

Public Audit Committee

22nd Meeting, 2023 (Session 6), Thursday, 14 September 2023

Criminal courts backlog

Introduction

1. At its meeting today, the Public Audit Committee will take evidence from the Scottish Government and the Scottish Courts and Tribunals Service on the Auditor General for Scotland's (AGS) section 23 report, [Criminal courts backlog](#), which was published on 25 May 2023.
2. The Committee previously took evidence from the AGS on the report on [8 June 2023](#). A copy of the report can be found in **Annexe A**.
3. Follow up information has been received from the AGS, this can be found in **Annexe B**.
4. The Committee will decide any further action it wishes to take after the evidence session today.

**Clerks to the Committee,
11 September 2023**

Criminal courts backlog

AUDITOR GENERAL 

Prepared by Audit Scotland
May 2023

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Audit team

The audit team consisted of Sarah Pollock, Nichola Williams, Lynsey Davies and Gemma Wilson, with support from other colleagues and under the direction of Mark Taylor, Audit Director.

Key messages

The Scottish Government, the Scottish Courts and Tribunals Service (SCTS) and partners responded quickly and effectively to the Covid-19 pandemic

1 Covid-19 created a backlog of criminal court cases waiting to be heard. The Scottish Government established the Criminal Justice Board (CJB) to manage its response to the pandemic and put in place the Recover, Renew, Transform (RRT) programme, committing over £100 million of funding to support this. Partners worked well together and made good progress through innovative solutions such as establishing remote jury centres in cinemas and balloting jurors remotely. Throughout the pandemic, SCTS made very effective use of modelling data to inform decision-making about the effects of the backlog and identify solutions.

Significant progress has been made in reducing the trial backlog that accrued during the pandemic

2 The courts recovery programme, introduced in September 2021, significantly increased Scotland's criminal court capacity and helped to reduce the backlog of cases which built up due to Covid-19. SCTS estimates that within the normal operating capacity for criminal courts, there would be around 20,000 outstanding scheduled trials at any given point. By January 2022 it was more than double that figure, peaking at 43,606. Thereafter, this figure reduced every month and by February 2023 stood at 28,029.

Victims, witnesses and the accused are experiencing significant waits for their cases to be heard and for the most serious cases the backlog will not be cleared until March 2026

3 The backlog for solemn cases, including murder, serious assault, rape and other sexual offences, peaked in January 2023 and it will take until March 2026 for it be cleared. For summary cases, such as common assault, domestic abuse, crimes of dishonesty, breach of the peace and motoring offences, SCTS estimates the backlog is on track to be cleared by March 2024. Average waiting times for the most serious cases have more than doubled since the pandemic. They currently stand at between 43 and 53 weeks. Some of these crimes disproportionately affect women and children.

The Scottish Government published its Vision for Justice in Scotland in February 2022 but the supporting three-year delivery plan has been delayed

4 The Scottish Government was due to publish its delivery plan for continued recovery and future reform of the criminal justice system by August 2022. But this is now not expected until summer 2023. This plan is essential in ensuring work continues to modernise the criminal justice system and that this meets the needs of people in Scotland. Meanwhile, new initiatives are being piloted within the criminal courts system that could fundamentally change how it operates, but it is too soon to gauge the impact of this work.

Key risks, such as staffing pressures in the legal profession, threaten progress on reducing the backlog and reforming the criminal justice system

- 5** The Scottish Government, SCTS and partners on the CJB need to carefully manage a range of risks that could make reducing the backlog and wider reform of the criminal justice system more challenging. Reconciling different stakeholders' views on the potential future deployment and use of new technologies (such as virtual trials) and the impact that plans to reduce the criminal courts backlog will have on other parts of the criminal justice system are also risks.
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Recommendations

The Scottish Government should:

in the next 3-6 months:

- as a priority, finalise and publish its three-year delivery plan supporting the Vision for Justice in Scotland, setting out actions to ensure work continues to modernise the criminal justice system ([paragraphs 90–92](#))
- effectively consult stakeholders, including the third sector (such as voluntary organisations and charities) and victim support organisations, about its vision and priorities for projects being taken forward through transformational change programmes, when developing the delivery plan to support the Vision for Justice in Scotland ([paragraph 91](#))
- work with the CJB and change programme boards to embed arrangements to ensure user experiences are consistently considered within transformational change programmes and are used to inform projects. In doing so, the Scottish Government should ensure that processes for communication and feedback between the CJB and any stakeholders advising on user experiences are clear ([paragraph 91](#))

in the next 12 months:

- develop clear programme management arrangements for the transformational change programmes supporting its wider Vision for Justice in Scotland. This should include clear action plans, a consistent approach to risk management, defined outcomes, appropriate success measures and arrangements for reporting progress publicly ([paragraphs 83–84](#))

in the next two years:

- consult with SCTS and relevant partners around wider legislative changes that are required to support the ongoing transformation of the criminal courts system ([Case study 2, page 39](#))

The Scottish Government and SCTS should:**in the next 12-18 months:**

- carry out evaluations of projects within the criminal justice transformational change programmes. These should be carried out at key stages as deemed appropriate by the CJB and should incorporate qualitative and quantitative information and include feedback from all relevant stakeholders ([paragraphs 94–95](#))
 - work with CJB partners, the third sector, victim support organisations, organisations representing the accused's interests and other relevant stakeholders to develop equality impact assessments for all projects being taken forward through transformational change programmes ([paragraphs 81–82](#)).
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Background

1. Scotland has a three-tier criminal court system, which is administered by SCTS and operates as follows:

- Justice of the Peace (JP) courts deal with lower-level crimes, such as breach of the peace and shoplifting. A Justice of the Peace decides the outcome of these cases.¹
- Sheriff courts are organised into six sheriffdoms and are where the majority of criminal cases in Scotland are heard. In sheriff courts, cases are dealt with through summary procedure or solemn procedure:
 - Summary procedure is for cases that are heard by a sheriff alone and can include common assault, domestic abuse, crimes of dishonesty and road traffic offences.
 - Solemn procedure is for crimes such as serious assault and sexual offending. A sheriff presides over these cases and a jury decides the verdict at the end of the trial.
- The High Court of Justiciary (High Court) is Scotland's supreme criminal court which hears the most serious criminal cases, such as murder and rape. A judge presides over these cases and a jury decides the verdict at the end of the trial.

2. The Covid-19 pandemic presented an unparalleled challenge for the criminal courts system in Scotland. The backlog of cases that built up as a result of the pandemic, and progress in reducing it, has been affected by two national lockdowns and long periods of physical distancing restrictions. As a result, criminal court business has been affected to varying degrees throughout the different stages of the pandemic ([Exhibit 1, page 9](#)).

3. In response to this, the Scottish Government, SCTS and partners have put measures in place to address the backlog and to plan and pilot more fundamental changes to the criminal justice system. Key partners in this work are the judiciary; the Crown Office and Procurator Fiscal Service (COPFS); Police Scotland; the Scottish Prison Service; Community Justice Scotland; the Law Society of Scotland; the Faculty of Advocates; the Scottish Legal Aid Board; and a wide range of support and advocacy groups.

Exhibit 1. Criminal Courts Covid-19 timeline



Stages of the Covid-19 pandemic



Impact on the criminal court system



Measures put in place

<p>Initial lockdown: March to May 2020</p>	<ul style="list-style-type: none"> • All jury trials stopped. • Significant reduction in summary criminal trials. • Physical distancing restrictions meant that remote and digital ways of conducting business had to be developed quickly. 	<ul style="list-style-type: none"> • Hub court model introduced to deal with all custody and essential business (March). • Virtual custody hearings introduced through direct links to police stations (April). • Sheriff courts were able to hear and dispose of cases where parties agreed that they could be resolved without a trial (May).
<p>Summer easing: June to August 2020</p>	<ul style="list-style-type: none"> • Closed courts reopened but at reduced capacity to allow for two metre physical distancing requirements. 	<ul style="list-style-type: none"> • Virtual summary trials first piloted (June). • Remote jury centres for High Court trials began whereby juries took part in trials from cinemas (July).
<p>Second wave: Sept 2020 to March 2021</p>	<ul style="list-style-type: none"> • From January 2021, in line with the legal requirement to stay at home, court business was again restricted, with criminal courts focusing on only the most serious trials. 	<ul style="list-style-type: none"> • Remote jury centres for sheriff court solemn trials began (December). • Pre-intermediate diet meetings² were introduced for sheriff summary cases to ensure that only those cases which could not be resolved by agreement and were ready to go to trial proceeded to the assigned trial date (December).

Cont

Exhibit 1. Continued



Stages of the Covid-19 pandemic



Impact on the criminal court system



Measures put in place

<p>Emerging from the pandemic: April to November 2021</p>	<ul style="list-style-type: none"> All courts reopened but the available capacity of court buildings was restricted by two-metre physical distancing which was reduced to one metre by August 2021. 	<ul style="list-style-type: none"> Courts recovery programme came into operation and 16 additional courts introduced (from September 2021 and in a phased way).
<p>Omicron: December 2021 to March 2022</p>	<ul style="list-style-type: none"> Two-metre physical distancing requirement reintroduced, with criminal court business again restricted until end of January 2022. Physical distancing requirement changed from two metres to one metre on 31 January 2022. 	<ul style="list-style-type: none"> Physical attendance limited at a range of criminal procedural hearings (December). The number of trials programmed to take place in court each day was reduced to manage the number of accused, legal representatives and witnesses needed on the premises at any one point in time (December).
<p>Current position: April 2022 to present</p>	<ul style="list-style-type: none"> One metre physical distancing requirement removed from court buildings from 19 April and replaced with recommended distancing measures in congested areas. 	<ul style="list-style-type: none"> Decommissioning of remote jury centres began (July). Summary case management pilot introduced to facilitate early disclosure of evidence to the defence and the accused (September). Additional summary courts converted to two additional trial courts for the High Court and six additional trial courts for sheriff solemn cases (from April 2023).

Source: Audit Scotland

About this report

4. This report summarises the findings of an audit assessing the scale of criminal court system delays as a result of the backlog caused by the Covid-19 pandemic, the actions taken to address these delays, and the impact on victims, witnesses and the accused. The audit looked at:

- the impact of Covid-19 since March 2020 on the patterns in criminal court business and waiting times
- whether the Scottish Government and SCTS are implementing effective plans to reduce the backlog of cases and introduce sustainable changes to help support system transformation, including by beginning to plan and pilot more fundamental changes to the criminal justice system
- how long SCTS has projected that it will take for the backlog to return to pre-pandemic levels, and the risks, challenges and threats to future recovery and sustainable transformation.

5. The audit focuses only on the criminal courts backlog in Scotland. We did not examine the impact of the Covid-19 pandemic on civil courts or tribunals. The scope of the audit work covers the response of the Scottish Government, SCTS and key criminal justice partners to the Covid-19 pandemic and their specific plans for reducing the criminal courts backlog, as well as longer-term plans to make more fundamental changes to the criminal justice system.

