



**SUBMISSION OF EVIDENCE TO THE
PUBLIC ACCOUNTS COMMITTEE INQUIRY
'REDUCING THE BACKLOG IN THE CRIMINAL COURTS'**

This is a preliminary submission of evidence by the Criminal Bar Association.

INTRODUCTION

1. The Criminal Bar Association (CBA) represents the views and interests of practicing members of the Criminal Bar in England and Wales.
2. The CBA's role is to promote and maintain the highest professional standards in the practice of criminal law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.
3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment, and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.
4. The work of our members is primarily in the Crown Court. Consequently, it is the Crown Court backlog that we address in this submission and in relation to which we are best placed to provide evidence to the Inquiry. Albeit some of our members also work in the magistrates' court, those courts are primarily served by the solicitor profession, from whom we encourage the Inquiry to take evidence.

SUMMARY

5. The Criminal Bar continues to experience a crisis of retention and recruitment and the consequent number of trials stood out, adjourned on the first day “ineffective”, because of a shortage of counsel to prosecute or defend which has reached record levels. The pool of specialist criminal barristers in publicly funded work cannot meet demand with annual case and trial receipts still only back to 2018 levels overall while a record backlog of over 67,500 outstanding cases as at 31 December 2023 continues to grow, according to three months of published data by HMCTS for January, February and March 2024 measuring “open caseload”, with case disposals failing to meet case receipts for the first quarter of 2024. That continues a trend largely uninterrupted since the first quarter of 2023 according to MOJ and HMCTS data.
6. There are only around 2,400 specialist criminal barristers conducting full-time publicly funded criminal cases. Since our last submission to the PAC in November 2021, Bar Council figures published in April 2022 showed a reduction in the cadre of full-time criminal barristers of 11% over the year to 2020/21. At the same, as the Independent Review of Criminal Legal Aid revealed, published end November 2021, there was a “disproportionate” drop in new counsel conducting full-time publicly funded criminal work, a reduction of 38%. The latest data from Bar Council indicates that the numbers of barristers full-time conducting publicly-funded criminal work, with 100% of their income from such cases, has remained largely static between 2021 and 2024 following steep declines from 2018/19 when there were 2,568, falling to 2,519 in 2019/20, falling again to 2,329 in 2020/21. There was a further drop between 2021/2 of 2,392 and 2022/3 of 2,378, flatlining at 2,384 in 2023/4 and a marginal increase of those self-reporting as likely to be 100% on crime for the current year 2024/25 underway of 2,452.
7. The case backlog of 67,533 at the end of December 2023 is 105% higher than the end of 2018, an historic low of 32,936. The outstanding case load had come down each year over the prior five year period, falling 41% from a previous historic high of 55,923 at the end of December 2014. The outstanding case load rose 24% over the 15 month prior to Covid19 40,891 between January 2019 and March 2020. This was driven

principally by a 15% reduction to the court sitting days budget for 2019/20 compared to 2018/19.

8. Covid-19 temporarily halted trials in the Crown Court for just under two months from the afternoon of 23 March until the first court re-openings on 18 May 2020. The outstanding case load rose another 49% over the following 15 months from the end of March 2020 to 60,784 at the end of June 2021, principally due to the Covid-19 pandemic but also due to the number extra Nightingale court rooms for criminal hearings being added never exceeding 38 extra rooms, barely half the 60 extra that criminal barrister and criminal solicitor groups had advised were needed if the backlog was to reduce when the Courts first reopened from mid May 2020 onwards.

9. From summer 2021, the outstanding case load began to decrease, driven largely by a significant drop in case receipts in the second half of 2021, and despite their rise in the first quarter of 2022, disposals exceeded receipts for nine months for the first time since 2018. The backlog fell from 60,784 in June 2021 to 59,428 at the end of March 2022. Industrial action by the criminal defence barristers from the start of April to the start of October 2022 in relation to defence counsel only, resulted in the backlog rising 6% over that six months to 62,963 at the start of October. Criminal barristers who prosecute cases never stopped prosecuting during that period. Despite industrial action ending when criminal barristers resumed defence work in full from 11 October 2022 onwards, the outstanding caseload reduced only marginally over the next six months by a net 756 cases to 62,207, a fall of just 1% between October 2022 and March 2023.

