



HMCPSI

HM Crown Prosecution
Service Inspectorate

CPS response to COVID-19: dealing with backlogs

**The impact of COVID-19 on the
CPS to 31 December 2020**

March 2021

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Who we are

HM Crown Prosecution Service Inspectorate inspects prosecution services, providing evidence to make the prosecution process better and more accountable.

We have a statutory duty to inspect the work of the Crown Prosecution Service and Serious Fraud Office. By special arrangement, we also share our expertise with other prosecution services in the UK and overseas.

We are independent of the organisations we inspect, and our methods of gathering evidence and reporting are open and transparent. We do not judge or enforce; we inform prosecution services' strategies and activities by presenting evidence of good practice and issues to address. Independent inspections like these help to maintain trust in the prosecution process.

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1. Chief Inspector's foreword

The challenge of the pandemic cannot be underestimated. It has changed the lives of us all in so many ways. At the time of writing, Government data showed that COVID-19 featured on the death certificate of over 140,000 people. Many of us have lost loved ones; many have lost their livelihoods and, for many, the long-term effects of loneliness and isolation will have consequences for years to come.

Against this background, it may seem trivial to publish a report about how the Crown Prosecution Service (CPS) has reacted to the pressures of extra work. However, it is the role of the Criminal Justice Inspectorates, of which HMCPSI is one, to report on the effectiveness and efficiency of the agencies it inspects.

This is never so important as when those agencies are under stress.

It is a testament to those across the criminal justice system ... that the system continued to operate as well as it did

The period of economic austerity had a serious impact on the criminal justice system. In the case of the CPS, it faced a budget reduction of over 30%. Other players in the criminal justice system were similarly affected: the courts system, judiciary, police, prisons and probation were all impacted by budgetary reductions.

Even before the pandemic, delays and backlogs in the justice system were unacceptable. The

increase in delays to investigate, charge and bring cases into an already overburdened system all led to cases taking too long to come to trial. Those in the system were doing their best in the circumstances and, as I have said in my most recent annual reports, it is a testament to those across the criminal justice system, the judiciary, court staff, prosecutors, the police, probation staff and those who work in our prisons that the system continued to operate as well as it did.

It was not going to take much for the system to falter. The advent of COVID-19 was such a major shock to the entire working of society that the pandemic was likely to be the event that finally broke the system.

In January, the four Chief Inspectors – Constabulary, Probation, Prisons and Prosecution – produced a joint report that set out our concerns about the challenges that the criminal justice system faced. There needed to be a clear plan, proper investment and some radical thinking about how to face the issues of even more outstanding work waiting to progress through the system. There was also a grave danger that public confidence would be lost or continue to be eroded as justice was delayed.

I said at the Justice Select Committee hearing that “justice delayed is justice denied” – and what this report shows is that the pressures on the CPS caused by the large increase in Crown Court and, in some places, magistrates’ court cases currently outstanding will not be resolved quickly.

We heard that, in some places, Crown Court trials are not being given trial dates because the date for a trial is likely to be so far into the future that there can be no certainty. In these cases, victims and witnesses have no clear idea of when their case will come to trial. This cannot be right and will quickly undermine confidence in the system. It is not the case everywhere, but in many places cases are being listed well into 2022. In some, dates for trials are stretching even into 2023. These waiting cases all have victims, witnesses and defendants.

HM Courts Service has acted to increase the throughput of cases. In most places, magistrates’ court cases are now progressing, often at pre-pandemic levels, although CPS data suggests some areas have been more effective than others in clearing backlogs.

The pressures on frontline staff have increased so significantly that some major changes in how the CPS undertakes its work have had to be made

Matters in the Crown Court are more complicated. In December, HM Courts and Tribunals Service (HMCTS) reported a backlog of 53,000 cases. Ministers have responded to questions in Parliament that the throughput of cases is greater now than pre-pandemic, that the creation of new courts (Nightingale) has increased the level of available courts, that sitting days are now at a level that exceed pre-pandemic levels. Again, CPS data suggests impact varies across the country.

Outstanding cases on the CPS case management system in some CPS Areas in Crown Court units have grown by more than 55%. This means that prosecutors and paralegal staff are carrying much higher caseloads. The pressures on frontline staff have increased so significantly that some major changes in how the CPS undertakes its work have had to be made.

Whilst the pressures on CPS staff have increased, the impact on victims and witnesses is much more of a concern. Trying to deal with the crisis and react to the backlogs has, in some instances, had unintended consequences for victims. Trying to ensure the effective and efficient use of court has meant that the main focus and priority is not to lose valuable court time. We have included an example of what this has meant for vulnerable victims. It is not unusual to hear of several trials being listed for the same time slot, with a decision having to be taken late in the day about which goes ahead. Whilst I accept the necessity to

use court time efficiently, there is also an impact on victim confidence that must be taken into account.

This is my last report as Chief Inspector. I retire on March 31 after six years in post. Sadly, the criminal justice system now is in a far more parlous state than it was in 2015. I have no interest in apportioning blame. Governments, of whatever hue, have to accept, however, that the criminal system they aspire to, and claim to have, needs to be funded. For too long it has relied on the goodwill and effort of those who work in it to be able to operate at all. The COVID pandemic has made it clear that this is not enough.

2. Background

1.1. In June 2020, HMCPSI published a report examining the response of the Crown Prosecution Service (CPS) to the first national lockdown – March to May 2020. That report commended the effective actions taken before and during the lockdown, which helped the CPS deal with the immediate difficulties of the situation. Our findings showed that staff safety and well-being were the absolute priority of the service. However, the CPS was also adamant that its role in the criminal justice system would continue and, where necessary, face-to-face court work would continue. The June report also set out how the CPS had been able to move most office-based activities to remote digital working with a high degree of success.

1.2. It was evident, even at the time of the June report, that the increasing backlog of cases building up, mainly as a result of court shutdowns, would not be easy to work through. In the June report, we said that “the challenge of addressing the backlog is likely to be much more complex than dealing with the immediate crisis”.

Staff safety and well-being were the absolute priority

1.3. When we wrote the June report, we thought – along with most others – that the relaxation of lockdown measures would move the situation from crisis management to recovery. During our interviews with senior officials in the CPS in

June, we were told that early planning with justice system partners had started at a national level. Recovery planning was at an early stage, but options were being discussed and some initial high-level recovery plans were being developed.

1.4. Our June report highlighted that some police forces had taken the opportunity of the first national lockdown to work on long-running cases, clearing case backlogs because lockdown had reduced crime levels. These cases came into the system as pre-charge receipts and increased the number of cases and court backlogs.

1.5. When we reported in June, work progressing through the courts was limited. The court service had moved quickly to bring in digital remote access in cases and this helped. In the Crown Court however, even with this change, only urgent cases were being heard and a small number of Crown Court centres had been re-opened. By June, jury trials had started in nine Crown Court centres and HM Courts and Tribunals Service (HMCTS) was working on a recovery plan to increase the number of Courts where jury trials could go ahead. In the magistrates’ courts, urgent cases (overnight remands) and priority cases were being listed and courts were sitting with social distancing arrangements. There was fairly extensive use of digital (remote) attendance for many parties in the

proceedings. Magistrates' courts were progressing work and there appeared to be local plans that would move the system towards recovery, dealing with those cases that had been 'blanket' adjourned at the start of the first national lockdown.

1.6. By August, magistrates' court case finalisations had started to exceed receipts. This meant that case numbers were reducing nationally – although the picture differed locally. In some CPS Areas, magistrates' court case backlogs were still growing.

1.7. In the Crown Court, the Criminal Courts Recovery Plan established by HMCTS contained a range of measures designed to help the courts return to normal operation as soon as possible and minimise any delays in delivering justice. The plan included:

- employing 1,600 court staff to carry out recovery measures
- maximising the efficient use of the existing physical estate, for instance through introducing plexiglass screens to separate members of juries so that courtrooms could be used safely
- increasing capacity through 'Nightingale' courts
- using video technology wherever appropriate, so that more cases could be heard remotely
- operating new COVID operating hours – increasing the number of hours that court buildings could be used for trials outside the standard weekday times of 10am to 4pm

1.8. In line with its plans, HMCTS met its target to open 250 rooms suitable for jury trials by the end of October 2020. Much of this was made possible by new safety measures across the estate.

1.9. However, even with these measures and the fact that much of the court estate was back to being able to be used to conduct jury trials and the full gamut of court work, HMCTS' own data in December highlighted that the backlog of Crown Court cases had increased to more than 53,000. Again, due to local issues, the backlog was more acute in some CPS Areas. As a result, the overall figure may not accurately reflect the pressures being felt by some at the CPS frontline.

1.10. In dealing with the backlog, it needs to be recognised that a court backlog is not simply something that can be worked through and cleared by increasing resources. More resources help, of course, but increasing the

numbers of courts also brings extra pressures. Additional and new courts require prosecutors and paralegals to be available. More cases being progressed means more cases need to be 'trial ready', which requires more cases to be worked on by a finite number of staff. New rooms in new buildings require support arrangement for victims and witnesses, and this requires revised systems and processes to be developed – in turn, adding yet more pressures. As well as these challenges, we must remember that the 53,000-case backlog in the Crown Court (and in some Areas, in magistrates' court cases) also has a significant impact on frontline staff.

- In every extra case, there is an ongoing requirement for the case to be reviewed, progressed effectively and any correspondence or work has to be dealt with. Cases do not sit waiting for a trial listing – they need to be kept under constant review. As cases take more time to come to completion, there is more work to do to maintain a case.
- Most cases have victims and witnesses who need to be kept up to date, engaged and, as cases are listed for trial, informed. As timescales for cases to come to trial are lengthened, there is more need to keep victims and witnesses engaged, as delay is often a cause of victim attrition. Prosecutors and paralegal staff must work with police witness care units to make sure this happens regularly and effectively.
- In cases where the defendant is in custody (with a custody time limit running), the prosecution is obliged to ensure that there is all due diligence in ensuring effective case progression. When cases can't be listed for trial within custody time limits, then applications for extension must be made. This is time-consuming. There are more custody time limit cases in the system than there were pre-pandemic.
- Caseloads for Crown Court prosecutors and paralegal officers have increased significantly as case receipts have exceeded case completion levels – this results in a significant increase in daily case tasks and actions on a substantial number of current live cases.

1.11. Throughout the pandemic, the CPS has taken a number of measures to proactively manage the increases in caseload. In the June report, we said that crown advocate resources had been redeployed from stalled Crown Court cases to charging, to help with the increase of cases being received by the police. This early proactive move demonstrates how senior managers nationally and locally reacted to the changing landscape and tried, within the bounds of available resources and options, to make changes to reduce the pressures.

3. Summary

1.12. This is the second report by HMCPSI on the response of the Crown Prosecution Service (CPS) to the COVID-19 pandemic. In June 2020, we published a report that set out the action taken by the CPS to deal with the challenges of the national lockdown from March to May 2020. At that point, we stated that the CPS, along with others in the criminal justice system, was starting to discuss and work out recovery plans. In hindsight, and given the series of rolling local lockdowns, our anticipation of a return to normality by late 2020 was somewhat misplaced. Given the growing pressures we had seen during the course of our other inspection activity, we decided that a further report on the CPS response to COVID would be appropriate.

1.13. In June, we reported that the CPS had continued to maintain its service, much of this as a result of the firm foundations of the strategy it had adopted to be a digitally enabled organisation. This report finds that the CPS has maintained its ability to function well and deliver its core aim. What is obviously of concern, however, is the challenge of an increasing caseload in the Crown Court and the increase of activity that has accompanied the restoration of magistrates' court work towards pre-pandemic levels. The resulting level of pressure is not lessening.