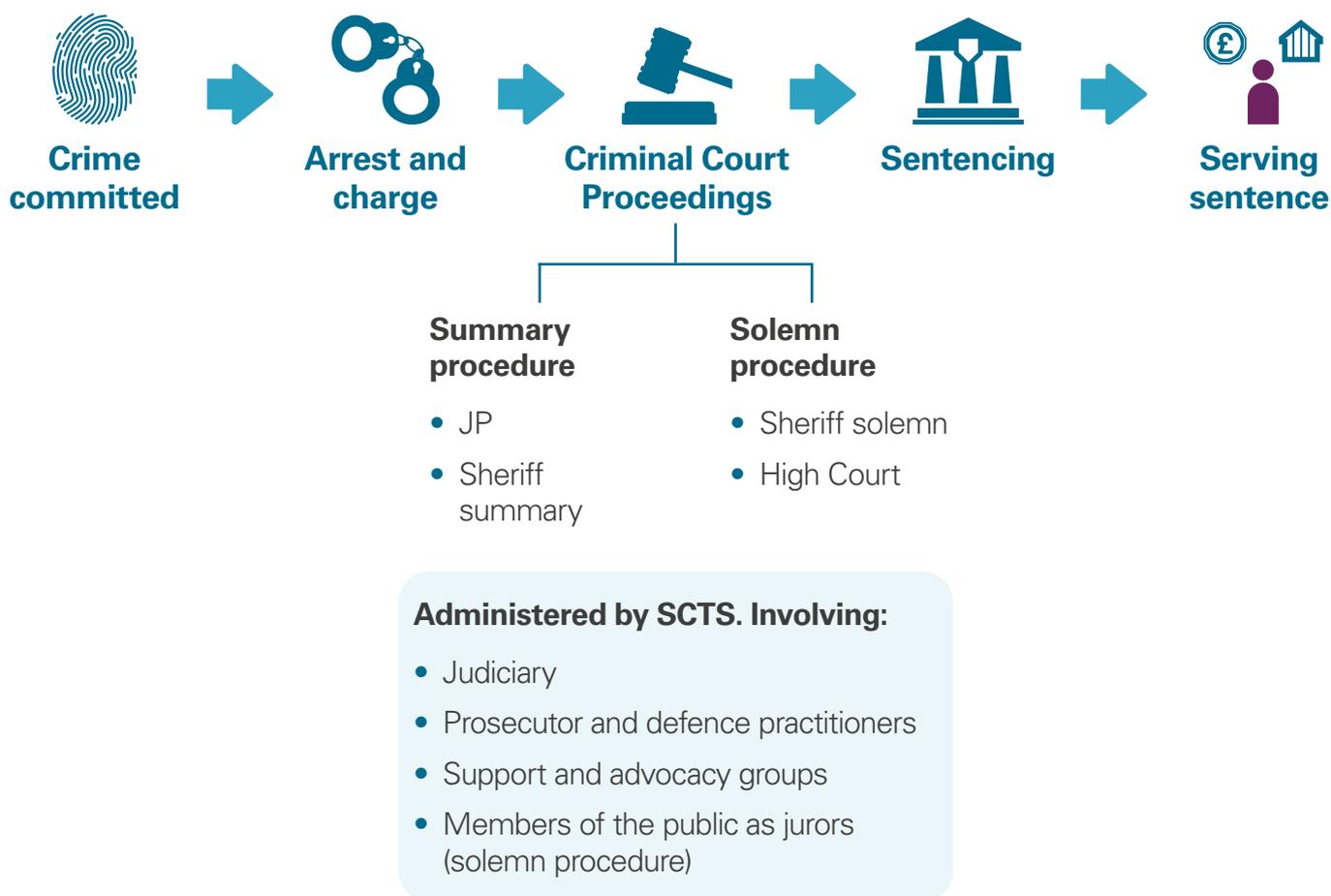
6. Criminal courts are one aspect of the wider criminal justice system ([Exhibit 2, page 12](#)), and this audit specifically focuses on these. Although we recognise that interdependencies exist between a wide range of bodies within the criminal justice sector, we did not examine in any detail the work of other criminal justice agencies such as COPFS, Police Scotland or the Scottish Prison Service. The report highlights possible future risks and challenges facing the criminal courts system.

7. The findings and recommendations in this report are based on evidence gathered through document reviews, specific analysis of available data and interviews with key stakeholders from the Scottish Government, the Scottish Courts and Tribunals Service and partners from across the criminal courts system. We plan to monitor progress against the recommendations made in the report.

Exhibit 2.

The criminal justice system

Criminal courts sit within the wider criminal justice system



Source: Audit Scotland

1. Impact of the Covid-19 pandemic and initial response

The Covid-19 pandemic posed an unparalleled challenge for the operation of the whole criminal justice system

8. In March 2020, Scotland entered a period of national lockdown in response to the onset of the Covid-19 pandemic. All jury trials were stopped from 17 March 2020 and all but essential summary criminal trials were adjourned. Key justice partners held a multi-agency contingency planning workshop before lockdown to prepare for the anticipated shutdown. Discussions were centred around what business could be maintained, and what could be suspended. This informed the initial response to the pandemic and the definitions of essential and non-essential business.

9. The partners agreed four shared strategic priorities in the Covid-19 response. These were to:

- maintain public trust and confidence in the justice system throughout the outbreak, prioritising action to preserve safety and order
- support the public health response – protecting the life and safety of all justice system users and staff
- maintain the operation of those elements of the justice system regarded as essential, such as custody court hearings
- maintain core operations so far as possible – to facilitate the most effective recovery.

The Scottish Government, Scottish Courts and Tribunals Service and partners responded swiftly and effectively

10. The Scottish Government and SCTS's response to the pandemic was based on the need to work with public, private and third sector partners to maintain essential business and restore capacity in the criminal court system, while adhering to physical distancing guidelines. The system had to minimise the number of people physically present in court, the number of locations people had to physically move to and non-essential travel.

11. SCTS acted quickly once lockdown was announced, consolidating all business from the 39-sheriff summary and JP courts into ten 'hub' sheriff courts, which started operating on 25 March 2020. The hub courts prioritised essential business against a backdrop of uncertainty while the remaining courts were closed.

12. By April 2020, the priority was restoring capacity in the criminal court system while maintaining physical distancing between court users. Scottish Government legislation, the Coronavirus (Scotland) Act 2020, came into force on 7 April 2020.³ This made provisions for conducting criminal court business by electronic means, including suspending the rules requiring a person to physically attend court, extending a range of statutory time limits and allowing the electronic transfer of documents. The legislation also expanded the range of circumstances where a witness's evidence could be presented in a trial without the witness being in court. SCTS played a significant role in the development of the Act. The Coronavirus (Scotland) (No2) Act 2020, introduced in May 2020, included further provisions for extending timescales and preserving proceedings where appropriate.⁴

13. In May 2020, a Criminal Justice Board (CJB), was formally established to oversee the Covid-19 pandemic response. The CJB is a sub-group of the National Justice Board for Scotland whose role is to lead justice system organisations in delivering the outcomes set out in the Scottish Government's justice strategy. The CJB includes senior representatives from key public sector criminal justice partners, including the Scottish Government, SCTS, the Crown Office and Procurator Fiscal Service (COPFS), the Scottish Legal Aid Board, Police Scotland, the Scottish Prison Service and Community Justice Scotland. The CJB met fortnightly during the pandemic. It initially led the emergency response, and from June 2020 it focused on the change programme, 'Recover, Renew, Transform', details of which are provided in [Part two](#) of this report.

Covid-19 has shown that, in an emergency, public bodies can quickly adapt how they provide their services

14. SCTS and key partners quickly put measures in place to support the provisions of the Coronavirus (Scotland) Act 2020. SCTS issued guidance and practice notes to support criminal court business, including guidance on attending custody hearings by electronic means and guidance to facilitate early guilty pleas for the accused.

15. Implementing the requirements of the Coronavirus (Scotland) Act 2020 followed quickly. Virtual custody hearings became operational at hub courts from 7 April 2020. This allowed the accused to appear via a direct video link from a police station. This minimised the number of people in court and meant that detainees with Covid-19 symptoms did not need to be moved. A joint inspection by Her Majesty's Inspectorate

of Prosecution and Her Majesty's Inspectorate of Constabulary concluded that existing effective partnership working arrangements across the partner organisations helped them respond collectively to the public health emergency.⁵

16. In May 2020, when summary business was limited to summary custody trials only, SCTS put a new procedure in place to help with the efficient disposal of summary criminal proceedings in sheriff and JP courts. This meant that where the accused wished to tender a plea of guilty, sheriff and JP courts could proceed to hear and dispose of cases if the parties agreed that they could be resolved without a trial. In the same month, a working group was formed to decide how to restart jury trials while adhering to physical distancing.⁶ This group included representatives from across the criminal justice system. The decision was made quickly to develop a remote jury centre model ([Case study 1, page 22](#)).

17. On 1 June 2020, court buildings that had closed during lockdown began to reopen in line with Scottish Government guidance. Scotland was the first UK jurisdiction to re-open all its court buildings.⁷ To support the reopening, SCTS undertook risk assessments for each building and put a range of measures in place to support social distancing and enhanced hygiene.

18. The nature of the pandemic necessitated a reactive, fast-paced response. Aspects of the approach outlined above were developed or modified quickly in response to rapidly changing public health guidance. Understandably, this meant the Scottish Government, SCTS and the CJB did not fully document their plans at this stage or set specific measures to judge the success of the initial emergency response to the pandemic. The pace of the emergency response and collaboration among partners at this stage were clear successes.

The Covid-19 pandemic had a significant impact on the criminal court system, leading to a growing backlog of cases

19. There will always be a certain level of **outstanding scheduled trials** within the criminal courts system as trials are prepared to come to court. For example, this includes evidence disclosure taking place and witnesses being cited. SCTS estimates that within its **normal operating capacity** for criminal courts there would be around 20,000 outstanding scheduled trials at any given point due to normal court processes.

20. After March 2020 the number of outstanding scheduled trials began to rise significantly, creating a **backlog**. Although some trials began to take place in June 2020, criminal courts were operating at a much-reduced capacity. This backlog of cases continued to increase throughout the second half of 2020 and into 2021. The total number of outstanding scheduled trials reached a peak of 43,606 in January 2022, more than double the normal operating capacity ([Exhibit 4, page 26](#)).



Information:

In this report we use the term **outstanding scheduled trials** to refer to all trials that are waiting to come to court. We use the term **backlog** to refer to the outstanding scheduled trials that are above the **normal operating capacity** of 20,000.