10. However, between 31 March and 31 December 2023 the outstanding caseload increased by over 5,000, a rise of nearly 9%, to a 23 year record high of 67,573, caused in part by a reversion to case receipts back up in line with pre Covid, 2019 levels, but principally by a surge in ineffective trials which has left the rise in the trials

component part of the case backlog to have risen disproportionately more than the overall case backlog. See Criminal court statistics quarterly: October to December 2023 - GOV.UK (www.gov.uk) Criminal court statistics quarterly: October to December 2023 (tables)

11. The trials backlog component of outstanding cases stood at 55,116 at the end of December 2023, a rise of 115% compared to the trials backlog of 25,551 at the end of December 2018, while the overall case backlog rose 105% over the same five year time period.
12. The components of the ineffective trials that have risen exponentially over 2023, long after the end of criminal barristers' defence action and unrelated to that action have been a surge in unavailability of both counsel for prosecution and defence unavailability, which recently has disproportionately impacted sexual offence trials and worsening judicial shortages.
13. In 2023, there were 1,436 trials of all offences in the Crown Court ineffective due to the absence of either a prosecution or defence advocate, a 20 fold increase on 2019 when 71 trials were similarly adjourned. Of those 252 were trials of sexual offences adjourned due to no prosecution or defence advocate being available while just 16 sexual offence trials similarly adjourned in 2019.
14. The MOJ cut sitting days by 16% for 2019/20 (April 2019 to April 2020) compared to 2017/18. This led to the outstanding case load to rise from 32,936 end December 2018 to 38,030 by the end of December 2019 and rise again during the first quarter of 2020, before the onset of the pandemic, to 40,891 on 31 March 2020. The Crown Courts sat as normal up until the afternoon of 23 March 2020.

15. From summer 2021, the outstanding case load began to decrease, driven largely by a significant drop in case receipts in the second half of 2021, and despite their rise in the first quarter of 2022, disposals exceeded receipts for nine months for the first time since 2018. The backlog fell from 60,784 in June 2021 to 59,428 at the end of March 2022. Industrial action by the criminal defence barristers from the start of April to the start of October 2022 in relation to defence counsel only, resulted in the backlog rising 6% over that six months to 62,963 at the start of October.
16. Criminal barristers who prosecute cases never stopped prosecuting during that period. Despite industrial action ending when criminal barristers resumed defence work in full from 11 October 2022 onwards, the outstanding caseload reduced only marginally over the next six months by a net 756 cases to 62,207, a fall of just 1% between October 2022 and March 2023.
17. However, between 31 March and 31 December 2023 the outstanding caseload increased by over 5,000, a rise of nearly 9%, to a 23 year record high of 67,573, caused in part by a reversion to case receipts back up in line with pre Covid, 2019 levels, but principally by a surge in ineffective trials which has left the rise in the trials component part of the case backlog to have risen disproportionately more than the overall case backlog.”
18. The trials backlog component of outstanding cases stood at 55,116 at the end of December 2023, a rise of 115% compared to the trials backlog of 25,551 at the end of December 2018, while the overall case backlog rose 105% over the same five year time period.
19. The components of the ineffective trials that have risen exponentially over 2023, long after the end of criminal barristers’ defence action and unrelated to that action have been a surge in unavailability of both counsel for prosecution and defence unavailability, which recently has disproportionately impacted sexual offence trials and worsening judicial shortages.

20. Using the last five year period and compared with the prior five year period when the backlog decreased – despite annual case receipts in each year from 2014 to 2018 inclusive being significantly higher than any of the years from 2019 to 2022, with only 2023 case receipts of 105,464 meeting 2019 levels.

21. Case receipts in 2014 were 135,540 and by 2018 had fallen to 104,578. The backlog still fell 41%. Case receipts never exceeded 98,000 annually for each of the three years from 2020 to 2022.

