandemic, coupled with the end of the immediate crisis, may mean that the 'Blitz spirit' has dwindled or gone entirely. In addition, the impact of the Covid-19 Omicron variant on staff absences has yet to be reflected in the data, although clearly there has been a huge increase nationally in days lost through illness, caring or self-isolating (either as a result of testing positive, having been in close contact with someone who has tested positive or shielding). If Omicron adapts or another variant emerges, there is potential for more protective measures and illness to hamper recovery efforts.

7.4. The opening up of the economy as the country recovers could create staff retention problems for criminal justice agencies, which have recruited from a variety of fields, including the private sector. For example, defence practitioners have joined the CPS, and recovery of those firms (especially if pay improves) could lead to staff returning to their old jobs. There remain worries about meeting police recruitment targets and the shortage of experienced detectives. The shrinking criminal bar is another factor that has the potential to have an impact on the effectiveness of the CJS.

7.5. The prison estate has experienced unprecedented staff shortfalls, caused partially by absences due to Covid-19 illnesses and track-and-trace procedures, but also by major challenges to recruitment and retention. Staff who have joined are not getting the support, challenge and development they require and inspectors continue to see staff being redeployed to areas where they have little or no experience. Shortfalls limit the regime that

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<sup>20</sup> Data accessed from: Prisoners on Remand. Question for Ministry of Justice (tabled on 10 March 2022). Available at <https://questions-statements.parliament.uk/written-questions/detail/2022-03-10/138041>.

<sup>21</sup> Data accessed from: Prisoners on Remand. Question for Ministry of Justice (tabled on 7 September 2021). Available at <https://questions-statements.parliament.uk/written-questions/detail/2021-09-07/44183>. To note: the data includes a note that 'Due to the methodology used here, these figures may include time spent on bail in the community. For example, an individual who enters custody on pre-trial remand, then is bailed after conviction awaiting sentence, and is then handed a custodial sentence. These figures will include the time spent on bail'.

<sup>22</sup> Response to Q35 during this session: <https://committees.parliament.uk/oralevidence/2363/pdf/>.

can be delivered and mean that staff are not able to create and maintain the positive and constructive relationships with prisoners that are important to their rehabilitation.

7.6. The new Probation Service has inherited risks, such as a lack of qualified probation officers in some regions. The service is trying to address this issue by increasing the number of trainees, but it will take several years for them to qualify and become competent and confident in their work. There is also a need for more unpaid work supervisors and accredited programme facilitators to deal with the backlogs.

7.7. Youth offending services face risks concerning staffing and court backlogs. Leaders told the Inspectorate that some staff want to leave because of fatigue. Many of the first generation of YOT managers who established the early youth offending teams 20 years ago are now nearing retirement age, which could lead to a loss of experience and expertise across services.

7.8. Children who are nearing 18 years of age who have committed more serious offences will be tried in Crown Court. Backlogs there have led to many children being released under investigation, with the prospect of a court case hanging over them for several years.

7.9. We remain concerned about the mental health and wellbeing of prisoners, given the long periods they have spent in cells with little to do. Restrictions imposed owing to Covid-19 have been too slow to ease and, even once they do, staffing issues will continue to mean that prisoners spend too much time in their cell. Reduced opportunities to socialise and engage in education and work have a detrimental effect on them and will mean that they are not properly prepared for release. Added to this is the impact of the limited rehabilitation work that has taken place since the start of the pandemic. While some prisons restarted offending behaviour programmes as quickly as possible and some continued to deliver some form of intervention work to small groups of prisoners throughout the pandemic, in others this work is still suspended. During an inspection of a category B training prison, HM Inspectorate of Prisons identified that no group programmes or interventions had been able to take place in 2021, and that there was limited provision of alternative one-to-one work. This meant that some prisoners had been, and would continue to be, released without completing key offending behaviour work designed to reduce their risk of reoffending. While it is reassuring that work to assess the needs of the population has begun in several prisons, the impact of the Covid-19 restrictions on prisoners may not be fully understood for some time.

7.10. We are also concerned about the impact of the unification of probation services on resettlement provision. In approximately two-thirds of prison inspection reports published between May 2021 and January 2022, inspectors identified either a loss of resettlement service provision or a lack of clarity in the delivery of resettlement services since the unification. This particularly affected prisoners who were remanded awaiting trial or sentencing, as resettlement partners no longer provided them with support or advice. During an inspection of a category B reception and resettlement prison, inspectors were concerned to find that the new housing support contract due to commence shortly did not include any provision for the large remand population. This was a significant loss of provision, and similar withdrawals of resettlement services for remand prisoners had taken place in most of the category A and B prisons inspected, leaving many remanded prisoners with little-to-no support to prepare for release. While the target operating model for probation unification states that resettlement support will continue to be provided for remanded prisoners, this is not currently being seen in practice.

7.11. 'Hybrid' working arrangements are likely to remain in place for many staff in the future. While there are some clear advantages to such arrangements, some staff have also told inspectors that working from home or socially distanced offices have reduced

opportunities to learn alongside more experienced colleagues. This is something that will need to be considered in developing future ways of working. There are also challenges to new ways of working. For example, not all courts welcome the use of the CVP for virtual hearings, and we were told of one judge who has started requiring proof of Covid-19 infection/self-isolation as a reason to attend a hearing using CVP. Reducing CVP usage generally presents a risk; some Areas have been able to manage their staff shortages, and hence their workload, by recruiting from outside their geographical area.

## 8. Concluding remarks

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8.1. None of the risks identified in our 2021 joint report have been mitigated in their entirety and recovery remains elusive. The system is getting by because of an artificially suppressed level of activity and reduced performance management and quality expectations – which cannot go on. The greatest challenge to the system, as we see it, is shifting back from pandemic exceptional delivery arrangements to a more business-as-usual way of working across the board.

8.2. Much of the CJS is dependent on people interacting in person, which has necessarily been severely curtailed. However, the requirement to administer justice has not stopped, and will continue. Where there are signs of business as usual emerging, it is with a fatigued workforce which is still adapting to new ways of working and getting back to normal. Without a coordinated whole-system plan, progress is likely to be disjointed. Given the nature of the Criminal Justice System, as one service recovers, that is likely to push issues into the next, and that service may not have recovered sufficiently to cope. This, coupled with the increase in police numbers and the unification of probation services, as well as a workforce that is under-resourced in some places and/or inexperienced, could further fracture the system.

8.3. The MoJ has secured funding from the Treasury to reduce the backlog to 53,000 cases by March 2025. We have commented previously that the system was in a parlous state before Covid-19, and that shock has made it worse. This modest reduction would mean that the backlog would remain higher than before the pandemic. Such unacceptable delays have an adverse impact on victims and defendants, and have a knock-on effect on other criminal justice agencies. The long-term impact on those who have been in touch with the system during this period and the paucity of input they have experienced, especially in custody, are yet to be fully realised. The situation is further compounded by the erosion of public confidence and trust in the system.

8.4. It is still too early to undertake a full retrospective on the impact of the pandemic as the system is still adapting, without the breathing space to reflect and consider what 'normal ways of working' should now be. This review leads us to conclude that most agencies are not yet able to move into full recovery, even to their pre-Covid-19 position. The aftershocks of the pandemic will be felt for a prolonged period and whole-system recovery will take a lot longer than initially anticipated.