21. Waiting times also increased significantly alongside the rising backlog. Before the Covid-19 pandemic, the average waiting time from a plea being entered to a jury trial commencing in the High Court in Scotland was 22 weeks. But by the beginning of 2021, this had more than doubled to 52 weeks. It is important to note that this measure reflects a partial picture of waiting times and not the overall waits experienced by those involved in the case ([paragraph 73](#)).

The criminal court backlog has a significant impact on victims and witnesses

22. The human impact of the criminal court backlog cannot be understated. It has a detrimental effect on victims and witnesses, including on their mental health. As victims wait longer for their cases to be heard, their lives are put on hold and in some cases their trauma is prolonged.

23. Before Covid-19, support and advocacy organisations had already been concerned about long waiting times. For example, Rape Crisis Scotland had supported people waiting two years or more for their case to come to court.⁸ The pandemic has exacerbated this situation through further increasing waiting times. This has a significant impact on individuals' mental health and can cause feelings of anxiety and re-traumatisation. Victim Support Scotland advised that at the beginning of the pandemic it experienced a 400 per cent increase in safeguarding incidents, which include victims and witnesses reporting thoughts of suicide or self-harm.⁹

24. The pandemic has increased the number of delays and **adjournments**, which adds to the feeling of uncertainty, with some people having their case adjourned numerous times.¹⁰ Support and advocacy organisations report that this is creating additional trauma, as many victims and witnesses have to rehearse their evidence, but feel they cannot move on with their lives, as they do not know when their case will be called to court.¹¹ This wait can also affect support for recovery, as an individual may not be able to access this until the court case has ended.

25. Delays can also have implications for the administration of justice. Victims and witnesses are concerned that if their case keeps being delayed, eventually it may be dropped completely. There is also concern that victims and witnesses may withdraw from the process because of the backlog and delays or be reluctant to report a crime in the future.¹²

The length of time someone accused of a crime is held on remand has increased during the pandemic

26. The criminal court backlog is also having a significant impact on people accused of a crime, especially those the court has placed on remand, meaning that they will be in prison until their trial begins.



Information:

An **adjournment** is an interruption to court proceedings when the court stops the hearing of the case for part of a day or for a longer period.

27. Since the start of the pandemic, the remand population in Scotland has increased: the average daily remand population increased by around 14 per cent in 2021/22, and one in four people in prison had not been convicted.¹³ The time people spent on remand also increased in 2021/22, with 90 per cent of those departing custody from remand within 139 days, compared with 109 days in 2020/21. In the year before the pandemic, 90 per cent of those departing custody from remand did so within 63 days.

28. Those on remand have different rights from other prisoners. They are not able to have a prison job and can spend up to 22 hours a day in their cell. This can have a significant impact on their mental health. It can also affect their lives outside prison, for example by risking the security of their employment or housing.

29. The Scottish Government introduced provisions extending the maximum time that an accused person can be held on remand prior to a trial without the court granting an extension through the Coronavirus (Scotland) Act 2020.¹⁴ This aimed to address the anticipated impact of the Covid-19 pandemic on the justice system and to ensure that cases did not exceed the maximum time limits. For example, COPFS identified that, if the time limit extensions had not been in place in November 2021, 786 cases due to be heard in court would already have passed the pre-pandemic time limit and a further 653 cases would have been approaching that limit.¹⁵ If the time limit extensions had not been in place, applications would have needed to be made to extend these limits on a case-by-case basis which would have required significant court time.

30. Feedback from a range of support and advocacy organisations on continuing to use the time limit extensions was mixed, with most agreeing that they were required at the beginning of the pandemic. The extensions are now having a negative effect on both victims and the accused, as they can increase the length of time people have to wait for a case to be heard in court and the time accused people spend on remand.

2. Addressing the backlog

The Recover, Renew, Transform programme built on the success of the initial response to Covid-19

31. The Scottish Government's Recover, Renew, Transform (RRT) programme was introduced in June 2020 and was overseen by the CJB. ¹⁶ The programme aimed to enable the justice system to operate again at pre-Covid-19 levels and prepare for future transformation. The elements of the programme were defined as follows:

- **Recover** – returning to pre-pandemic capacity and addressing backlogs across the whole system.
- **Renew** – prioritising the resolution of cases at the earliest opportunity and embedding new ways of working.
- **Transform** – changing outcomes for those affected by the criminal justice system (by changing how the criminal justice sector operates).

32. The RRT programme had five workstreams: High Court and sheriff and jury trials; virtual summary trials; virtual custody courts; summary criminal process (further details are provided in [paragraph 45](#)); and community justice and preventing reoffending.

Criminal justice partners worked well together to recover from Covid-19 and implement new ways of working

33. Each RRT workstream was led by a senior responsible officer from one of the CJB partner organisations. A senior responsible officer group was also established and formed part of the RRT programme's governance structure. It managed the operational delivery of the RRT programme and regularly reported progress to the CJB.

34. The RRT programme showed positive examples of partnership working, including the following:

- Key partners collaborating to pilot physically distanced alternatives to jury trials. This led to the eventual introduction of remote jury centres ([Case study 1, page 22](#)).

- In February 2022, representatives from across the criminal justice system worked together to promote consistency across three summary case management pilot courts and to allow partners to work through problems and identify solutions ([paragraph 93](#)).
- The Scottish Government's Justice Analytical Services Division established an operations and analysis sub-group which brought together analysts from various justice organisations to ensure that the CJB received joined-up, consistent data and analysis. Data sharing continues to be an important element of system-wide partnership working ([paragraph 41](#)).

Early modelling work informed decision-making on tackling the criminal courts backlog

35. Early in the pandemic, SCTS carried out modelling work to estimate the possible backlog that could build up across the criminal court system if no mitigating action was taken.¹⁷ This provided a robust evidence base against which a range of options and solutions could be assessed, and competing pressures balanced appropriately.

36. The initial modelling identified that, given the nature of the challenge, measures to expand capacity and resources would be needed to enable the criminal court system to recover and deliver services.

37. SCTS was well placed to lead this work, as it had access to a large amount of data and the appropriate skills and expertise in house. Analytical and operational staff worked closely together, and operational staff were able to clearly explain the operational requirements arising from modelling work.

Data was used very effectively by the Scottish Courts and Tribunals Service

38. As the modelling work developed, scenario-based modelling was used to set out the potential impact of the various solutions being considered. SCTS also used the modelling to consider the costs associated with different scenarios. This helped SCTS to identify the options to take forward, as well as successfully supporting the case for the funding needed.

39. The scenario-based model takes account of the numbers of cases coming into the system and the capacity of the criminal courts and then uses this information to project what that means for the backlog. So, for example, if the number of cases coming to court remains stable but the number of available courtrooms reduces because of physical distancing, then the backlog will increase.

40. The model projected that remote jury centres and additional court capacity would help trial numbers get back to or close to pre-Covid-19 processing levels, which has since proven to be the case ([paragraphs 46 and 54-55](#)).

41. Through this work, SCTS was able to demonstrate what would happen if partners did nothing to address the growing backlogs. It showed that backlogs would not return to pre-Covid-19 levels in the period to March 2026, and the High Court backlog would not reduce at all. SCTS also later used the modelling to demonstrate the possible impact on backlogs and trial delays if the activities supported by additional funding were stopped or reduced. SCTS regularly monitored progress in reducing the backlog compared with the modelling projections and reviewed this annually. It worked closely with other criminal justice partners such as COPFS to help inform the modelling and ensure that it was based on the most accurate and up-to-date information.

The Scottish Government provided over £100 million to support the recovery of the criminal justice system

42. The Scottish Government committed over £100 million to support the RRT programme between 2020/21 and 2022/23. This included:

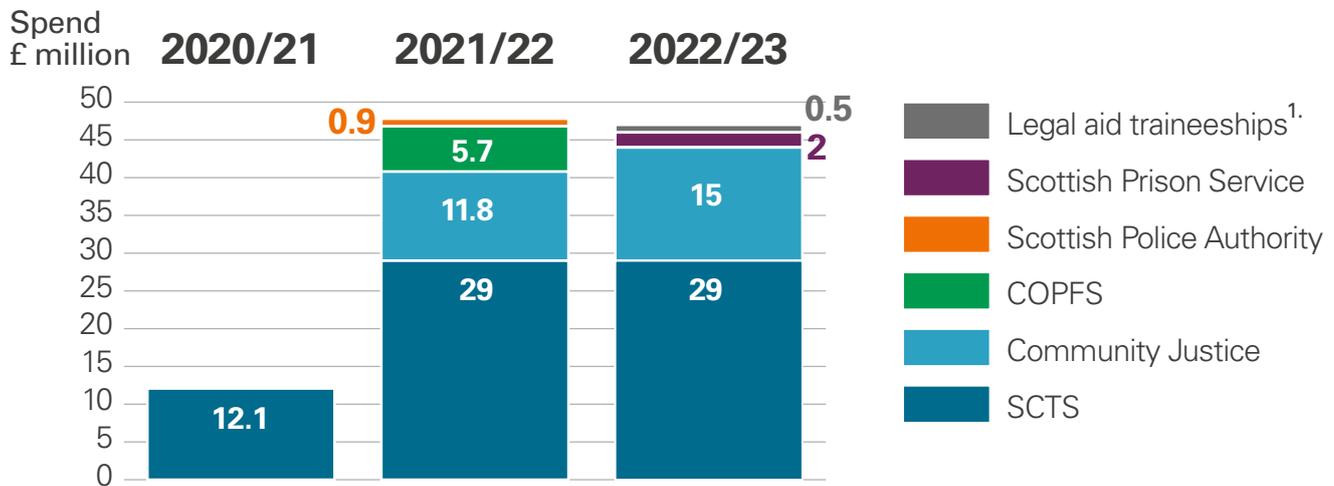
- £12 million for establishing remote jury centres in 2020/21
- £50 million in 2021/22 to support the courts recovery programme
- a further £44 million in 2022/23, with £29 million of this funding going to SCTS to continue to address the courts backlog by increasing court capacity.

43. The Scottish Government does not hold information on the spending on each RRT workstream but does hold information on spending by organisations. [Exhibit 3 \(page 21\)](#) shows the amount of money spent by each organisation in the first three years of the RRT programme.

44. The Scottish Government has committed to providing over £40 million of ongoing Covid-19 recovery funding in 2023/24 to continue addressing the criminal courts backlog. SCTS modelling has shown that by continuing and adapting the additional court capacity introduced through the courts recovery programme ([paragraph 56](#)), significant improvements in reducing the backlog will be achieved by March 2026. This assumes that funding will be in place to support this ([paragraph 97](#)).

Exhibit 3. RRT spending

Spending by organisations on the RRT programme between 2020/21 and 2022/23.



Notes:

1. This is a Scottish Government fund that is managed by the Law Society of Scotland to provide legal aid traineeships.
2. This exhibit does not capture all recovery funding, for example where this became part of the normal budget allocation in 2022/23.
3. 2022/23 expenditure figures are provisional as at March 2023.