1.14. We heard during this inspection that collaboration is central to managing these pressures and to working towards recovery. The CPS, therefore, has a strong imperative to work with others in the criminal justice system to reduce the backlog. There were many examples of effective working with the police, courts and judiciary, with all parties pulling together. However, we also heard that competing priorities, a determination to ensure effective use of court time and the drive to reduce the backlog were resulting in one agency taking precedence and the needs of others not being effectively considered.

1.15. Statistics and figures sometimes mask the actual increase being felt day-to-day by staff. An increase in Crown Court cases of the magnitude seen in some CPS Areas and the increase in clearing magistrates' court work to address the backlog brings differing pressures to staff in the different CPS units. The burden does not fall evenly. The disparity brings with it difficulties in effectively deploying resources to tackle the increased workload. The CPS has responded well, but there are only so many ways to spread limited resource. Court advocates have largely been taken away from their advocacy duties and have been deployed in out-of-court casework (charging and case review). Recruitment has been maintained, budgetary constraints relaxed, and Areas and CPS nationally have adopted pragmatic approaches to increasing resources through overtime, redeployment of staff, and moving staff from central teams to the frontline. All of this has been successful to some extent, but cannot be maintained indefinitely.

1.16. Consideration has also been given to reducing what needs to be done. Looking at core work demands in terms of management action and casework requirements is also sensible. A decision to reduce the frequency of individual quality assessments and the numbers of monthly performance returns shows a clear understanding of the pressure being faced, but again cannot be an indefinite solution. The Inspectorate believes that the levels of the increase in caseload will make maintaining casework quality a challenge in itself.

1.17. We have seen a continuation of the 'can do' approach and attitude we reported in June 2020. There is a real sense of staff pulling together to respond, adapt and deliver. We heard of some local issues with the reallocation of crown advocate resources. While this is disappointing, it is not a demonstration of the culture of the CPS we have seen from the vast majority of crown advocates and staff.

1.18. The continued focus by the CPS on health, safety and well-being has been maintained. There has been a sensible and proactive focus on support and well-being through new national products, such as the Thrive app, and locally through regular events and the continuation of staff engagement. Some Chief Crown Prosecutors highlighted instances that demonstrate pressure is starting to show. It is not clear how long staff can work under these pressures. It should be noted that, even given the pandemic crisis, the CPS has increased its engagement score (as measured by the Civil Service Staff Survey) by 5% to 70%. This is an indication of how successfully the organisation has supported staff.

1.19. The increased backlog is not a statistic without consequence. For victims, witnesses and defendants, it means a delay in the resolution of their criminal case. Delay affects the ability of victims, witnesses and defendants to recollect the events and can impact on their willingness to attend court to give evidence. But the practice of listing multiple cases into the same time slot to maximise valuable court time can also undermine the confidence of victims and witnesses in cases that are listed but not heard on the day.

1.20. Whilst there were clearly pressures in all Areas, local differences in case mix and progress towards recovery means that pressures are falling less quickly in some Areas than others. As things develop, we feel this geographical inconsistency will become more apparent, and some Areas will have the scope to absorb some of the pressure from other parts of the CPS. So far, there has been a good and clear sense of the CPS working together to deal with the consequences. Collectively the CPS has reacted well. But soon it may become necessary for difficult decisions to be made and for some Areas to be asked to give more help to those facing greater challenges.

4. Increase in caseloads – the pressures

Charging

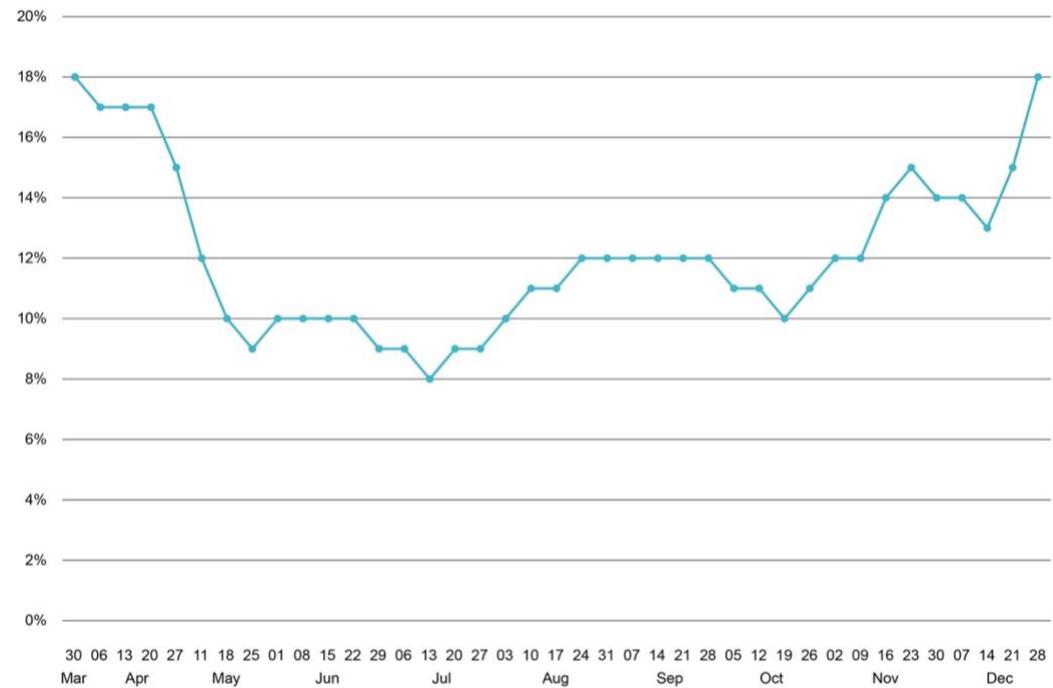
1.21. In our June 2020 report (*CPS response to COVID-19: 16 March to 8 May 2020*¹), we stated that the Crown Prosecution Service (CPS) had, in the immediate aftermath of the national lockdown, been able to ‘flex’ and “The level of service provided throughout has been effective, with digital capability being core to the continuation of the business”. At this stage, only urgent and priority cases were being heard in the magistrates’ courts and all but a small number of Crown Court centres were able to list jury cases.

1.22. Throughout the first lockdown (April to June), a number of police forces had taken the opportunity of reduced crime levels to work on outstanding cases. As we reported in June, this meant that charging receipts increased in some CPS Areas and decisions were taken locally to reallocate crown advocate resources (who could no longer present cases in court) to charging reviews. All CPS Areas had prosecutors who could focus on clearing charging receipts and, in some, in charging backlogs, because magistrates’ courts were closed or had reduced sittings.

1.23. Figure 1 shows that, during the initial period of lockdown and into the summer, CPS performance on timeliness of charging decisions improved. Over the period of May to the first week of August, more than 90% of charging decisions were timely –an improvement from the position at lockdown when decisions were timely in just under 83% of cases. Senior managers we spoke to during this inspection told us they had been able to use lawyers who would usually be in court to look at charging cases. This made sense, although the aim of case ownership would be the ideal, having the same lawyer charging and progressing the case was mostly lost by doing this. Moving the underutilised resources onto charging helped ensure that reviewing lawyers in the magistrates’ and Crown Court units could focus on case review and have cases ready for trial and court once the courts restarted.

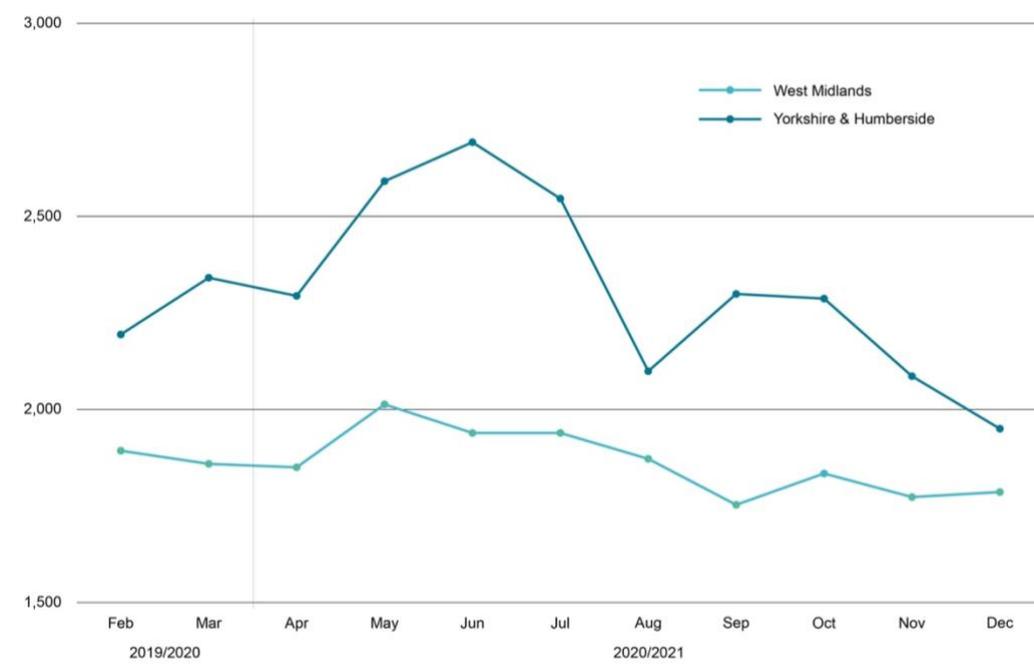
¹ *CPS response to COVID-19: 16 March to 8 May 2020*; HMCPSI; June 2020 <https://www.justiceinspectors.gov.uk/hmcpsi/inspections/cps-response-to-covid-19-16-march-to-8-may-2020/>

Figure 1: Percentage of cases charged over 28 days



1.24. In some Areas, the number of pre-charge advice cases coming in from the police as ‘they cleared the decks’ meant that, even with the additional legal resources, it was difficult to keep up with the charging demand. This added a degree of pressure. Nationally a revised protocol was agreed with the police to prioritise cases. In many Areas, local collaboration led to managed conversations about the potential impact of any increase in workload and how the changes agreed in the national protocol might have an impact. However, this level of local collaboration was not consistent across Areas. Figure 2 shows an example of one CPS Area where the charging caseload increased by 13.6% over the three months from April 2020 to June 2020. In comparison, the graph shows an example of one CPS Area where the charging caseload increased by 30.3% over the same period. This was not the only Area to experience such an increase. This lack of local collaboration and focus of each organisation on its own priorities can have unintended consequences.