22. The Crown Courts first re-opened 18 May 2020, were fully opened by September 2020 and by April 2021 all social distancing removed and an additional over 30 Nightingale court rooms for crime had been in place for up to six months.

23. The backlog rose just over 3,000 to 43,079 during that Covid closure period. The Crown Court was fully reopened with initial additional Nightingale court room capacity by the end of September 2020 by which time the backlog had risen to 51,250. Social distancing remained until the end of March 2021 but despite an additional approximately 30 extra Nightingale court rooms devoted to criminal hearings, the backlog rose again to 59,785.

24. From April 2021, with all Covid restrictions lifted in courts and despite extra Crown Court room physical capacity, the backlog rose to 60,784. Notably case disposals for each of the four quarters of 2021 had at over 23,600 per quarter exceeded the quarterly case disposal levels for the six months pre-Covid from October 2019 to

March 2020, but what helped reduce the backlog from for the second half of 2021 was a significant reduction of case receipts.

25. We have yet to see evidence that the increase in Crown Court receipts from q2 2023 to q4 2023, back to 2019 levels, was not unexpected. Case receipts on a 10 year basis also remain historically low.
26. Further the end-to-end rape review jointly published by Home Office and MOJ in June 2021 made a commitment to increase rape prosecutions coming to Court by the end of Parliament back to 2016 levels, when case receipts overall were significantly higher than in 2018 and 2019.
27. In 2023 there were 30% fewer rape case disposals (1,805) than rape case receipts (2,566). In 2016 there were 4% more rape case disposals (2,303) than rape case receipts (2,212) that year.
28. This disparity between rape case disposals and receipts, a function of shortage of counsel to both prosecute and defend these cases and a shortage in overall court time, means the rape case component of the backlog has grown at more than double the rate of the overall case backlog. The rape case backlog was 2,786 at the end of 2023, up 385% since the end of 2018 when it was 575.
29. . The overall sexual offence case backlog of 10,141 at end December 2023 is up 237% from 3,005 at the end of 2018.
30. The MOJ first made its commitment in June 2021 to reduce the backlog to 53,000 by March 2025
31. In 2022, the MoJ believed it was on track to reduce its outstanding caseload to 53,000 by 2025 and reaffirmed in January 2023 that commitment to reduce the backlog to 53,000 in oral evidence to the House of Commons Justice Select Committee in January 2023, months after the resolution the previous October of the criminal barristers' industrial action in 2022."
32. See Q 123 and answer from MOJ permanent secretary Antonia Romeo January 2023

committees.parliament.uk/oralevidence/12628/pdf/ "At the moment we do not have an interim target that we want to make public. We are signed up to the target of 53,000 and we are doing everything we can to bring that to bear, but the recent volatility means we are not publishing an interim target"

33. As recently as 8 April 2024, Minister for Courts and Legal Services, Mike Freer MP wrote to the House of Commons Justice Select Committee chair Sir Bob Neill MP, reaffirming the MOJ target of reducing the Crown Court backlog to 53,000 by March 2025,"
34. Ministry of Justice letterhead (parliament.uk) See "At the Crown Court, we remain committed to our public ambition of a caseload of 53,000 cases or fewer by March 2025""The MOJ first made its commitment in June 2021 to reduce the backlog to 53,000 by March 2025
35. In 2022, the MoJ believed it was on track to reduce its outstanding caseload to 53,000 by 2025 and reaffirmed in January 2023 that commitment to reduce the backlog to 53,000 in oral evidence to the House of Commons Justice Select Committee in January 2023, months after the resolution the previous October of the criminal barristers' industrial action in 2022. See Q 123 and answer from MOJ permanent secretary Antonia Romeo January 2023
36. Progress was delayed by criminal barristers' action by defence counsel from the second week of April to the start of October, which saw the backlog rise rising 6%, just under 5,000 extra cases from 58,037 at the start of April to 62,963 at the start of October, according to MOJ's latest updated figures. See Criminal court statistics quarterly: October to December 2023 - GOV.UK (www.gov.uk)Criminal court statistics quarterly: October to December 2023 (tables)
37. The industrial action led to a reduction in the rate of disposals for a distinct six month period during the defence only action by criminal barristers. The impact was evenly spread across importantly the trial component for all cases, regardless of offence or complexity. That the backlog immediately reduced during the fourth

quarter of 2022 in the first three months after the end of the criminal barristers' action and during the subsequent first quarter 2023 between January and March, points to the available capacity of criminal barristers being able to meet and exceed the then volume of case receipts including trials of any complexity.