Source: Scottish Government; and SCTS

Wide ranging innovation helped the criminal court system recover

45. In this audit we have reviewed documentation relating to the RRT programme workstreams that most directly impact the criminal court system:

- **Virtual custody courts** – different approaches to these were developed and piloted in individual sheriffdoms. All pilots involved the accused appearing remotely from a police custody centre rather than having to appear in person in court, regardless of whether or not they had or were suspected to have Covid-19.
- **High Court and sheriff and jury trials** – a remote jury centre (RJC) model was introduced, with jurors participating in trials from cinemas across Scotland. This allowed High Court and sheriff solemn trials to resume, albeit initially in a reduced way because of physical distancing ([Case study 1, page 22](#)).
- **Virtual summary trials** – using technology (such as video-conferencing), these trials minimised the need for physical attendance at court, which benefited public health and created

efficiencies. The first virtual summary trials were conducted in the North of Scotland in June 2020. In May 2021 the pilot was extended in Aberdeen Sheriff Court to domestic abuse summary trials. ([Case study 2, page 39](#)).

- **Summary criminal process workstream** – in December 2020, a new procedure called a pre-intermediate diet meeting (PIDM) was introduced in sheriff summary cases. The aim of a PIDM is either to resolve the case entirely (for example by COPFS discontinuing proceedings or the accused entering a guilty plea); to resolve issues that might otherwise prevent the trial from proceeding on the date fixed; or to focus on the issues for trial.

Case study 1.

Remote jury centres

In July 2020 the remote jury concept was piloted in the High Courts in Edinburgh and Glasgow. In Edinburgh, two courtrooms were used: the trial courtroom, which included seating for media in the gallery, and a separate courtroom where the jury viewed the trial remotely.



The pilot proved successful, leading to the implementation of the remote jury centre (RJC) model more widely. It was recognised that any multi-courtroom model would substantially reduce the court estate's capacity to conduct jury trials in large numbers, so an alternative solution had to be sought. SCTS signed contracts with Odeon, Vue and Eden Court cinemas to host RJC's using ten cinemas covering a geographical area from Inverness to Ayrshire. Cinemas were chosen because they have high levels of digital connectivity and extremely secure IT infrastructure.

RJC's opened in September 2020 for High Courts and in December 2020 for sheriff solemn courts. Juries were balloted in the courtroom in advance without the jurors present. In year one, the Scottish Government gave SCTS an additional £12 million of funding to implement the RJC model.

Source: Audit Scotland

Overall, remote jury centres restored capacity and enabled more efficient jury balloting

46. The RJC model proved successful in enabling jury trials to restart while physical distancing restrictions remained in place. This approach helped restore system capacity for solemn trials.

47. RJC's returned solemn trial business to pre-Covid-19 processing levels within a very short time. RJC's began operating in September 2020 and the High Court was back to full capacity by November 2020. The sheriff solemn courts were back to full capacity by February 2021, as they had started using RJC's in December 2020. SCTS reported that utilising this model removed approximately 7,500 cases from the backlog.

48. RJC's operated until July 2022, when phased decommissioning began and jury trials returned to physical courtrooms. Two RJC's are being retained for two to three more years to support further criminal court recovery.

49. Balloting jurors is an essential part of the solemn trial process, without which trials cannot begin. Jurors and substitute jurors are selected by having their names drawn from a bowl at the start of the trial. During Covid-19, remote balloting of jurors was introduced, whereby jury balloting took place without jurors being physically present in court. This was essential in allowing criminal court trials to resume despite the physical distancing requirements.

50. The remote balloting of jurors has now been made permanent, introducing a more efficient process that also reduces inconvenience to jurors. Other benefits of the approach include cutting greenhouse gas emissions, as fewer potential jurors need to travel to court. In addition, although intended to support criminal court recovery, the RJC model could potentially be deployed in future cases where there is a risk of jury intimidation.

Other initiatives to reduce the backlog and support wider transformation had more mixed successes

51. Other initiatives had mixed outcomes and effectiveness. SCTS has highlighted challenges with solicitor participation throughout the virtual summary trials pilot.¹⁸ Virtual summary trials ([paragraph 45](#)) depend on all parties consenting to the trial taking place by electronic means. Solicitors may consent to the trial taking place virtually but could withdraw this consent at a later stage. A total of 24 virtual summary trials took place between June 2020 and February 2023, therefore the numbers to date have been small.¹⁹

52. The virtual summary trials conducted to date have provided a helpful 'proof of concept', proving that trials can be conducted by virtual means. Feedback from victims and witnesses has been positive. They value being able to give evidence away from courtrooms, as it reduces the risk of seeing the accused and can reduce the trauma of going to court.²⁰ This approach is now being taken forward as part of the Scottish Government's wider transformation of the criminal justice system ([Case study 2, page 39](#)). This is at an early stage and we have not seen evidence of significant progress.

53. The virtual custody court model was not fully deployed nationally. Different sheriffdoms piloted different approaches, such as fully virtual, hybrid or virtual by exception. More than 4,200 virtual custody court hearings were completed in the 12 months after the start of the Covid-19 pandemic. Feedback on virtual custody courts has been mixed. For example, organisations representing the accused and those representing victims and witnesses have raised concerns that there may be less understanding of the formality and process under virtual means. Feedback from support and advocacy groups has highlighted that individuals with autism or learning difficulties may find it easier to take part in virtual proceedings and feel less anxious about doing so. Partners are considering an expansion of virtual custody courts as part of the Scottish Government’s wider transformation of the criminal justice system ([paragraph 93](#)).

The courts recovery programme successfully led to criminal courts operating above pre-Covid-19 capacity

54. In September 2021, SCTS moved to the next stage of recovery by formally introducing the courts recovery programme, which worked alongside the RRT programme. This was in recognition that returning to pre-Covid-19 capacity would not in itself address the criminal courts backlog. The courts recovery programme was underpinned by a robust and comprehensive plan developed using SCTS’s modelling work ([paragraphs 35–41](#)). This involved further expansion of RJC’s and an increase of 16 additional criminal trial courtrooms, including:

- four additional trial courts in the High Court
- two additional sheriff solemn courts
- up to ten sheriff summary courts.

55. Additional staff were needed to support the courts recovery programme, and Scottish ministers appointed 16 part-time sheriffs and 17 part-time summary sheriffs. The additional court capacity for sheriff solemn and High Court trials meant an expansion in RJC capacity, and the additional capacity in sheriff summary courts was based at various locations across the country. The additional capacity allowed criminal courts to quickly operate above their pre-Covid-19 capacity.

56. In November 2022, in a further development of the courts recovery programme, SCTS announced that it would be switching resources from summary to solemn courts. This was a direct consequence of its modelling work, which identified a reducing backlog in summary cases in parallel with an increasing number of solemn cases ([paragraphs 64–65 and 68–69](#)). The change involved switching resources from ten additional summary trial courts to solemn trial courts (an additional two High Courts and six sheriff solemn courts). This was introduced from April 2023 across nine locations.

57. Switching resources from summary to solemn courts is not straightforward. Increased trial capacity must be matched by appropriate staffing. Discussions continue to take place through the CJB and with the Faculty of Advocates and the Law Society of Scotland who share concerns about the staffing pressures the legal profession faces and the challenge that increasing solemn trial capacity may bring to the profession.

The courts recovery programme is reducing the backlog

58. SCTS has been transparent about its progress against backlogs, providing key information to the public. It has published data on outstanding scheduled trials and waiting times on a monthly basis as well as publishing its modelling data and subsequent updates.

59. In January 2022, the number of outstanding scheduled trials peaked at 43,606 ([Exhibit 4 \(page 26\)](#)). It has consistently reduced every month thereafter as a result of:

- additional criminal court capacity being introduced through the court recovery programme from September 2021
- physical distancing restrictions easing at the end of January 2022.

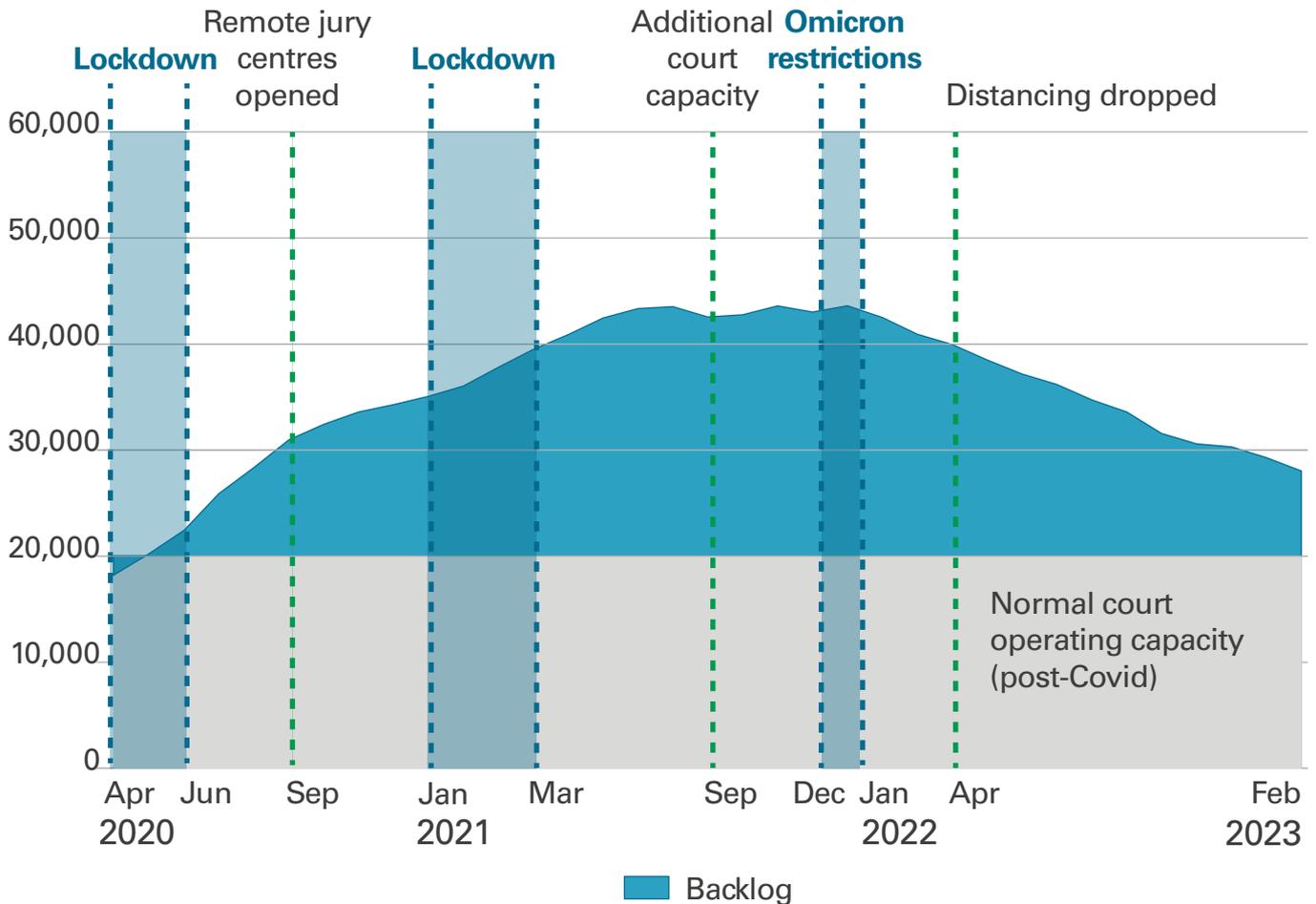
60. By February 2023, the number of outstanding scheduled trials was 28,029, a reduction of 36 per cent since the peak in January 2022. This represents a 66 per cent reduction in the backlog of cases since the peak. As the backlog of cases has reduced, there has also been an increase in the operating capacity in the system and an increase in levels of cases concluded.