Figure 2: Pre-charge receipts in two CPS Areas



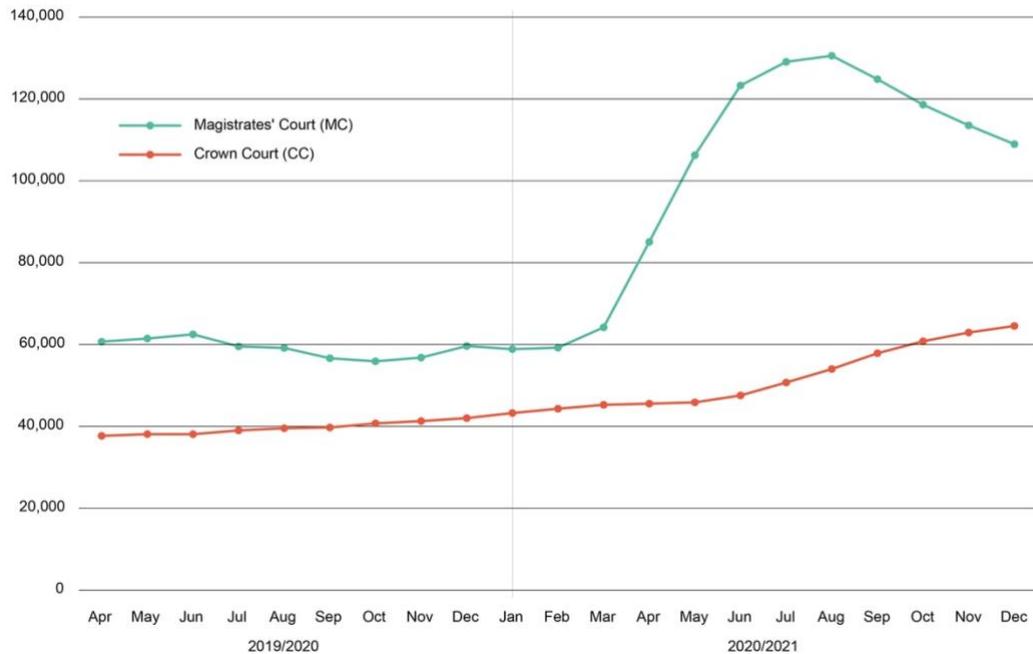
1.25. Throughout the pandemic, the CPS nationally has focused on maintaining the timeliness of charging. There has been targeted use of overtime and also help given to Areas by CPS Direct (the CPS out-of-hours charging unit). Figure 1 shows that performance of charging timeliness was maintained at a stable level between May and October. Discussions with senior managers highlighted that maintaining timeliness was largely due to limited and slower than anticipated listing of Crown Court trials. However, the fact that case receipts continued to rise while case finalisations were significantly reduced led to a steady build-up of pressure in casework units. We were told that this resulted in difficult decisions around using limited resources – a number of Chief Crown Prosecutors said that they were left with no other option than to ‘rob Peter to pay Paul’.

Casework

1.26. The increase in the CPS caseload since March has been significant. Much of this has been a direct result of the closure of courts to all but priority work in the early period of first lockdown and the inability to conclude cases. Figure 3 sets out the national increase in both magistrates’ courts and Crown Court. The pressures and increases have differed as recovery activity has happened, equally there have also been differing levels of local recovery, which has also resulted in different challenges for local managers to address. Annex D sets out the differing levels of caseload increase across the 14 CPS Areas.

1.27. Whilst the published figures show a backlog of 53,000 Crown Court cases in December 2020 and that work in the magistrates' courts is reaching pre-pandemic levels, the position of caseload increases in the CPS is very different.

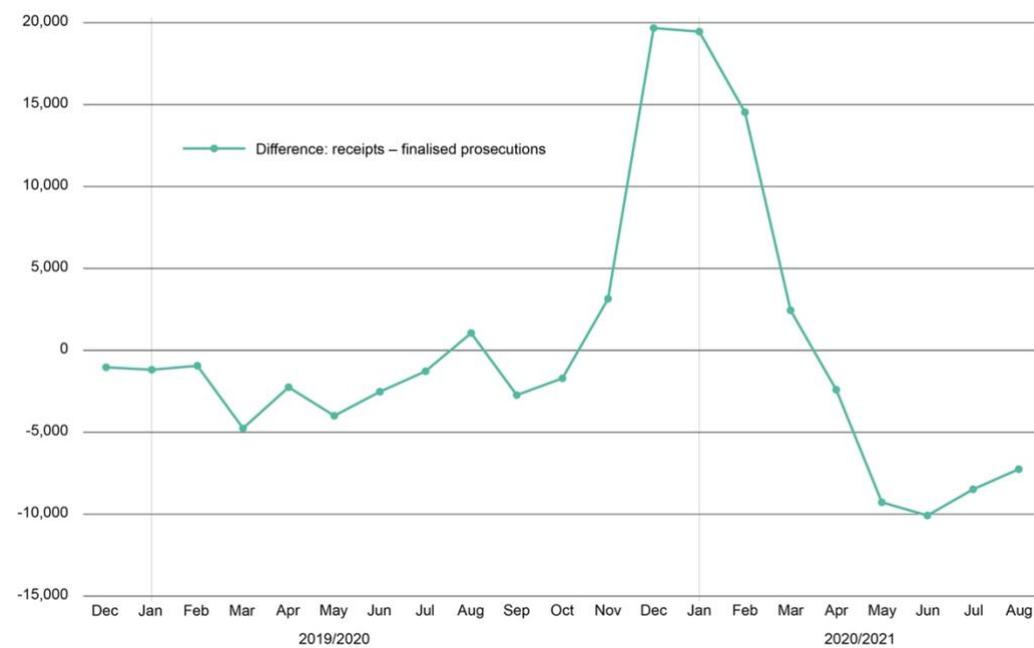
Figure 3: National caseload increase in magistrates' courts and Crown Court



1.28. As Figure 3 shows, a court backlog in the CPS represents an increase in caseload, and this means an increase in tasks for lawyers, paralegal officers and operational staff in each case that needs to be completed.

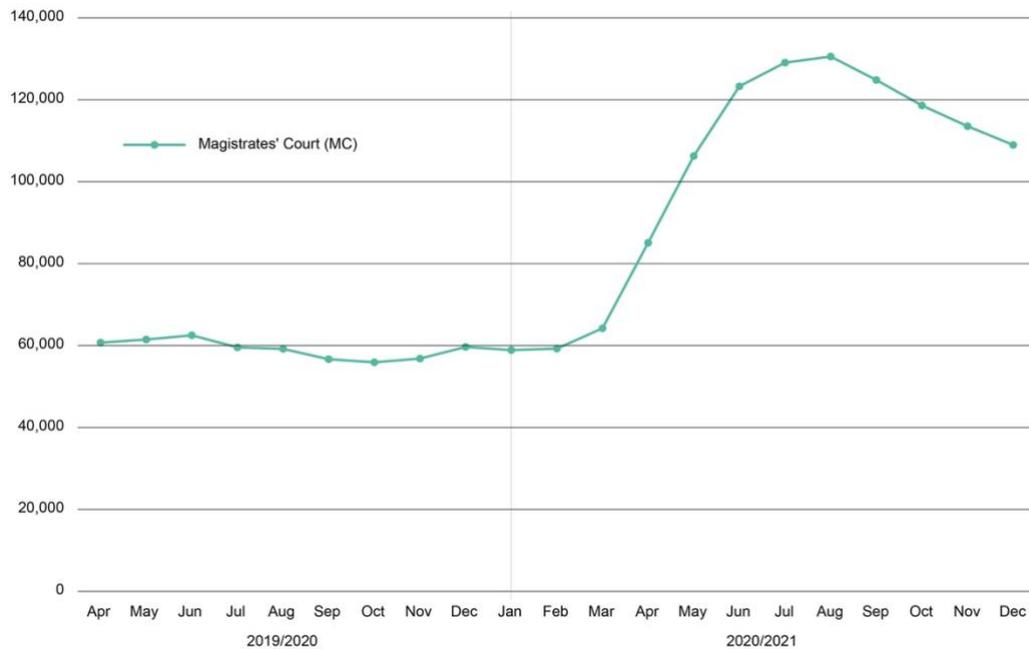
1.29. Figure 4 shows that the pressures in the magistrates' courts were keenly felt during May, June and July when case receipts significantly exceeded finalisations. In all the additional cases, staff across the Areas faced significantly more work to manage and progress cases and ensure that cases were prepared. As we state later in this report, Areas 'flexed' their staffing as best they could to manage this peak of work.

Figure 4: Difference between receipts and finalised prosecutions – magistrates’ court cases



1.30. Figure 4 shows there was a major level of case receipts between May and July. The real challenge came, however, when the system started to operate to reverse the increase in workloads. As more cases were being finalised than received (September onwards), the backlog that had grown over the early part of the pandemic was beginning to reduce. Managing this work meant that more courts were open, more cases were being listed and more trials needed to be prepared. Whilst later we set out some of the actions taken by the CPS nationally and in Areas to increase and flex staff levels, there is no doubt that the level of increased need has been significant. Staff worked immensely hard across all Areas to meet the extra demand. We were told that the level of goodwill and desire to make a difference were evident throughout. However, what Figure 4 does not reflect is the fact that the workload in the magistrates’ courts is still 70% higher than pre-pandemic. Figure 5 shows the level of workload being carried over in magistrates’ court units nationally.

Figure 5: Workload carried over in magistrates' courts

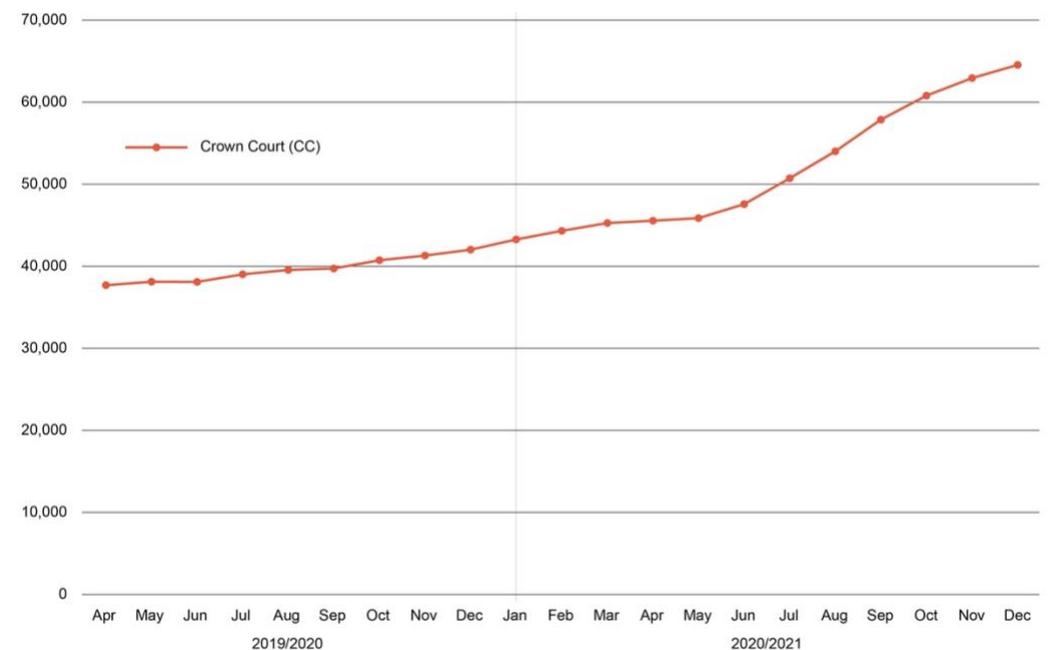


1.31. Charts in annex D show that, whilst there is a 70% increase in the workload carried over at the national level, there is a high degree of variation between CPS Areas. CPS Cymru Wales is carrying 800 cases more in its magistrates' court unit than pre-pandemic – a 28% increase. At the other end of the scale, CPS East Midlands is carrying more than an extra 6,100 cases – a 111% increase.

1.32. As annex D shows, there is not one Area in the CPS that has yet returned to pre-pandemic levels of caseload in the magistrates' courts.

1.33. The issue is similar, but more concerning, in the Crown Court. Figure 6 shows that, over the 21-month period, there was an increasing level of Crown Court caseload month-on-month. In April 2019, the CPS Areas had a total of 37,700 cases. At the beginning of the pandemic in March 2020, the level of caseload had increased by 7,600 cases to 45,300. This increase is a consequence of the reduction in available court time and also because cases in the Crown Court have, over the years, become more complex and now take longer to progress through the system.