38. What became apparent was that an underlying shortage of criminal barristers to both prosecute and defend meant that increasing numbers of trials of all offences were being first vacated and then ineffective – adjourned on the day due to commence as there was either no prosecution or defence advocate available.
39. The underlying shortage of criminal barristers to both defend and prosecute cases to allow trials to commence on the day they were due to start became however even more acute during the action, with the MOJ's own data on ineffective trials showing sharp and steady rises in numbers of trials adjourned on the first day due to no prosecution advocate being available, during a period when the action by defence counsel only should have meant fewer not greater numbers of trials ineffective for want of a prosecution advocate.
40. That trend of worsening availability of counsel to prosecute grew exponentially in the year up to the criminal barrister defence only action in Spring 2022, remained high during the defence only action that summer 2022, and has grown exponentially since autumn 2022 for the whole of 2023.
41. 49 trials were ineffective between July and September 2021 because of no prosecution advocate being available ("Prosecution advocate engaged in another trial" or "prosecution advocate failed to attend"), increasing to 80 between October and December 2021, first peaking at 119 between January and March 2022 but remaining at 72 and 44 trials ineffective due to prosecution advocate unavailability for the next two quarters respectively in 2022 during the defence action. The numbers of trials adjourned on the day, thus adding to the case backlogs, because of prosecution advocate shortages have risen a further five fold in the 15 months since the action ended. Between October and December 2022, 146 trials adjourned due no prosecution advocate being available, 189 in the first quarter of 2023, 131 in the second quarter 2023, rising to 209 in the third quarter and a quarterly record 227

trials ineffective through want of a prosecution advocate in the fourth quarter of 2023 which compares to just 14 in the first quarter of 2020 pre Covid and only one such trial adjourned due to no prosecution advocate being available in the first quarter of 2019.

42. The shortage of prosecution advocates is today mirrored across defence advocates.
43. In 2023, there were 1,436 trials of all offences in the Crown Court ineffective due to the absence of either a prosecution or defence advocate, a 20 fold increase on 2019 when 71 trials were similarly adjourned. Of those 252 were trials of sexual offences adjourned due to no prosecution or defence advocate being available while just 16 sexual offence trials similarly adjourned in 2019.
44. Measured by the number of defendants needing representation rather than just the number of cases, provides a more accurate measure of the backlog and what is required to reduce the backlog as explained in evidence by the then Director of Public Prosecutions, Max Hill KC, in oral evidence to the Justice Select Committee in November 2022. This is not a matter of case complexity rather supply of barristers to prosecute and defend multi-handed cases, regardless of underlying complexity. As at September 2022 the CPS measure of its backlog which has regard to numbers of defendants charged – all needing counsel for representation – was 74,587 when the MOJ measure was some 62,000
45. See committees.parliament.uk/oralevidence/11454/html/
46. The issue is less the complexity of underlying case but the ability to resource all trials with sufficient criminal barristers and judges, leading to a surge in over-listing of trials. (see data below)
47. Another impact on the average length of hearing is the worsening delays from late delivery or failure to deliver defendants from prison on time to court. (see data below)
48. In 2023 there were 713 trials of all offences ineffective due to failure by prison escort services to deliver a defendant on time