61. Although the backlog that built up because of Covid-19 is reducing overall, progress varies significantly between the different tiers of the criminal courts. This is explained in more detail below.

Exhibit 4.

The number of outstanding scheduled trials in criminal courts since April 2020

The number of outstanding scheduled trials has been falling since the beginning of 2022.



Source: SCTS monthly data

The summary case backlog is on track to be cleared by March 2024

62. Criminal cases such as breach of the peace, motoring offences, criminal damage and common assault (not causing significant injury) are typically dealt with by both JP and sheriff summary courts and are prosecuted under what is called summary procedure.

63. Summary cases make up more than 80 per cent of the overall number of outstanding scheduled trials. Good progress has been made in reducing the number of these, which decreased by more than a third during 2022 ([Exhibit 5 \(page 28\)](#)). In January 2022, there were 40,860 outstanding scheduled summary trials, which reduced to 24,946 by February 2023: 4,305 of these related to JP while 20,641 were sheriff summary.

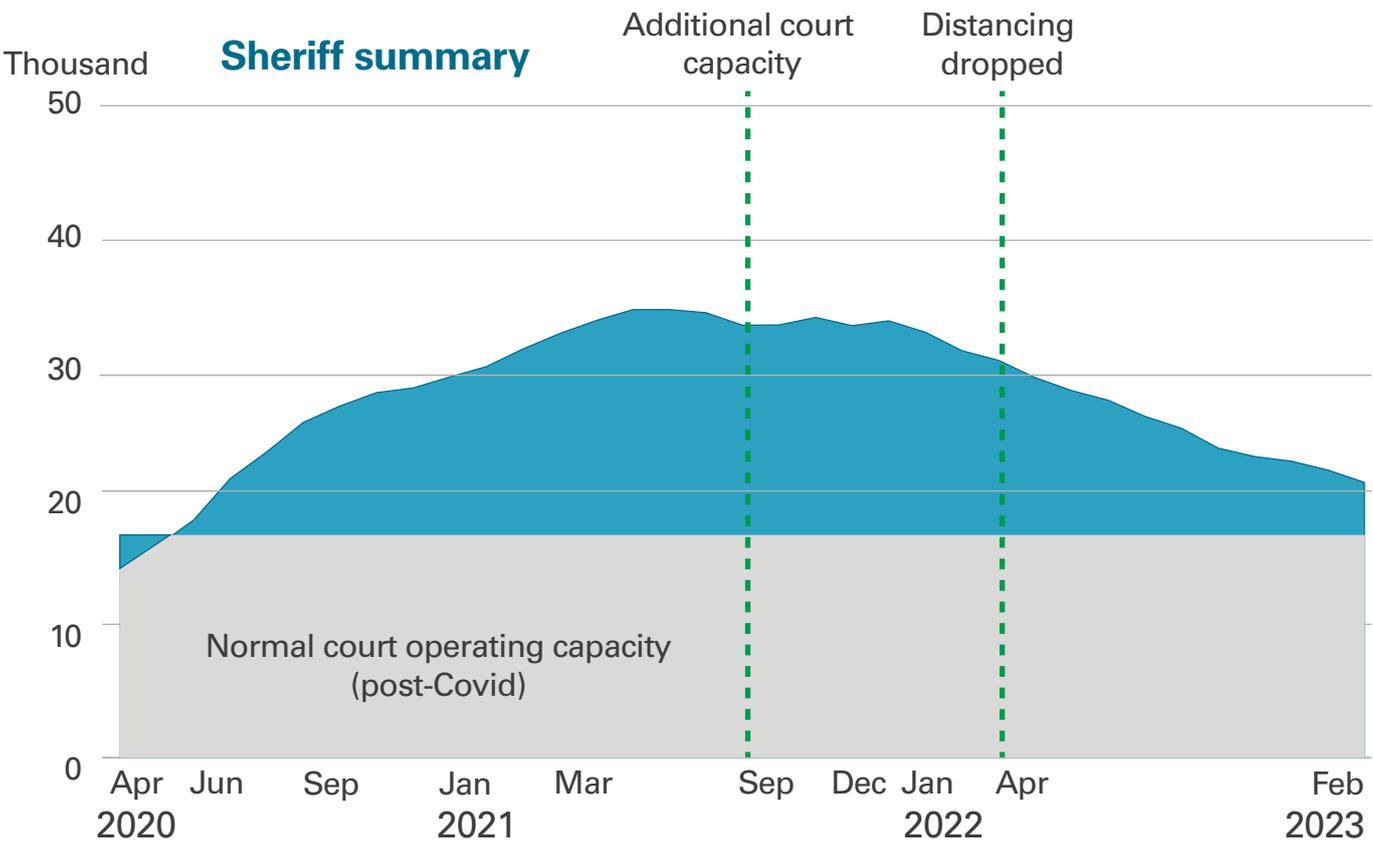
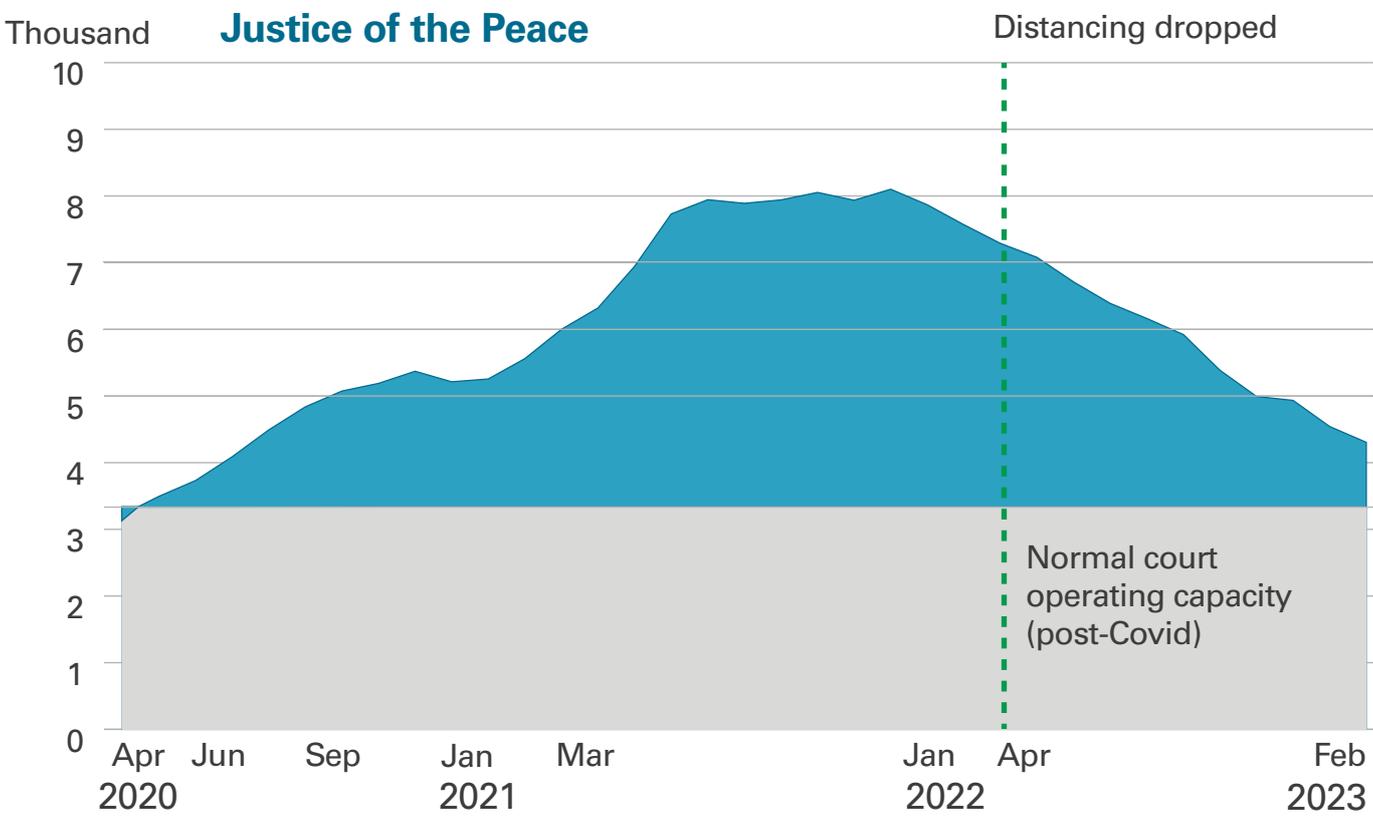
64. As outlined at [paragraph 35](#), when the modelling work commenced, baselines were introduced to reflect a situation that assumed the pandemic had not happened and that the number of trial courts were unchanged. For summary business, consistent baselines were established, these have proved useful in measuring recovery as case numbers have remained relatively stable.

65. The most recent modelling work, published by SCTS in September 2022, indicates that it will consider the summary court backlog to be cleared when the number of outstanding scheduled trials returns to normal operating capacity. SCTS estimates this figure to be 17,637. Progress remains on track to achieve this by March 2024.

66. The progress achieved to date means that the ten additional summary trial courts introduced as part of the initial court recovery programme were scaled back from March 2023.

Exhibit 5. Outstanding scheduled trials for summary cases

The number of outstanding scheduled trials for summary cases has been decreasing since the second half of 2021.



Backlog

Source: SCTS monthly data

High Court and sheriff solemn court backlogs continued to grow until January 2023

67. Criminal cases such as rape, murder and serious assault are dealt with by both the sheriff solemn courts and the High Court. Cases in both these types of criminal courts are prosecuted under what is termed solemn procedure.