Figure 6: Workload carried over in the Crown Court



1.34. Since March 2020, the increase in carried-forward caseload has become more marked. Since the beginning of the pandemic, there has been an increase of a further 19,200 cases – taking the total in December 2020 to an outstanding caseload in the CPS Areas of 64,500 cases.

1.35. Again, as with the magistrates’ court increases, there are some very wide local variations, as the charts in annex D show. Whilst the number of cases in the Crown Court are much smaller than in the magistrates’ court units, the complexity and work required is much greater. The caseload in CPS London North increased from 4,900 to 8,100 (a 65% increase) and CPS West Midlands from 5,000 to 7,300 cases (a 46% increase) – with the same level of staff resources. This highlights the level of pressure being felt in some Areas. Whilst increases in West Midlands and London North are significant, the small increase in CPS South West of 300 cases (a 15% increase) is having an equal impact because the workload in the South West magistrates’ court unit has increased substantially (by 66%). Given that South West has struggled to recruit since lockdown, the Area has had an increase of five prosecutors. The limitation of some of the court buildings has meant that cases can’t proceed as quickly to restore to pre-pandemic levels. The impact of the increases, even where the numbers look low, may not reflect the actual pressure faced by staff in Areas.

1.36. The CPS has developed a range of measures to assess local pressures, and we describe this in more detail in chapter 5. One of the measures is the increase in custody time limit (CTL) cases against the number of prosecutors in post in the Crown Court units. Using this measure, the CPS sets a level of eight

CTLs per prosecutor as a manageable level of workload. In 12 of the 14 Areas, this level is currently higher, and four Areas have levels of CTLs per prosecutor above 11.

1.37. The inspectorate has in the past used caseload per prosecutor as one measure to consider the balance of resourcing at Area level. This is never an exact science because determining accurate levels of numbers of prosecutors in each Area is difficult when lawyers start and leave. New recruits are also less likely to be carrying average caseloads because they are supported as they settle into their roles. However, even with this limitation, caseload per prosecutor is a comparable method to assess workload pressures. Pre-pandemic national average of caseload per prosecutor were 58.5 cases per prosecutor. In December 2020, this figure had risen to 83.3 case per prosecutor (a rise of 42.4%). Again, this national figure mask marked differences at local Area level, where some of the increases are above the average and some lower.

1.38. While the statistics seem to highlight the fact that the current court throughput exceeds the levels of receipts, they mask the actual position of the pressures being felt by staff in the CPS. Case finalisations continue to rise and the national position will improve, but the levels of local variation are of serious concern. This makes it more difficult for the CPS to manage the pressures.

1.39. Being able to target overtime and support to one Area faced with the challenges of limited court throughput won't solve the problem. Increasing the numbers of courts will, of course, help in the long run but, as the charts in this chapter show, this is not a simple matter of finalisations exceeding receipts. The backlog in the Crown Court has grown month on month for a number of years. Tackling this pressure is not going to be a simple, short-term fix.

5. Mitigating the pressure – CPS action

1.40. Since March 2020, the Crown Prosecution Service (CPS) has taken a number of actions to ensure it can operate effectively and efficiently. As stated in the June 2020 report, the ability of the CPS to operate effectively was founded on the forward-thinking, strategic decision to ensure the service could continue in a fully digital way. This ability has allowed the CPS to manage increasing workload pressures locally and nationally.

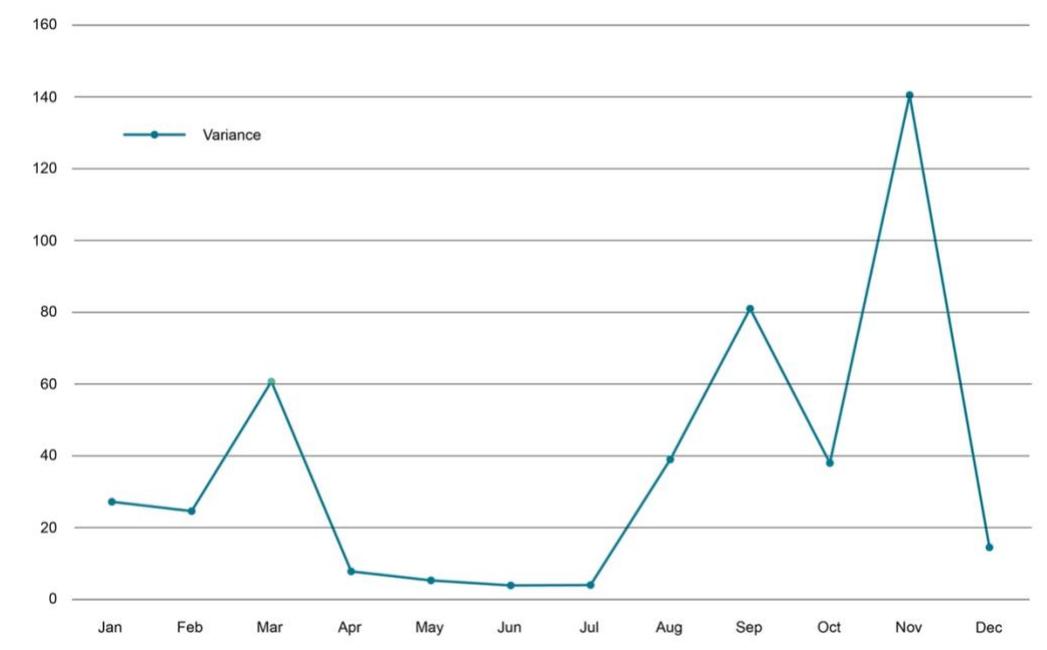
National action

1.41. CPS governance structures have been central to ensuring that national decisions have enabled local decision-making. A number of high-level decisions were taken early in the run-up to lockdown.

1.42. The CPS decided early in the pandemic to continue to recruit and appoint during the crisis. Given the move to virtual working and the extra pressures brought about by the crisis, adding a high number of new recruits risked destabilising the service. Speaking with all the Area senior leaders during this inspection, there was universal agreement that recruitment did create pressure in support, training and mentoring but it had been the right decision. Several Chief Crown Prosecutors (CCPs) said that the number of new lawyers and operational staff recruited since lockdown had significantly helped in managing the pressure on resources. Some new legal recruits came with criminal experience, having previously worked for the court service or defence firms. Their level of experience meant people with more experience could be moved across the Area to where they were most needed – the Crown Court and Rape and Serious Sexual Offences (RASSO) Units.

1.43. Figure 7 shows the level of recruitment maintained during the period of the pandemic. Nationally, more than 440 staff were recruited during the year, of which 200 were legal appointments.

Figure 7: Variance (all staff)



1.44. To reduce local pressures, a programme of induction and training was developed nationally for local delivery. This helped to ensure that the large increase in recruitment was, where possible, managed to reduce local pressures. Whilst recruitment was successful and there was clear planning between the central HR recruitment team and local managers, there were some geographic variations with pressures inconsistently felt across Areas.

1.45. The differing levels of recruitment, along with other local issues, caused some significant problems locally. The CCPs in the Areas where local recruitment had not been so successful said the problem had been recognised early on. CPS Direct and Central Casework Divisions had provided overtime support to try to address the imbalance.

1.46. In a changing environment, it takes some time to develop a clear understanding of the actual position and pressures faced at local level. Given the structure of the CPS, some Areas were reacting to requests from CCP colleagues by providing what help they could. Some CCPs accepted that this was inevitable given the fast-moving dynamics of the pandemic. Some also thought there was a level of recovery in the summer in some places. However, with the advent of the rolling local lockdowns, it was clear that more structured national support would be needed. By late October, the CPS had developed a data driven red-green-amber rated table to assess pressures across the 14 CPS Areas, using a wide range of comparators. Some felt this was a little late, as the system for which Areas received help seemed unstructured. We were also told that what constituted support seemed somewhat unclear.

1.47. Despite the introduction of the rated table, some of the CCPs we spoke to were still confused about what measures were being used to make decisions for which Areas received help. One CCP in a red-rated Area that was given additional targeted help expressed some confusion at the Area's rating. They didn't quite understand why they needed the help compared to other Areas where colleague CCPs seemed to be facing much more pressure.

1.48. Having looked at the rating system, there is a logic to this corporate approach by the CPS. There is clearly a limit to the amount of extra resources and support that can be shared and provided across the Areas, and there has to be a simple way to determine pressure. In our opinion, the rating table does this. However, it may help for CCPs to be given a clearer picture of the reasoning behind decisions and why Areas rated red are seen as needing more help. Failing to ensure the system is understood and accepted can lead to mistrust that ultimately undermines the overall aim of sharing corporate support.

Any decision to return resources without an attendant increase in legal resources would be fatal to casework quality

1.49. A number of other measures have been taken and implemented with direction from the centre. In October, there was a decision to move the vast majority of crown advocates from trial work to case reviews or charging. A number of CCPs thought this decision was taken a little late. Some said that this directive had been unhelpful because it undermined

established local agreements with crown advocates. On the other hand, we were told this directive was needed in some Areas because the local relationship with crown advocates was such that no amount of negotiation was producing the level of collaboration necessary to bring all crown advocates into review work. As we mentioned in the June 2020 report, it is disappointing that some crown advocates do not see the greater need of the organisation as part of their responsibility. It is also surprising that, given the crisis, some crown advocates were aggrieved that they had been asked to undertake casework review or charging.

1.50. The single biggest concern of this approach expressed by CCPs was that, whilst there was a national commitment to reviewing the withdrawal of crown advocates from trials, any decision to return resources without an attendant increase in legal resources would be fatal to casework quality and the well-being of legal staff.

1.51. A number of other changes have been supported nationally to reduce the burdens and pressures. The options have been shared and discussed at regular CCP meetings. Given the core function of the CPS, the options for radical

change are limited. However, a number of small changes have been agreed to reduce the levels of expected data returns to the centre, reduce the level of casework assurance reporting and reduce the aspects covered in monthly management reports. While small actions in themselves, these were appreciated by all of the CCPs we spoke to. The view was that senior managers were mostly aware of the acute pressures being faced. Reducing some of the compulsory checks gave them a level of latitude to take some of the burden from frontline managers who had to produce monthly assurance reports.

1.52. One Area also tested providing extra administrative support to first line legal managers. The aim was to free up legal time so that managers could focus on working with lawyers to manage caseloads and set case strategies to improve the efficiency of casework. This pilot will be evaluated in early April 2021 with a view to rolling out the model. The CPS has also had the help of 40 temporary administrative staff through the cross-government COVID surge teams.

1.53. A number of CCPs also told us that the previous budget constraints on resourcing decisions had been relaxed. Whilst the expected budget controls were still in place, Areas were given the authority to over-recruit against the national resourcing limits. This was a sensible approach and allowed a number of Areas to increase resource levels in anticipation of the increase in workload. Some CCPs told us that this flexible approach had been central to addressing some of the staff concerns about the increase in pressure.

Local action

1.54. As highlighted in chapter 4, the pressures at Area level have not been consistent. The developing backlog of cases and increase in receipts has been felt in Area units at different times and have created differing pressures. In general, by July, most Areas were finding that the return towards some semblance of normality in magistrates' courts meant increasing pressure on the magistrates' court teams. During the first national lockdown, courts closed to all but priority work and many magistrates' court trial fixtures were indefinitely postponed. In some Areas, the work went into what became known as 'bucket' lists with cases moved to future dates. Pressure built quickly, however, as the courts started to reopen and work that had been moved forward needed to be prepared, victims and witnesses needed to be warned for court and other casework activity restarted. In most Areas, we heard that the most straightforward way to reduce the pressure was to engage external agents to undertake court advocacy, freeing up CPS lawyers who would usually be in court to pick up magistrates' court casework. Some Areas also deployed crown

advocates to the magistrates' courts to undertake Area advocacy as this was a better skills match.