49. Between January 2014 and June 2019 the ineffective trial rate fluctuated at historic low levels between 14% and 16% each and every quarter. The ineffective rate began to rise steadily between July 2019 and March 2020 as a result to a cut to court sitting days, meaning not all available judges could sit in available court rooms and the volumes of trials both vacated and importantly ineffective rose, with the ineffective rate rising to 22% in the quarter before Covid shut courts in Spring 2022.
50. There have been two sharp quarterly peaks since of first a 48% rate of ineffective trials in the second quarter of 2020 due to Covid largely shutting courts to trials and 57% for just a single quarter during the peak of the criminal barristers' defence counsel action in the third quarter of 2022. For the 12 months leading up to the criminal barristers' action and the 15 months since – both periods when the courts have been fully opened and with no cap on sitting days, the ineffective rate has remained around double the rate maintained for the 5 years leading up to 2019, when the backlog was reduced.
51. The ineffective rate for trials was 27% on average in 2023 compared to 14% in 2018.
52. In total 24,245 trials were delayed from their original listing date in 2023 comprising 10,062 ineffective trials and 12,183 vacated trials
53. Of the ineffective trials in 2023 The key drivers for the rise in ineffective trials:
- Counsel shortages up 20 fold in 4 years
 - In 2023, there were 1,436 trials of all offences in the Crown Court ineffective due to the absence of either a prosecution or defence advocate, a 20 fold increase on 2019 when 71 trials were similarly adjourned. Of those 252 were trials of sexual offences adjourned due to no prosecution or defence advocate being available while just 16 sexual offence trials similarly adjourned in 2019.
 - "Defendant not produced by prisoner escort service" has tripled in five years
 - 713 trials in 2023, up from 77 in 2019 and 75 in 2018
 - "Judge availability"- judicial shortages more than doubled in the past four years

- 190 trials ineffective in 2023 as there was no judge available; up from 150 in 2022, up from 87 in 219
- Overlisting of trials- doubled in 5 years
- In 2023 there were 1,566 ineffective trials due to overlisting, compared to 767 in 2018

54. During the six month 2022 period of barristers' defence action when prosecution counsel continued to work as normal, 116 trials were ineffective – did not go ahead – due to a lack of prosecution advocate, 72 in the second quarter and 44 in the third quarter. During the first quarter 2022 before any defence criminal barrister action, 119 trials were ineffective due to lack of a prosecution barristers

55. Those shortages of both defence and prosecution and defence criminal barristers has continued long after the 2022 barristers' action. In the fourth quarter of 2023, 15 months after the end of the defence barristers' action, there were 227 trials ineffective due to lack of a prosecution advocate and an additional 194 trials ineffective due to shortage of a defence advocate

56. In 2022, industrial action was taken by defence barristers following a series of ballots by the Criminal Bar Association (CBA) of the self-employed independent Criminal Bar in protest over the levels of criminal legal aid fees payable under the AGFS (Advocates' Graduated Fee scheme for work done to defence barristers.

57. From 11 April 2022, criminal barristers engaged in a 'no returns' policy for defence cases only payable under criminal legal aid, whereby barristers refused to 'return' to a case where another defence advocate is or was listed as trial advocate, a long-running voluntary, non-binding, accepted practice within the Crown Court. Following two further CBA ballots, one in June and another in August, criminal barristers' defence action escalated from the start of July 2022, with criminal defence barristers beginning to stop attending court on a number of days each week, increasing to alternate weeks in court and out of court by defence barristers during August. In September the action by defence criminal barristers increased to court walks every week. On 29 September, the government announced it would apply the proposed 15% uplift to the Advocates Graduate Fee Scheme to the vast majority of

existing cases, both new instructions and cases in the backlog. On 30 September 2022 the government agreed to raise most defence fees paid for criminal legal aid work by 15%, and the criminal barristers engaged in defence work suspended their action on 10 October 2022 following a CBA ballot of its members on the offer. The 15% uplift took effect for the vast majority of cases from 12 October 2022. Agreement to pay new separate fees for so called “special preparation, “wasted preparation” and payments for the hearings of pre-recorded evidence under Section 28 only took effect by February 2023