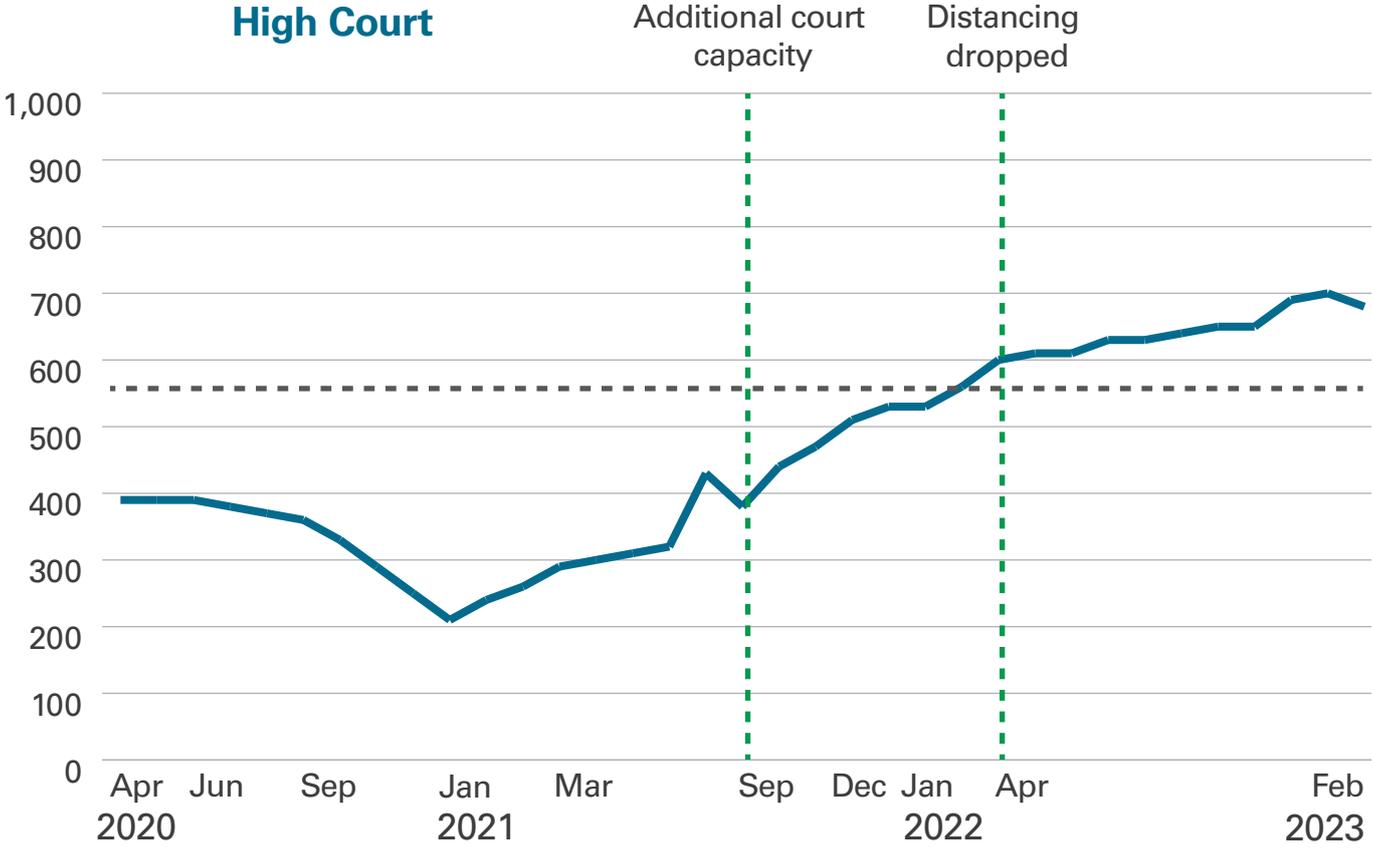
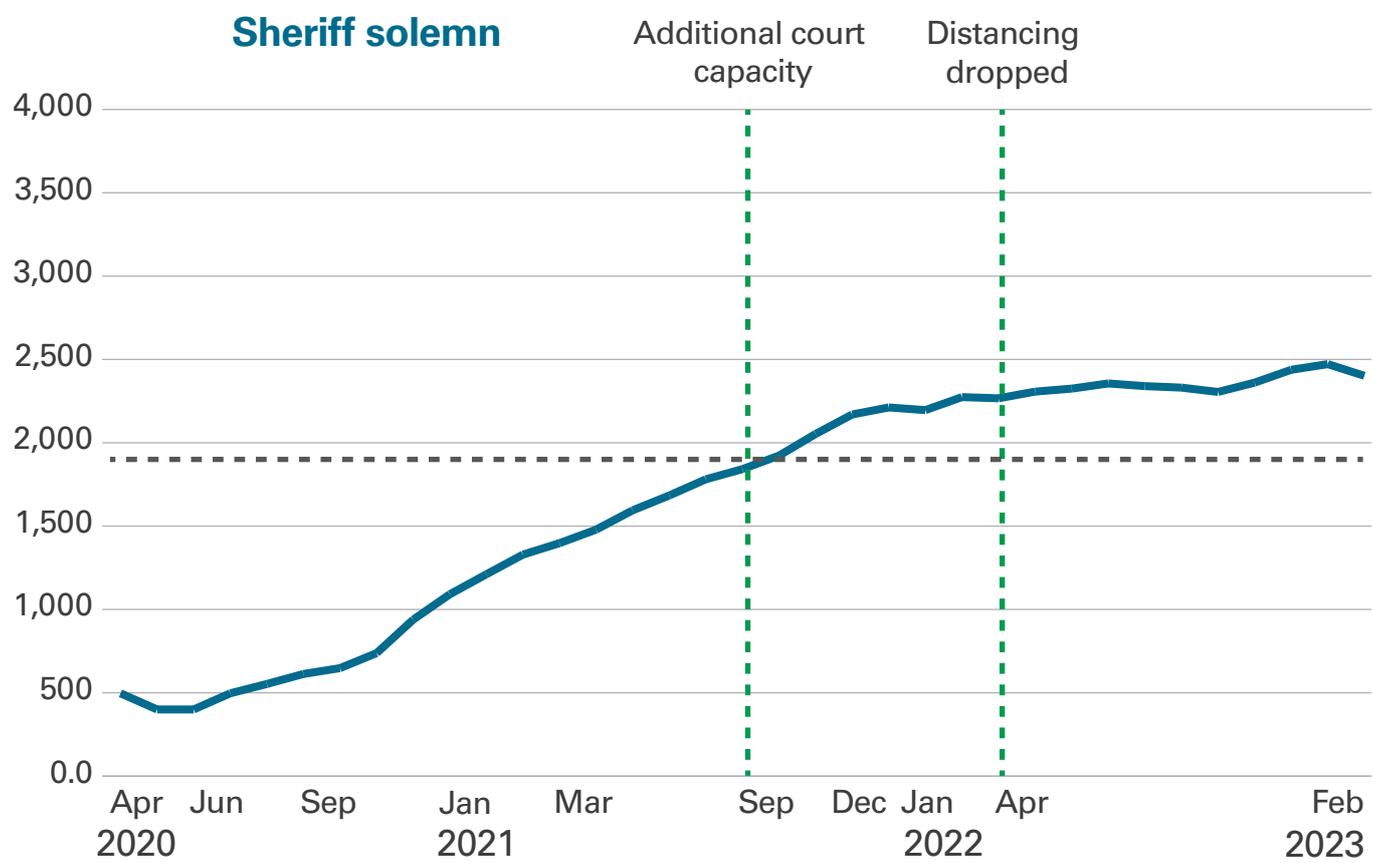
68. The backlogs of both High Court cases and sheriff solemn cases reached their highest levels in January 2023 ([Exhibit 6, page 30](#)), although the rate of increase slowed during 2022. There were 681 outstanding scheduled trials in the High Courts in February 2023, while the sheriff solemn case figure was 2,402. Prior to the Covid-19 pandemic, normal operating capacity for outstanding scheduled trials in the High Court was 430 and for sheriff solemn it was 520.

69. Progress with reducing the backlogs for solemn cases is challenging due to the increasing numbers of cases coming to court, a trend that emerged prior to the Covid-19 pandemic. Since the beginning of 2021/22, sheriff solemn case numbers have continued to be higher than pre-Covid-19. In 2018/19, the quarterly average for cases coming to court was 1,296, compared with a quarterly average of 1,441 cases in 2022/23. As explained in [paragraphs 56–57](#), plans are in place, through the court recovery programme, to address the situation by switching resources from summary to solemn courts.

70. As a result of the significantly increasing number of solemn cases coming through the system, the original target baselines in the SCTS modelling work have been adjusted. The new target is to return to an increased normal operating capacity of 567 outstanding scheduled trials in the High Court and 1,892 in sheriff solemn courts. The most recent SCTS modelling projects that reaching these target levels will take until March 2025 for the High Courts and March 2026 for sheriff solemn courts.

Exhibit 6. Outstanding scheduled trials for solemn cases

The number of outstanding scheduled trials for solemn cases is still rising.



--- Normal court operating capacity (post-Covid) — Trials scheduled at end of period

Source: SCTS

Reducing criminal court waiting times remains challenging

71. Waiting times are an important measure of performance and also act as a barometer of broader pressures in the criminal courts and wider justice system. It is important to analyse these to understand the impact on the people involved and to examine the progress made in reducing them.

72. The Scottish Government regularly publishes data on waiting times for different parts of the criminal justice system for summary cases. This includes an indication of the percentage of cases that go from caution and charge to verdict within 26 weeks. This goes beyond just the criminal courts system, but it indicates how long victims and witnesses wait for justice. In February 2020, prior to the onset of Covid-19, 66 per cent of cases met this target. In February 2023, the figure was down to 44 per cent.

73. SCTS measures the average time in summary cases between a plea being entered and the scheduled trial date. It measures from the point that the plea has been entered, and therefore does not include the time those involved in the case have been waiting prior to this. In addition, these are average waiting times: the time that victims, witnesses and the accused wait in individual cases could be significantly longer or shorter.

74. Waiting times for this measure in sheriff summary cases have almost returned to pre-Covid-19 levels and are now 14 weeks, compared with 13 weeks before the pandemic. JP cases now have a waiting period of 18 weeks, compared with 13 weeks pre-Covid-19.

Average waits for cases that proceed to an evidence-led trial are more than double those pre-pandemic

75. The overall number of cases that proceed to an evidence-led trial varies significantly between criminal court types. In general, very few cases dealt with under summary procedure proceed to an evidence-led trial, but for those dealt with under solemn procedure higher proportions proceed to an evidence-led trial ([Exhibit 7, page 32](#)).

Exhibit 7.

Conversion rates from cases coming to court to an evidence-led trial

The proportion of cases that result in an evidence-led trial varies by criminal court type and is highest for the most serious crime types.