1.55. The caseload tables in chapter 4 show the levels of casework increase experienced in the magistrates' courts from June and July 2020 when courts started to reopen.

1.56. There were other elements that also helped locally during the early stages of recovery in the magistrates' courts. HM Courts and Tribunals Service (HMCTS) moved quickly in most places to roll out the court video platform (CVP), which allowed some participants in proceedings to appear virtually. This had a twofold benefit to the court and the CPS – it reduced footfall in court buildings and also saved time for prosecutors who no longer needed to travel to court. They could use the time saved to prepare casework or 'attend' a number of sites on the same day. In some Areas, we were told that CVP also enabled courts to increase capacity and throughput and allowed courts to sit where they could not previously do so. CCPs indicated that this change in approach brought about real benefits and was a development that should be kept after the pandemic. However, at local level, the use of CVP was very inconsistent. This meant some of the efficiency gains were lost and staff well-being and safety were undermined when staff had to attend court in person.

1.57. We were told of many examples where the local practice was to ask CPS for case-by-case applications to appear remotely. Of course, it is a matter of judicial discretion whether the interests of justice are served by having the parties in the proceedings actually in court. What was surprising, though, when carrying out interviews for this inspection, was how variably this matter was dealt with at the local level. In one CPS Area, one court centre granted CVP proceedings as a blanket approach. In another part of the same Area, CVP was unlikely to be granted even after an application in individual cases. We were told was this inconsistency added often unnecessary pressure into an already pressured mix of extra work and well-being concerns. In January 2021, the Lord Chief Justice issued guidance that CVP should be the default position. CCPs acknowledged this clarity was helpful.

1.58. As detailed in paragraph 2.11, most Areas used the reduction in Crown Court sittings to bring back crown advocates to address some of the immediate needs at the start of the pandemic. Apart from three Areas, local conversations resulted in the immediate increase of available resources by using their crown advocates to mitigate the pressures caused by the adjourned trial lists in Crown Court units. Although courts were closed, cases still needed to be reviewed, case actions taken to ensure due diligence could be shown and case progression tasks carried out.

1.59. Whilst case receipts in the Crown Court did not immediately grow exponentially as they did in the magistrates' courts, casework tasks increased because of the maintenance needed for ongoing cases and the closure of Crown Court centres to all but priority work until the HMCTS recovery plan could be implemented. Many of the CCPs we spoke to told us of the immediate pressures that came with the requirement to ensure custody time limits did not expire. They also highlighted the increased workloads of Crown Court lawyers because of the increase in applications for extensions and the extra work involved in maintaining engagement with victims and witnesses as cases were no longer able to come to trial.

1.60. In some places the early pressures were ameliorated by using crown advocates. As the Crown Court remained closed for jury trials, however, backlogs started to increase in many Areas and this immediate relief was soon exhausted.

1.61. Areas tried and adopted a range of different solutions to reduce the growing pressures. It is not surprising that different local decisions were taken as local variations had resulted in differing levels of pressure. In some Areas, issues with the local court buildings meant case uptake was not as quick as in other Areas. In some Areas, as magistrates' court cases were being progressed, more work was moving to the Crown Court. To reduce the pressure in Crown Court units, some Areas decided to permanently move resources from the magistrates' court units. This was achieved by temporarily promoting junior lawyers into the roles in the magistrates' court units, releasing more experienced lawyers to the Crown Court. In other Areas, secondees from the Bar were given short-term contracts and were brought into Crown Court units to increase the resources. Most Areas were able to make some resource changes with the extra legal staff who had been recruited.

1.62. The pressures being not only felt by lawyers in the Crown Court units, but paralegal officers too saw a large increase in caseload. Overall, as Figure 5 shows, the increase in Crown Court cases was significant before the pandemic and is still rising. In reality, recruiting 440 staff across the 14 CPS Areas, the use of crown advocates, some targeted support from Central Casework Divisions, the use of overtime and some secondments from the external Bar were not going to meet the increase in demand. CCPs said this had helped, but many expressed the view that this level of pressure could not go on indefinitely and that staff in some Areas were at breaking point.

1.63. There is a continued rise in cases coming into the system and work from the magistrates' courts is now proceeding into the Crown Court. Without a clear understanding of the local position, the impact on the CPS and the criminal justice system could be fatal.

Well-being

1.64. The June 2020 report said that the well-being, health and safety of staff was a priority for the CPS during the pandemic. This focus on health and safety has maintained and enhanced.

1.65. All senior managers we spoke to – locally and nationally – gave examples of activity that showed a clear determination to support staff as work pressures developed. All Areas supported staff with activities including virtual social events, weekly management one-to-one meetings and regular check-ins.

1.66. Nationally, the CPS well-being package has continued to develop and the well-being hub includes a wide range of services for all staff. As well as the hub, the simple and effective Thrive app allows staff to assess their own level of stress and access counselling and support. It also has information on a wide range of personal issues, such as advice on home schooling, dealing with financial pressures in the pandemic and other COVID related matters. The CPS also agreed to extend the use of the individual learning account (ILA), the system whereby all CPS employees have access to an £350 to spend on their training and development. We heard in a number of Areas that the extension of the ILA had been welcomed and had been used in some Areas to access tailored events on health and well-being.

1.67. Given the changing issues in each CPS Area, all CCPs held daily, weekly and other regular all-staff events to communicate with their teams and hear concerns. These started in March 2020 with the first national lockdown. In all Areas, the meetings continued and the frequency was kept up in some Areas as dealing with the backlogs needed more timely communication. The single most difficult issue for CCPs and staff was the physical return to court.

1.68. All CCPs we spoke with said the period of increased attendance in the magistrates' courts and the increase of hearings and re-start of trials in the Crown Court had personally been the hardest and most difficult time in their management careers. Sending staff back into the court environment with the pandemic still raging, and with the emergence of the new variant, had caused difficult levels of stress. In some Areas, working to achieve this return in a safe way had been the focus of much of their time, requiring extensive and ongoing conversations with HMCTS colleagues around health and safety concerns and assessments for court buildings.

1.69. As mentioned earlier, the challenge faced in some Areas around the use of remote attendance via the court video platform added a significant degree of personal stress. All CCPs felt, however, that they had been supported and by their line managers, by their peers and by the strength of their own local senior

management teams. Some expressed frustration at the lack of local consistency around court attendance and consideration of health, safety and well-being had piled pressure onto an already difficult dynamic.

1.70. As stated earlier, the increase in caseloads and the drive to recover create a real challenge. In some instances, this plays out with the competing priorities of each agency being the sole focus. We heard many examples of how this resulted in staff in Areas having to deal with seemingly unreasonable demands. All of this adds to the pressure and to the need for more focus on well-being. Simple requests that appear to be reasonable in one place can have major consequences in other places. For example, a request for four trials to be prepared to ensure that no valuable court time is lost means administrative staff have to print, paginate and sometimes laminate or plastic-sleeve jury bundles for a number of cases (we were given examples of up to six). This time-consuming and pressurised. Given that then only one of the trials will have available court time, there is then extra work for the others, such as de-warning and re-warning witnesses. The same issues are felt by the lawyers who have to prepare the case for trial.

1.71. We accept that there is no easy answer. Court time needs to be used as effectively as possible, and this means some decisions will be made that have consequences elsewhere. Some Areas told us that local relationships made it a more collaborative approach possible. This is helpful but is, by no means, universal. Less collaborative partnership arrangements in some Areas add burdens and pressures.

6. The impact on victims and witnesses

1.72. Unlike professionals in the criminal justice system, most victims and witnesses will only become involved in the justice system once or twice in their lifetimes. The very fact that they are warned to come to court or are being asked to give evidence is a major event for them. Many are nervous and worried. It was inevitable that the suspension of court work in the first national lockdown would have an impact on those whose cases were ready to be heard, and on witnesses due to give evidence.

1.73. Throughout this inspection, Crown Prosecution Service (CPS) senior managers gave us examples of how the focus on recovering from the backlog and the drive to ensure no valuable court time was lost was affecting victims and witnesses when cases were listed for hearing but then not heard.

1.74. Chief Crown Prosecutors (CCPs) told us that the impact of the pandemic on victims and witnesses had been a major concern. Most were clear that the impact was inevitable and unavoidable during the first national lockdown. However, it was the impact on the recovery from the Crown Court backlogs that was the single highest concern of most of those we spoke with.

Impact in the first national lockdown

1.75. The lockdown led to a large number of magistrates' court and Crown Court cases being postponed after victims and witnesses had been warned to court. People were suddenly in limbo as victims and witnesses in hundreds of cases no longer had a clear view of what was happening in their case.

1.76. Witness care units (units run by the police who contact, update and warn victims and witnesses for court) and CPS staff made huge efforts to work through the lists of postponed cases in priority order to update victims and witnesses.

1.77. The single biggest problem was the fact that these updates, in nearly all cases, could not give a clear indication of a future hearing date. Some CCPs told us that some magistrates' courts fixed a single future date for all trials – locally these were called 'bucket list' trial dates. The rationale for this was that there needed to be a court date for all parties to plan for. This also had the consequence of giving victims and witnesses a proposed date rather than no indication at all of when their case might be held. Whilst this seems a better option than having no clear idea of what might happen, in reality it meant that the vast majority of victims and witnesses would end up with entirely different dates when magistrates' courts started to reopen. The impact of this on victims and witnesses is at best unsettling. In some instances, as dates change

and cases are pushed further away, it inevitably leads to a loss of confidence in the system and a lack of cooperation.

Ongoing impact

1.78. By August 2020, the magistrates' courts were finalising more cases than they were receiving. By this point, many Areas were seeing cases starting to come back to pre-pandemic levels.

1.79. Some CCPs told us how their working relationship with HM Courts and Tribunals Service (HMCTS) in the magistrates' courts had resulted in partnership work that allowed them to influence local practice and ensure that court time was used effectively. Working together, they could ensure that listed cases were fully prepared, that victim and witness issues had been resolved and that case type priorities were clearly set.

1.80. The impact of the ongoing pandemic is a little more complicated in the Crown Court. As set out in chapter 2, the HMCTS Criminal Courts Recovery plan detailed how to reopen the Crown Court estate. Many of the objectives in the plan have been achieved with a staged release of available court rooms to hear jury trials and restart a programme of Crown Court work.

1.81. Many CCPs spoke of good relationships with their Resident Judges, effective engagement and how they were able to pick up the phone when local issues and concerns were raised by their staff. We were told matters were often quickly resolved and that these local relationships were better now than they had ever been, as the pandemic had led to much more engagement. This relationship was also much less formal than the usual pre-pandemic monthly meeting with the Resident Judge.

1.82. However, the challenges of the backlog and the increase in workload (as shown at paragraph 4.13) will have major consequences on the service provided to victim and witnesses. Our view is that some of the technological changes that have resulted as a response to the pandemic, such as the use of the court video platform (CVP), may help with some of the challenges being faced.

1.83. In some Areas, trial dates are now having to be set into 2023. In one Area, the lack of available court rooms has meant stage dates being set but not trial dates in cases where the defendant pleads not guilty. Stage dates are those by which the defence and the prosecution must take action in line with the criminal procedures. The victims and witnesses are sent a letter saying that the defendant has pleaded not guilty but that no trial date is available or has been set. We were told that this has happened even in cases with vulnerable victims.