58. Criminal barristers’ defence action in the summer of 2022 was limited to six months during which time the case backlog which saw the backlog rise rising 6%, just under 5,000 extra cases from 58,037 at the start of April 2022 to 62,963 at the start of October 2023, according to MOJ’s latest updated figures.
59. Covid-19 in relation to the Criminal Courts officially ended by April 2021, but over the next 12 months the backlog only reduced 3% from 59,785 to 58,037 by end of March 2022 (before any defence action commenced) when the courts were working to the maximum court room and legal professional capacity. All social distancing in court was removed in April 2021 and the Crown Courts had the additional benefit by then of over 30 Nightingale Court rooms for extra physical capacity. Shortages of criminal barristers were already apparent to both defend, prosecute and provide the recorders – part-time judges – also relied on to help reduce the backlog, as is apparent in the break-down of ineffective trials. This was evidenced by a surge in the ineffective trial rate from 20% at the end of Covid 19, in the first and second quarter of 2021 to 27% by the first quarter of 2022. This was a result of years of criminal barrister underfunding by Government.
60. The 9% rise in the case backlog between 31 March and 31 December 2023, an increase of over 5,000 cases to a 23 year record high of 67,573, is a direct result, not of any criminal barrister action for defence which had concluded a full six months before March 2023, but a result of a chronic and worsening shortage of legal professionals in particular criminal barristers to prosecute and defend cases as they come to trial.

61. The action taken by criminal barristers in relation to defence fees under criminal legal aid was always motivated as stated on 9 April 2022 to “shine a light on the severity of the ongoing crisis in the Criminal Justice System,,,,,to address the chronic underfunding of the AGFS and, in particular, to implement immediate and substantial improvement to fees in order to halt the alarming exodus of criminal barristers from publicly funded work... Without sufficient prosecutors and defenders, thousands of victims and accused will continue to face years of delay and the backlog in cases will grow ever longer.”

62. CBA No Returns Action - Criminal Bar Association

63. Evidence of that April 2022 prediction coming true in 2023, long after the end of any criminal barrister defence action:

Counsel shortages up 20 fold in 4 years

- In 2023, there were 1,436 trials of all offences in the Crown Court ineffective due to the absence of either a prosecution or defence advocate, a 20 fold increase on 2019 when 71 trials were similarly adjourned. Of those 252 were trials of sexual offences adjourned due to no prosecution or defence advocate being available while just 16 sexual offence trials similarly adjourned in 2019.
- “Judge availability”- judicial shortages more than doubled in the past four years
- 190 trials ineffective in 2023 as there was no judge available; up from 150 in 2022, up from 87 in 2019
- Witness and defendant unavailability (2,335 in 2023): was the main reason across the five years from 2019 to 2023, except for 2022 when the criminal barristers’ industrial action had a larger effect. It was the cause of the largest number of ineffective trials in 2023.
- 1,566 ineffective trials due to over listing of cases in the Crown court in 2023

64. A shortage of criminal barristers both before and after the criminal defence barrister action has impacted the ability to conduct on time many multi-handed trials, which is down to barrister man-power more than case complexity . See evidence of former CPS DPP Max Hill and former Lord Chief Justice and current Lady Chief Justice to successive House of Commons justice select committees and House of Lords Constitutional Committees from 2021 to 2024.
65. 16 November 2021 (long before criminal barristers action on defence only) Lord Burnett Justice Select Committee evidence session transcript 2021 (judiciary.uk)
66. THE LORD CHIEF JUSTICE: I am pausing because the shortage of lawyers that I was referring to was very much a crown court phenomenon, so I am not aware, no-one has yet said to me that there is a general shortage of lawyers to conduct litigation, for example, or a general shortage of lawyers to deal with family cases or tribunal cases, or so on. There is a problem in the criminal legal profession and the likely reason is the relentless reduction in real rates of remuneration over the last 15 years.”
67. 8 November 2022 (after the end of criminal barristers action on defence only) committees.parliament.uk/oralevidence/11497/pdf/