Justice of the Peace 2021/22 Percentage 100%

Complaints registered	23,557	
Trials called evidence led	518	 2.2%

Sheriff summary 2021/22

Complaints registered	55,506	
Trials called evidence led	5,503	 9.9%

Sheriff solemn 2021/22

Indictments registered	5,759	
Trials called evidence led	907	 15.7%

High Court 2021/22

Indictments registered	745	
Trials called evidence led	577	 77.4%

Source: SCTS data

76. Solemn cases are more complex than summary cases. This is reflected in the average trial length, which is around six days in the High Court compared with less than three hours for a sheriff summary trial.

77. The average number of weeks between the pleading diet to an evidence-led trial have more than doubled since the start of the pandemic and are almost four times as long for sheriff solemn cases ([Exhibit 8](#)).

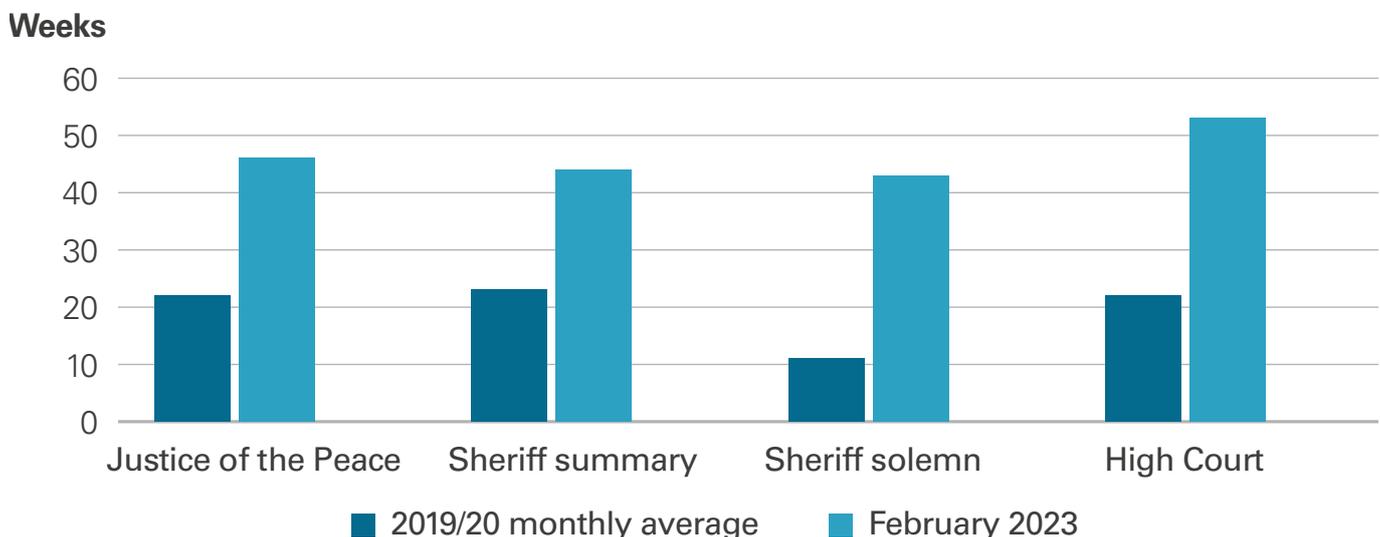
78. A wide range of issues can impact the time taken to get to trial. These include case preparation, availability of forensic evidence, disclosure, witness availability, failure to appear, parties not ready to proceed and adjournments due to lack of court time. These issues existed before the onset of Covid-19 but adjournments due to Covid-related matters were significant and will have impacted on waiting periods. A more detailed examination of these issues is outwith the scope of our audit work.

Exhibit 8.

Average number of weeks to evidence-led trial across all criminal court types before and after Covid-19

This period has increased for all criminal court types as a result of Covid-19.

Criminal court type	2019/20 monthly average	February 2023	Increase
Justice of the Peace	22	46	109%
Sheriff summary	23	44	91%
Sheriff solemn	11	43	291%
High Court	22	53	141%



Equality issues were not consistently considered by the Criminal Justice Board

79. In addition to the significant impact of waiting times on victims, witnesses and the accused, the criminal courts backlog is having an unequal impact on people from different groups in society. For example:

- Child victims or witnesses – delays can represent a significant part of a child’s or young person’s life, depending on their age, and exams or crucial developmental stages may be affected. Some children are unable to access trauma-informed support until a case has ended for fear that this could taint their evidence.²¹
- Women – the backlog in the High Court largely consists of serious gender-based violence cases. 70 per cent of cases indicted and awaiting trial relate to serious sexual offences, which predominantly and disproportionately affect women and children.²²
- Remand population – remand disproportionately affects women and young people. According to prison population statistics, in 2020-21 the proportion of women on remand was 30 per cent and the proportion of young people was 48 per cent, compared with 25 per cent of men.²³

80. The CJB established an independent RRT advisory group in November 2020. The group included key third sector partners representing victims, witnesses and the accused. Its remit included informing equality impact assessments and highlighting the RRT programme’s consequences on those impacted by the system.

81. Equality impact assessments are important for public service providers in assessing the impact of services and projects on particular groups. In the context of this audit, equality impact assessments are important to show the impacts that the backlog and initiatives to reduce the backlog have on equalities. We found that the RRT advisory group was given limited opportunity to contribute to equality impact assessments for the RRT programme. In addition, we found a lack of clearly documented evidence that the CJB regularly considered the equality impacts of RRT programme initiatives. For example, we found very limited evidence that equality impact assessments were developed in a timely manner for most of the RRT workstreams and initiatives, with only two equality impact assessments prepared.

82. SCTS completed an equality impact assessment for the move to RJs for solemn trials. This recognised that RJs would have the greatest impact on women and those with disabilities among all protected groups. It highlighted specific steps that would be taken to mitigate these impacts, such as making greater use of pre-recorded evidence where possible for vulnerable witnesses and installing hearing

loop systems. Equality impact assessments were not consistently prepared for RRT initiatives, and the CJB needs to give greater consideration of equality impact in the future. In addition, the RRT advisory group has not met since December 2021, and therefore not fulfilled its equalities role ([paragraph 91](#)).

There were weaknesses in the programme management arrangements for the Recover, Renew, Transform programme

83. As part of our audit work, we reviewed CJB agendas and papers to assess the strength of the programme management arrangements supporting the RRT programme. This is intended to support improvement as the Scottish Government and the CJB move forward with wider system transformation. We identified the following weaknesses:

- the Scottish Government and CJB did not agree clear plans, outcomes and success measures for the RRT programme
- the RRT advisory group was not given the opportunity to be sufficiently engaged in the RRT programme, and feedback from the CJB to the RRT advisory group on the advice it provided was limited
- wider public reporting of the programme was limited, making it difficult for stakeholders outwith the CJB and any others with an interest in the criminal justice system to assess the programme's impact
- the CJB's approach to risk management was inconsistent and minutes of CJB meetings were not produced, so it is not possible to determine the extent to which risk was discussed at these meetings and how this was used to inform decision-making
- there was limited evidence of the CJB implementing recommendations from a lessons learned exercise it carried out in March 2021, and the CJB did not make arrangements to monitor progress with this.

84. Effective programme management is critical for all stakeholders in gaining a clear understanding of overall risks, goals and outcomes, and successful implementation can lead to better results. It is therefore important that the CJB addresses the weaknesses identified above as it moves forward with wider transformation of the criminal courts system through its Vision for Justice in Scotland. This is covered in more detail in [Part three](#) of the report.

3. Transforming the criminal justice system

The focus is shifting from recovery to reform of the criminal justice system

85. The Scottish Government is currently incorporating key transformational elements of the RRT programme into the Vision for Justice in Scotland. It recognises that it needs to transform how the criminal justice system operates, so that it can respond to changing demands and needs.²⁴

86. In January 2022, the Scottish Government prepared a transition report for the CJB, setting out how the RRT programme would continue to support recovery from Covid-19 and transform how the criminal justice sector operates. The transition report was intended to inform the longer-term three-year delivery plan for the Vision for Justice in Scotland ([paragraph 90](#)).

87. The Scottish Government published a year one delivery plan alongside its Vision for Justice in Scotland, setting out the actions to be taken forward in 2022/23.²⁵ The CJB also prepared an interim delivery plan specifying new arrangements for overseeing the delivery of the activities identified in the RRT transition report and the year one delivery plan. The workstreams being developed as part of the interim delivery plan include:

- summary criminal business ([paragraph 93](#))
- virtual custody hearings ([paragraph 93](#))
- remote provision of evidence ([paragraph 93](#))
- virtual summary trials ([Case study 2, page 39](#))
- pre-recording evidence or taking evidence by commission ([paragraph 93](#)).

88. Each of these workstreams has a senior responsible officer leading its development, who updates the wider senior responsible officer group on progress. The interim delivery plan also proposed that each workstream would provide the CJB with a monthly checkpoint report. This was to provide a greater focus on success criteria and outcomes to ensure a clear link between the work delivered and the intended benefits.

89. The RRT transition report also highlighted numerous enabling projects and initiatives contributing towards recovery and future transformation. One such project, which has links to the summary case management pilot ([paragraph 93](#)), is the Digital Evidence Sharing Capability (DESC) project. This aims to transform the way that digital evidence is managed throughout criminal investigations and prosecutions and facilitate faster resolution of cases through early disclosure of evidence. It also aims to prevent trial delays and postponements caused by issues accessing evidence.

The Scottish Government's three-year plan to support system transformation has been delayed

90. The Scottish Government was due to publish a three-year delivery plan setting out short, medium and longer-term actions to support the delivery of the Vision for Justice in Scotland by August 2022, but this has yet to happen. It now plans to publish this alongside a report on the year one delivery plan outcomes in summer 2023. This delivery plan is critical for ensuring work continues to modernise the criminal justice system, and that it both meets and reflects the needs of people in Scotland, such as women and children, who are disproportionately negatively impacted within the current system.

91. Transformational projects that support the Vision for Justice in Scotland (including those elements of the RRT programme) are being taken forward through three transformational change programmes (TCPs). In January 2023, the CJB agreed a governance structure to support this work, with the senior responsible officer group acting as a programme board for two of these TCPs and a community justice TCP programme board providing this arrangement for the third. The CJB acts as a sponsoring group for the TCPs and delegates authority to the two programme boards. Advisory group arrangements are still being discussed. Determining the future role of any advisory group will be important ([paragraphs 80–81 and 83](#)) to ensure that the views of a wider group of stakeholders continue to inform decision-making and ensure that equalities issues are fully considered.

92. Over £40 million has been allocated to recovery, renewal and transformation activity across the justice system for 2023/24. It will be important that strategic planning progresses in a joined-up way, combining funding and delivery, to ensure that the proposals in the three-year delivery plan are fully costed.