The impact on victims and witnesses in such circumstances cannot be underestimated.

1.84. At the Justice Select Committee hearing in January the, four Criminal Justice Chief Inspectors highlighted the impact of the backlogs on victims. The failure of the justice system to take a whole systems approach to tackling the current crisis will, in the view of Chief Inspectors, have fundamental consequences. The Victims' Commissioner has echoed these concerns – with the view that justice delayed is justice denied. Figures being quoted in the media have indicated that large numbers of cases are failing due to withdrawals because of victim issues. Chief Inspectors told the Justice Select Committee that this could undermine public confidence and have major consequences for the future of the criminal justice system.

Annex A

Inspection framework

The framework consisted of an overarching inspection question with two sub-questions. The inspection question was: “What is the impact of the ongoing COVID crisis on the Crown Prosecution Service (CPS) – the position at 31 December 2020”.

To consider this question, our inspection framework considered the two sub-questions:

- How have caseload increases impacted at both the national and local level?
- What activity has the CPS taken to mitigate the pressures that have developed between full national lockdown, through the recovery period until the end of the year?

The particular focus of the two sub-questions are detailed in annex C.

The effect of the pandemic and various lockdowns on the criminal justice system changes rapidly and so this report aims to provide a timely assessment of the actual position on case levels and core outcomes at December 31, 2020. To obtain a swift report that shows the situation at this point in time, this report does not include a file read and analysis.

We were conscious that the inspection itself could create unnecessary pressure for the already pressurised CPS. We therefore limited the inspection to data analysis and interviews with senior officials to discuss the national and local situation.

The timeframe was shortened to provide a prompt picture of the current pressures the CPS is facing.

Annex B

Methodology

CPS response to COVID-19: dealing with backlogs

We interviewed the Directors of Legal Services, the Chief People Officer, the Director of Digital and Commercial, the 14 Area Chief Crown Prosecutors, the CPS Direct Chief Crown Prosecutor and the three Heads of the Central Casework Divisions.

Data was requested from the Crown Prosecution Service (CPS) and can be found in annex D.

Annex C

Inspection sub-questions

Resource challenges

- The service has accurate management information that allowed for the impact to be fully understood.
- The Crown Prosecution Service (CPS) plans to address any backlogs and assess demand management in anticipation of a transition to recovery and business-as-usual.
- Management information was used to plan and support the service to operate effectively and react to any immediate problems caused by absence or by changes in workloads.
- National measures were taken to effectively manage resources and react to the changing needs of the service.
- Local partnership arrangements allowed resources to be assessed.
- Local managers were supported in dealing with any resource pressures and action was taken to address problems.

Impact of the crisis: national and local

- There was clear communication in place to support the immediate changes needed.
- Communications to staff were clear and unambiguous.
- All staff understood what they needed to do and what they were expected to do to support the delivery of the service.
- There was a clear external communication strategy that supported the immediate changes needed and was influential in trying to address service impacts.
- Changes were efficiently and quickly communicated with clear guidance and policy to support any change. Messages to staff set out the rationale for change.