The Lord Chief Justice: Essentially, yes, although it did follow —to be fair to Government—a reduction in the volume of cases coming in to some extent; but it maintained a backlog at an artificial figure. With less work, fewer lawyers stuck with crime. That is what it came to. At the same time, for all the reasons you are very familiar with, the financial reward for doing crime was also, in real terms, reducing—and reducing quite fast. So the defence legal community, as it is sometimes called, is depleted. Therefore, there is not resilience within that defence legal community—it is the prosecution community as well—to do all the extra work that we are listing. So we have encountered a phenomenon of cases having to be stood out at the last minute, or adjourned on the day of the trial, because one or other side simply does not have a lawyer to prosecute or defend. The problem, as it seems to me, with a legal community that has been subject to attrition over many years, is

that it is not possible simply to flick a switch and magic up hundreds or thousands of criminal lawyers. That is a problem that I fear may be with us for some time.”

68. 16 January 2024 Lady Chief Justice to Commons Justice Select Committee (15 months after end of criminal defence barristers’ action)
committees.parliament.uk/oralevidence/14108/pdf/ Finally, the sixth factor is, of course, the Bar. I am not talking about the strikes any more, I am talking about the fact that, as you may have read, when Max Hill KC retired, he was saying he could not find barristers to prosecute his cases. A lack of advocates is, at the moment, a real problem in efficiency.
69. Consequently, the necessary increase in judicial sitting days can only be achieved if the crisis of retention and recruitment for the Criminal Bar is addressed in parallel and with the same degree of urgency. At present the volume of work is beginning to exceed the capacity of the profession. Addressing the crisis requires an immediate increase in remuneration, an improvement in working conditions and a long-term strategy to secure the viability of criminal legal aid work, relative to other areas of legal practice.
70. At present, the quality of justice delivered by the criminal courts is being impeded, as are efforts to reduce the backlog. Both impediments will continue unless there is investment in the human capacity of the criminal courts: the women and men who work within them.
71. The Criminal Justice System will always remain, should always remain, a limited system, contained to its purpose and objective. It cannot cure society’s ailments. Strategies to prevent offending are a necessary and welcome adjunct to it and, for example, in relation not just to drug addiction, but also, for example, vulnerable youths, are a more effective, and preferable, way of reducing the associated costs and harms relative to the greater difficulty of, and greater associated cost of, successful intervention post-conviction. Consequently, the Criminal Justice System and the scale of the work required of it mirrors society’s investment in tackling a multitude of

problems, which makes projections of the capacity that is needed for the future difficult (but achievable, using projections based on annual trends) and means the system must have the flexibility and capacity to be able to absorb year to year fluctuations.

72. The purpose of the Criminal Justice System merits emphasis at this juncture, when it is under immense pressure, and priorities for its use must be identified and achieved within a realistic timescale.
73. Criminal justice is inseparable from, and fundamental to, a safe and functioning democratic state. That is its' fundamental purpose: to uphold the rule of law and ensure that the state can deliver on its' core duty: the safety and security of its' citizens. That objective must not be diluted. Overburdening and under resourcing the women and men whose daily job it is to deliver justice risks not only the functioning of the system but the maintenance of law and order.
74. The consequences of the Ministry of Justice and HM Treasury's on-going failure to put into effect a long term strategic plan and related funding to a tried and tested formula: that every defendant charged and brought to trial in the Crown Court requires, under one roof at the same time, properly qualified and available counsel both to prosecute and defend a case, a judge, a jury and a working courtroom.
75. Disregard for planning and funding for any of these interlinked cogs in the wheels of our criminal justice system together with record case backlogs will only cause further delay and as prisons too are overcrowded the burden on the taxpayer ever increases .
76. A simple example is whilst a court sits with a judge, defendants are brought to court and complainants and witnesses attend to give evidence with a jury ready to hear the case, the lack of an available prosecutor causes the whole process to stall at significant cost to the taxpayer and results in further delay to the complainants, victims, witnesses, defendants and their family and friends that suffer the consequences.
77. The recently published NAO report confirms that which criminal practitioners have known for years - that the criminal justice system remains in crisis without a plan for sustained investment, despite the repeated warnings of prosecutors and defence advocates who are tasked with delivering justice daily in our publicly funded courts.

CRIMINAL BAR ASSOCIATION

23rd May 2024