Annex D

Data tables

Figure 8: Cymru-Wales

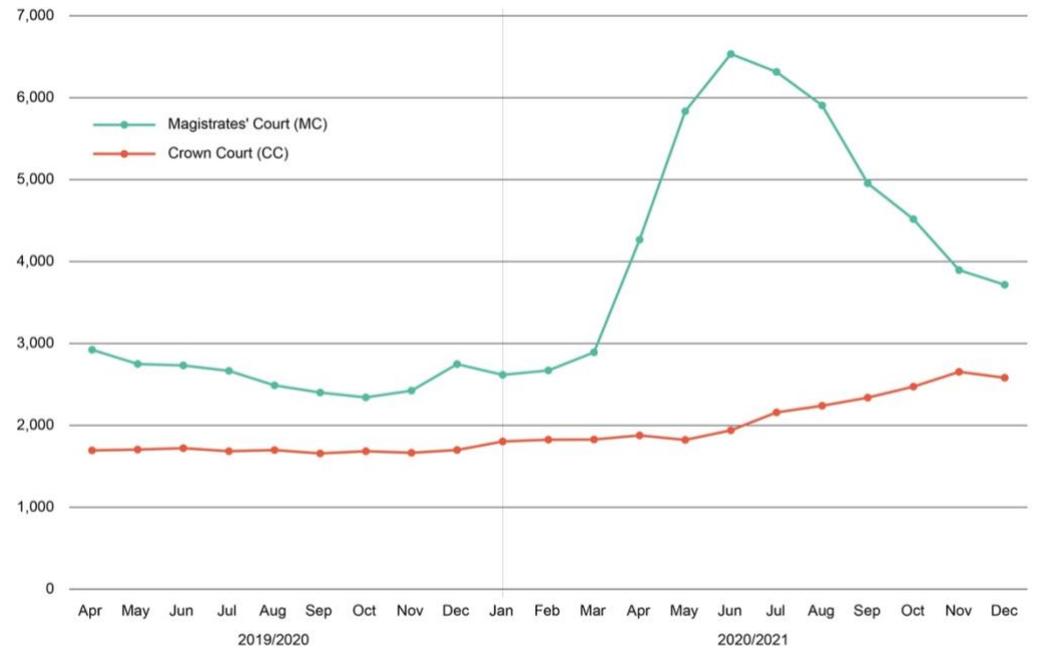


Figure 9: East Midlands

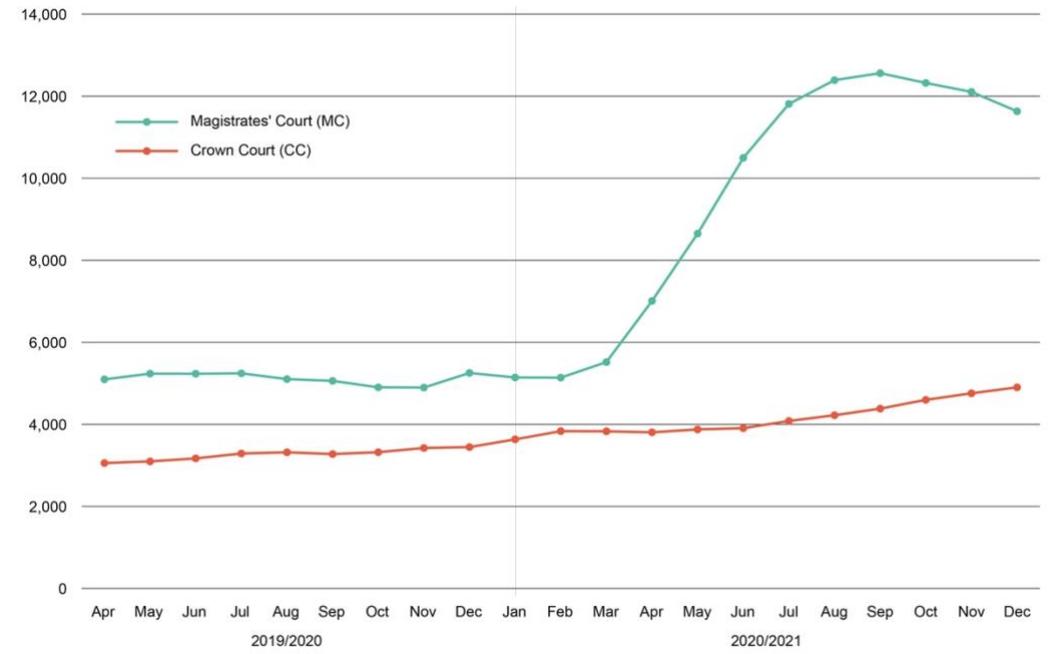


Figure 10: East of England

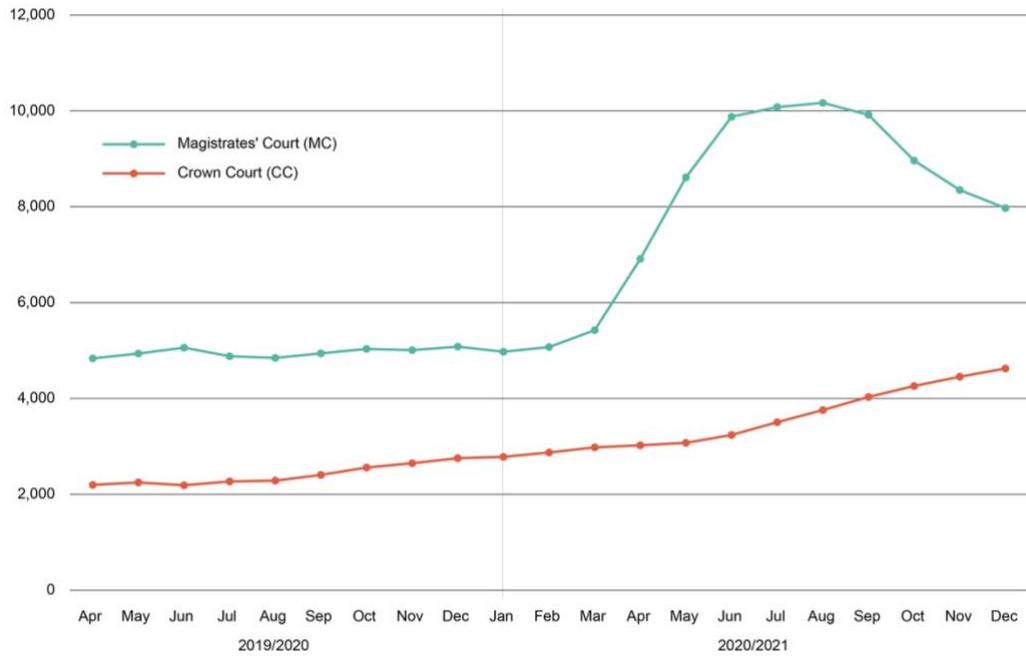


Figure 11: London North

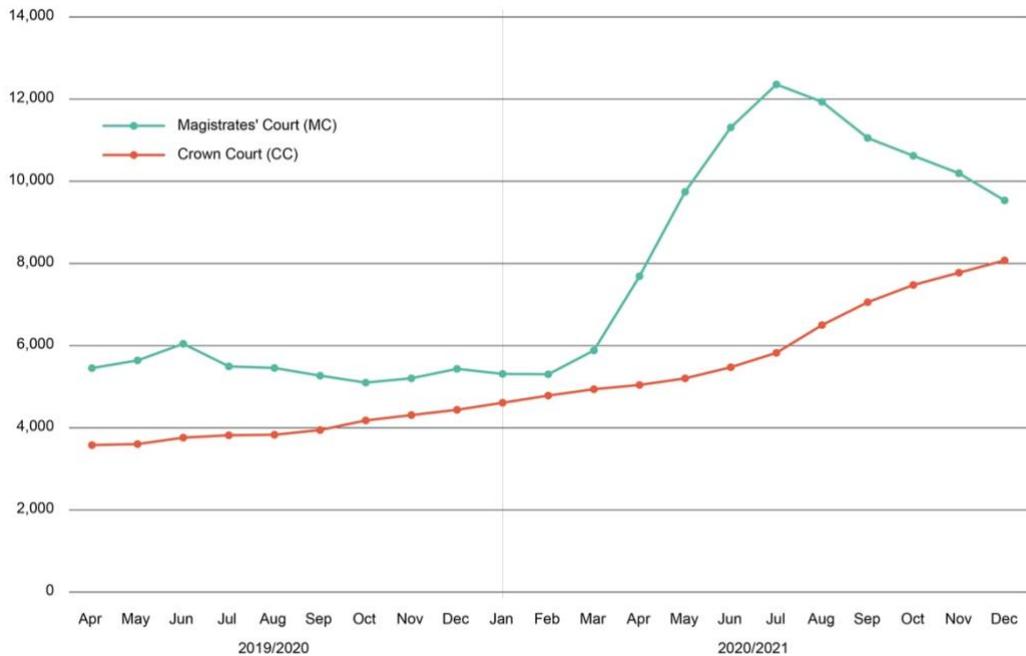


Figure 12: London South

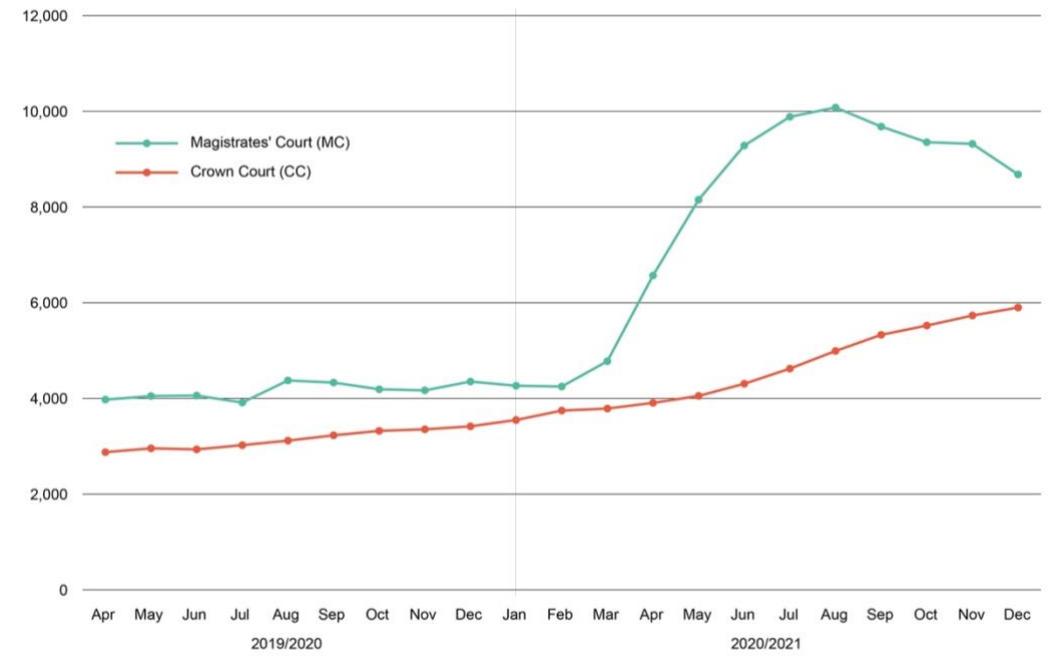


Figure 13: Merseyside and Cheshire

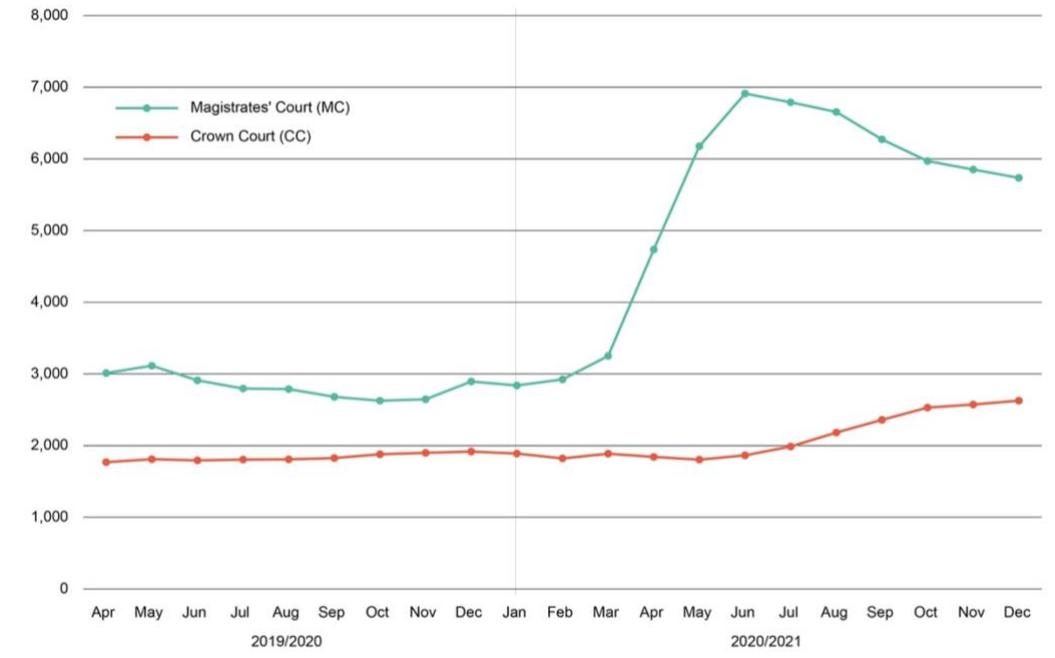


Figure 14: North East

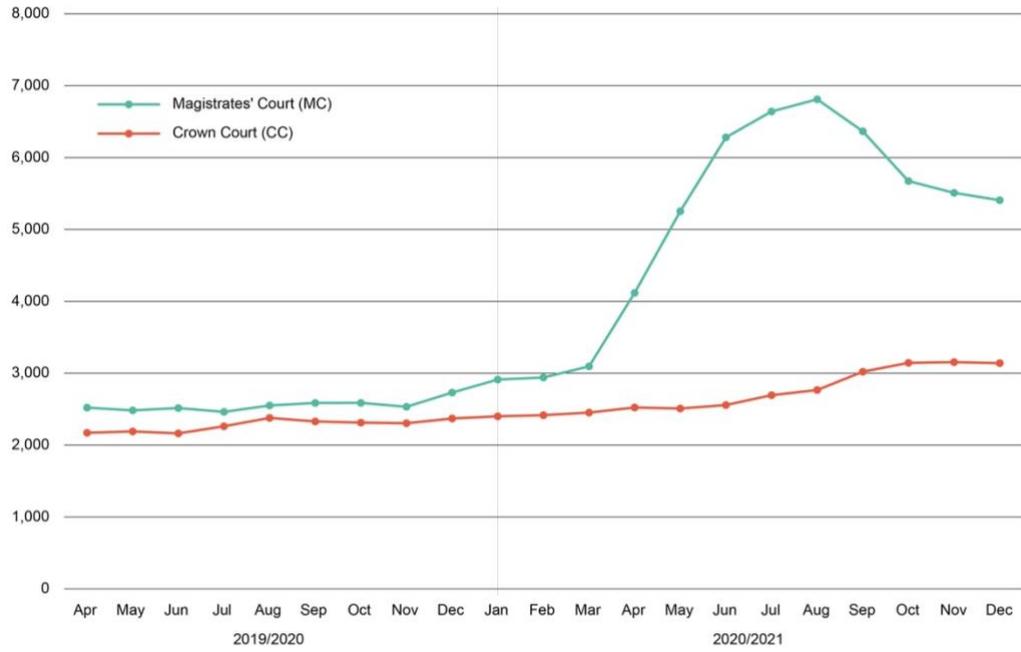


Figure 15: North West

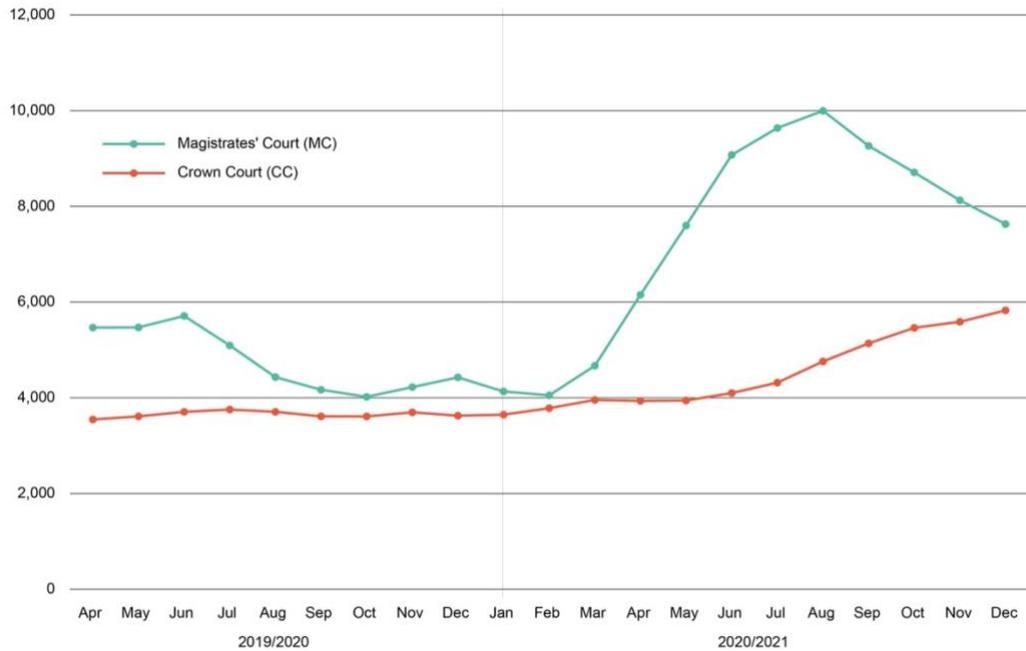


Figure 16: South East

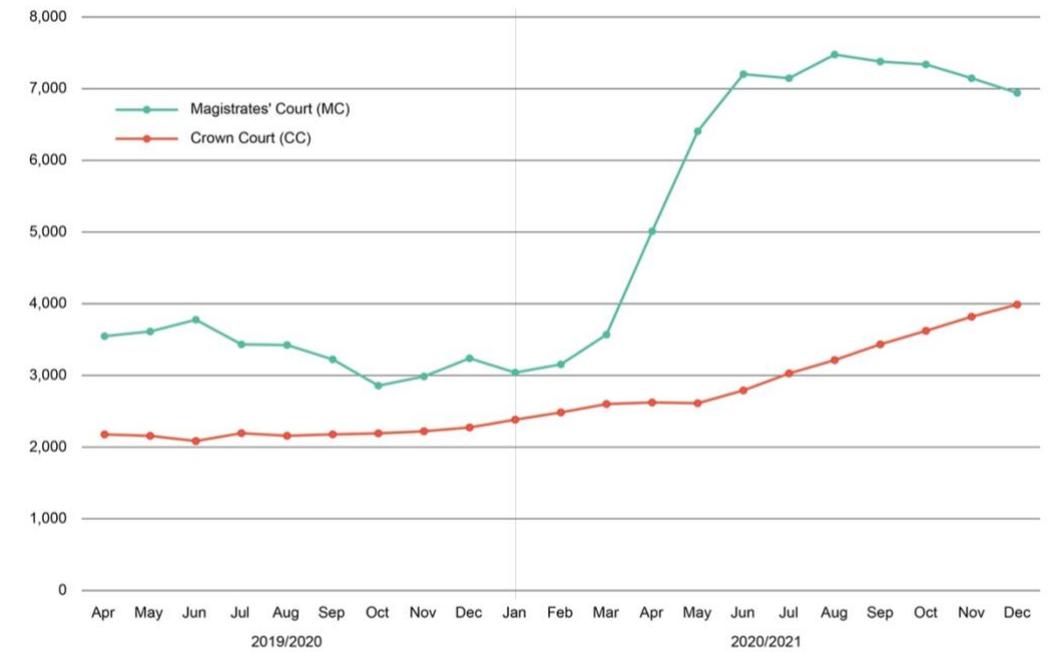


Figure 17: South West

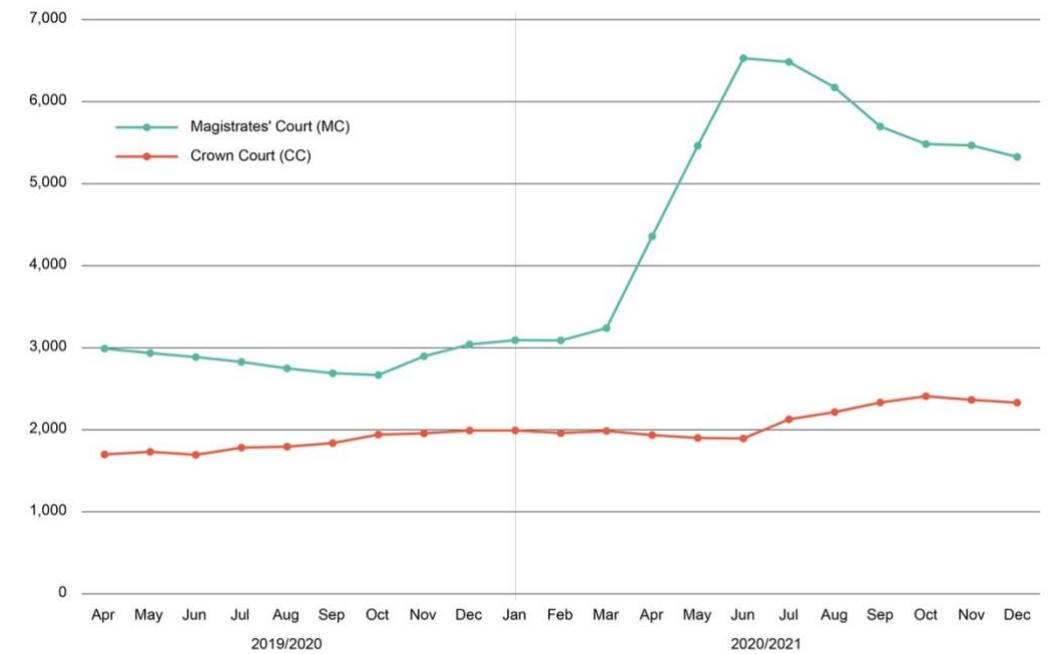


Figure 18: Thames and Chiltern

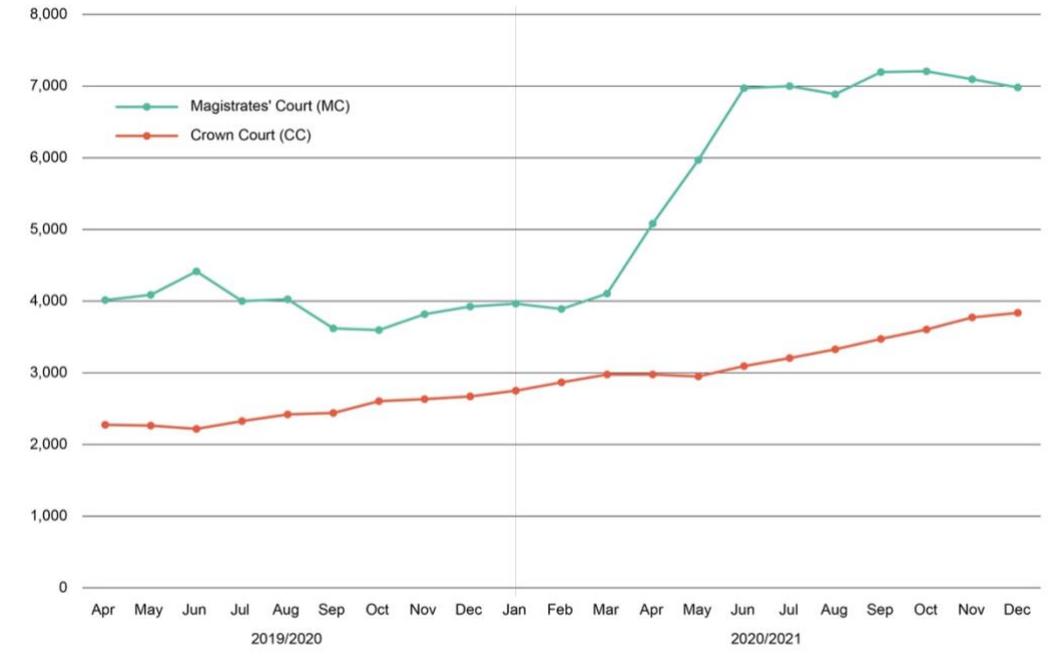


Figure 19: Wessex

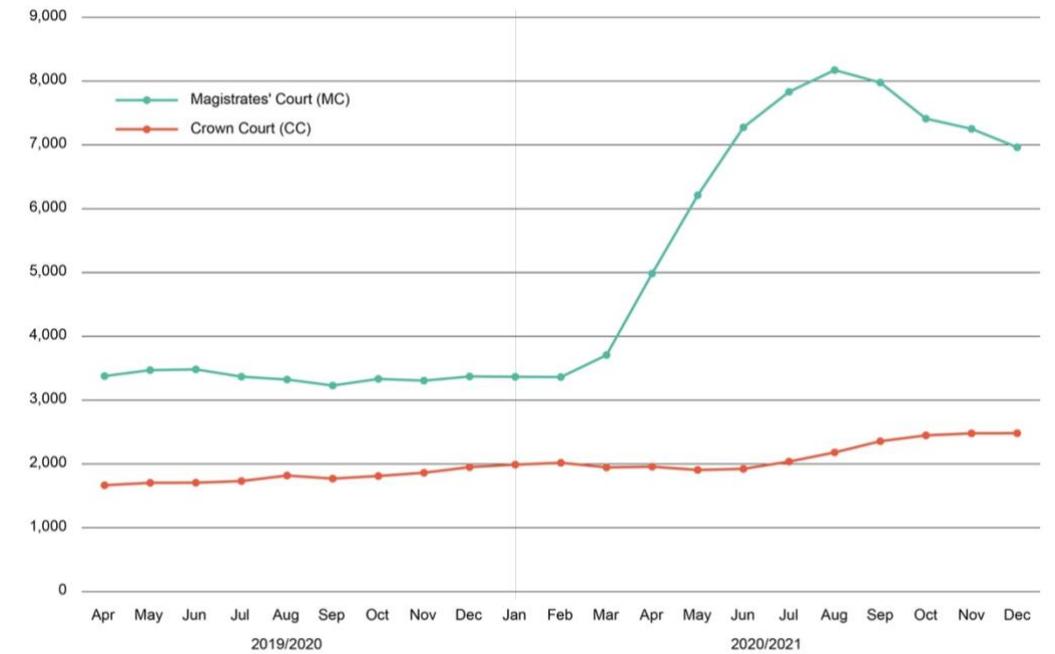


Figure 20: West Midlands

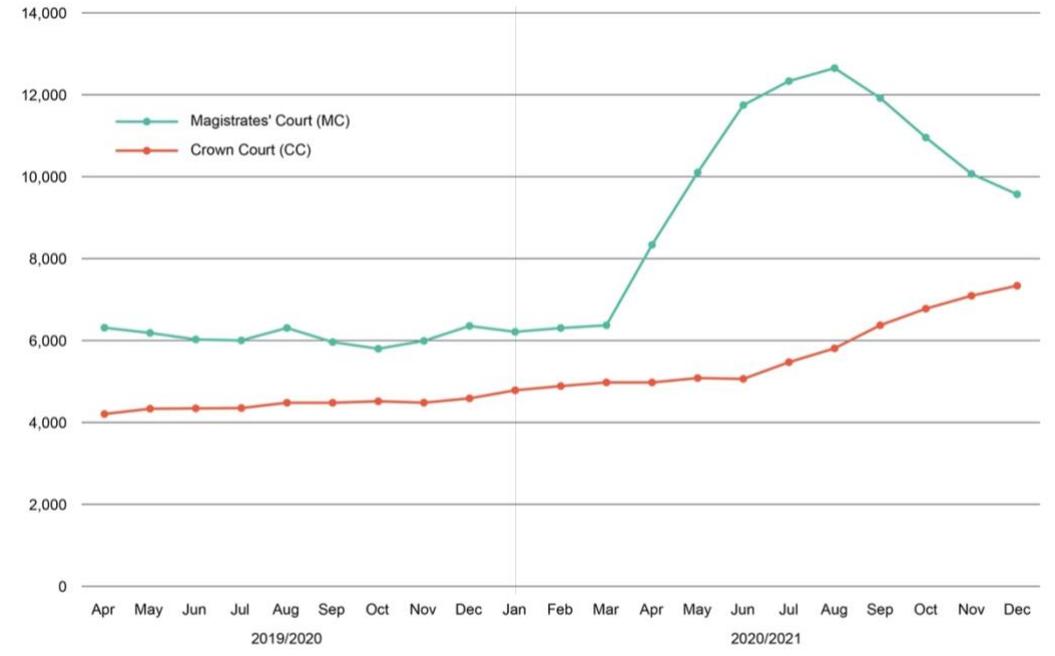
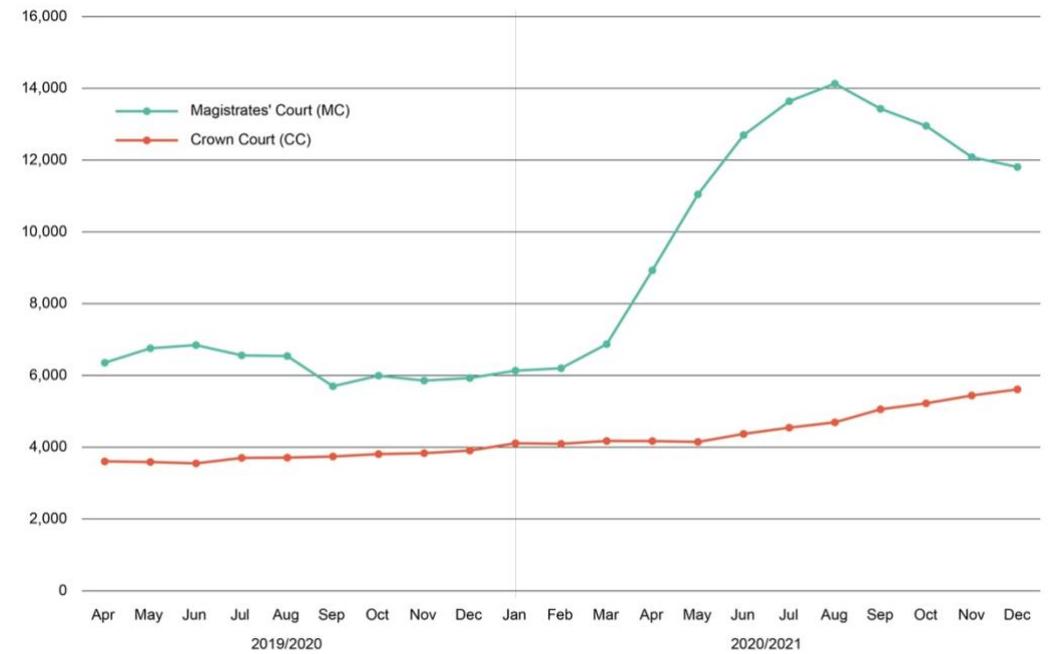


Figure 21: Yorkshire and Humberside



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