It is too early to gauge the impact of initiatives aimed at transforming the criminal justice system

93. [Part two](#) of this report set out a range of initiatives introduced through the RRT programme. Many of these focused on supporting recovery from the Covid-19 pandemic. Several initiatives are more transformational in nature and support the Scottish Government's Vision for Justice in Scotland. However, at this stage it is still too early to gauge the overall impact of these initiatives:

- **Summary case management** – this judicially-led pilot began in January 2020 but was paused due to the Covid-19 pandemic and was revised and restarted in September 2022 at Dundee, Hamilton and Paisley sheriff courts.^{26,27} The overall aim of the pilot is to reduce the number of cases that are set down for trial unnecessarily and reduce the volume of late guilty pleas. It involves the early disclosure of evidence by COPFS to the accused and their solicitor to allow early dialogue between parties and encourage earlier resolution of cases. This has the potential to accelerate the reduction in the sheriff summary case backlog by resolving cases without the need for a trial.
- **Virtual custody courts** – partners are working together to explore the expansion of the use of virtual custody courts and establishing this type of court in each sheriffdom in Scotland. Progress in the North Strathclyde sheriffdom – which is the starting point for the implementation of the model – has been delayed primarily as a result of resource constraints and the project is currently paused. Partners are engaging with key stakeholders to review the process for the virtual custody court model and to try to overcome issues.
- **Domestic abuse virtual trials** – this builds on pilots in sheriff courts in the North of Scotland in June 2020 ([paragraph 45](#)). Work is at an early stage to pilot a domestic abuse virtual summary trial court in Grampian, Highlands and Islands sheriffdom with a view to longer-term national roll-out ([Case study 2, page 39](#)). This type of court would minimise physical attendance at court and allow victims and witnesses to give their evidence without the risk of encountering the accused.
- **Taking evidence by commission** – this allows children and other vulnerable witnesses to give their evidence in advance of a trial. It pre-dates Covid-19, with its use first recommended in the judicially-led evidence and procedure review and is now a provision of the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.^{28,29} Plans are in place to expand the use of evidence by commission as part of the response to Lady Dorrian’s 2021 review of sexual offence cases.³⁰ Taking evidence before a trial can reduce harm to witnesses caused by giving evidence in court and also means that less time will have passed since the alleged crime occurred, which may lead to more accurate evidence.
- **Remote provision of evidence** – in the majority of High Court cases, police and expert witnesses can now give their evidence remotely. This minimises the time needed to attend court, which frees up considerable amounts of their time, allowing them to continue with essential front-line duties.

Case study 2

Transforming domestic abuse trials in virtual summary courts

In June 2021, a virtual summary trials pilot commenced in Aberdeen Sheriff Court, to test both the viability of virtual trials for domestic abuse crimes, and the effectiveness of witnesses giving their evidence remotely to the court under the supervision of Victim Support Scotland.



Feedback received on the pilot included the following:

- Victim Support Scotland reported overwhelmingly positive feedback from victims and witnesses, who welcomed the opportunity to give evidence virtually.
- The Law Society of Scotland reported that defence solicitors found that more work was needed to prepare for and conduct a virtual trial, putting further pressure on the amount of work required within the legal aid fixed fee.
- COPFS reported that the additional preparation required of trial deputies was minimal compared with in-person trials, although the normal trial preparation cycle had to be amended so that the relevant paperwork could be submitted to the court earlier.³¹

In January 2022 the Virtual Trials National Project Board recommended that each sheriffdom have a dedicated virtual domestic abuse trial court, with their own programme allowing trial diets to be fixed earlier, potentially lessening waiting times for victims, witnesses and the accused.³² An action related to this is included in the year one delivery plan for the Scottish Government's Vision for Justice in Scotland. The sheriffdom of Grampian, Highland and Islands plans to roll out a dedicated domestic abuse court in 2023.

Virtual summary trials are able to proceed under the provisions of the Coronavirus (Recovery and Reform) Scotland Act 2022, which extended the provisions for virtual attendance at trials set out in the Coronavirus (Scotland) Act 2020.³³ These expire on 30 November 2023, but the Scottish Government could seek to extend these by up to two years, subject to the agreement of the Scottish Parliament. The Virtual Trials National Project Board has highlighted that the new model will require a change in legislation to allow virtual domestic abuse trials to be the preferred model.
Source: Audit Scotland

The impacts of initiatives that support recovery and transformation have not been consistently evaluated

94. Evaluations determine what works well and what can be improved in a particular programme or initiative, helping inform decision-making on future courses of action.

95. To date, there have been either limited or no formal evaluations of various RRT initiatives. This is partly because some of these remain small scale or at the piloting stage. For example:

- The summary case management pilot remains at an early stage, but it will be evaluated every six months, with a final evaluation and report planned by the end of March 2024.
- For virtual summary trials, the Virtual Trials National Project Board prepared a report to the Lord Justice General in January 2022, which included evaluation criteria.³⁴ However, this report did not fully consider the experiences of all parties and was based on a small number of trials.
- SCTS carried out an evaluation of RJs and published the findings in February 2022.³⁵ Responses from victims and witnesses were limited, and there were no responses from the accused. Difficulties were encountered in recruiting some users, as well as police witnesses, because of Covid-19 restrictions in place at the time of the survey.

96. The Scottish Government has established principles underpinning its Vision for Justice in Scotland, one of which is evidence-based decision-making. This sets out that justice services will implement transformative actions that are informed, funded and prioritised by credible and robust evidence, and are routinely monitored and evaluated. In future, the Scottish Government and criminal justice partners will require a stronger evidence base to inform decision-making and priorities to clarify which initiatives best support longer-term system transformation. Completed evaluations must be discussed and shared with the CJB, as decisions about which initiatives will have the greatest impact will need to be made against a backdrop of future limited resources.

There are a number of risks that could impact progress with reducing the backlog and longer-term transformation

97. The audit work has identified a range of key risks that the Scottish Government, SCTS and other partners will need to manage, as follows:

- **Staffing pressure** – in the short term, the increased solemn trial capacity in place from April 2023 will increase staffing pressure in the legal profession. The CJB is engaging with the Law Society of Scotland and Faculty of Advocates to understand how best to manage and mitigate the risks associated with this.

- Defence practitioners and legal aid** – We heard concerns from some stakeholders during the audit about the recruitment and retention of defence practitioners, linked to **legal aid** fee rates. The number of active criminal legal aid practitioners reduced by over one-quarter between 2014/15 and 2021/22.³⁶ These issues have been explored by the Scottish Parliament’s Criminal Justice Committee. The former Minister for Community Safety wrote to the committee in June 2022.³⁷ The Minister argued that the reduction in criminal legal aid practitioners is linked to a longer-term reduction in demand for legal aid and is not necessarily an indication of a lack of capacity within the sector to provide legal aid services. This interpretation has been disputed by some representatives of the legal profession. In January 2023 the Minister wrote to the committee to provide an update on negotiations between the Scottish Government and the legal profession in respect of an ongoing dispute over legal aid fees.³⁸ This set out the agreement reached to introduce a package of legal fee increases and the end of nationally coordinated action to boycott certain types of cases. Ensuring an appropriate balance between demand for and supply of defence practitioners is a key challenge given the potential impact – for example on case journey times, victims, witnesses and the accused – on maintaining access to justice for all.
- Impact of the criminal courts backlog on other parts of the criminal justice system** – the audit did not examine the impact of plans to reduce the backlog on other criminal justice bodies such as prisons and community justice services. Our review of CJB papers provides evidence of ongoing engagement between criminal justice partners being used to inform decision-making now and in the future. However, we found more limited evidence that discussions are taking place with wider stakeholders, such as third sector partners including victim support organisations, who are also impacted by plans to reduce the backlog.
- Funding to support future recovery** – alongside all public bodies in the criminal justice sector, SCTS faces uncertainty over future additional funding for its plans to reduce the backlog. The Scottish Government has committed over £40 million of ongoing Covid-19 recovery funding in 2023/24 to continue addressing the criminal courts backlog. Current SCTS modelling projects the backlog of sheriff solemn cases will not see significant improvements until March 2026. This assumes that current capacity will continue and funding will be in place to support this.



Information:

In criminal cases, **legal aid** is financial support to help those charged with an offence who cannot afford to pay their own legal costs. It can help with the costs of legal advice from a solicitor or representation at court.

- **Differing views of key stakeholders** – there is a risk that the Scottish Government and the CJB will not be able to progress some elements of transformational change due to key stakeholders' differing views. Some stakeholders are resistant to the use of virtual trials because they believe that they reduce access to justice, whereas others feel that they improve the quality of evidence and reduce the distress of victims and witnesses.

98. The risks outlined above are widely recognised by the Scottish Government, SCTS and other criminal justice partners. Ongoing and effective involvement of a wide range of stakeholders will be important to both mitigate and manage these risks now and in the future.

Endnotes

- 1** Justices of the Peace are judges who are not legally qualified, but they sit with a legal advisor who is legally qualified and can advise on sentencing. Justices of the Peace sit only in the JP court.
- 2** Pre-intermediate diet meetings are early discussions between the prosecution and defence in sheriff summary cases. These meetings help ascertain if a case is likely to proceed to trial to help ensure that trial slots are not lost by last minute adjournments or late guilty pleas. They also provide a potential opportunity to resolve cases at an earlier stage without the need for a trial, therefore reducing unnecessary attendance at court.
- 3** Coronavirus (Scotland) Act 2020
- 4** Coronavirus (Scotland) (No.2) Act 2020
- 5** Joint inspection of emergency criminal justice provisions, Her Majesty's Inspectorate of Constabulary in Scotland and Her Majesty's Inspectorate of Prosecution in Scotland, September 2020.
- 6** Jury trials working group press release, SCTS, 12 May 2020.
- 7** Covid-19: Respond, recover, renew: Supporting justice through the pandemic and beyond, SCTS, August 2020.
- 8** Official report from Criminal Justice Committee meeting – 22 September 2021, Scottish Parliament, September 2021.
- 9** Official report from Criminal Justice Committee meeting – 8 September 2021, Scottish Parliament, September 2021.
- 10** Official report from Criminal Justice Committee – 23 February 2022, Scottish Parliament, February 2022.
- 11** Official report from Criminal Justice Committee – 8 September 2021, Scottish Parliament, September 2021.
- 12** Victims Taskforce papers: January 2022, Scottish Government, January 2022.
- 13** Scottish Prison Population Statistics 2021-22, Scottish Government, November 2022.
- 14** Prior to the pandemic, in solemn cases where an indictment had been brought against the accused, if a proceeding to determine whether the prosecutor and the defence are ready to go to trial (known as the first diet in sheriff solemn cases and preliminary hearing in High Court cases) had not been held, the accused person could not be held for a total of more than 110 days. If this proceeding had been held, they could not be held for a total of more than 140 days, unless the trial began within that period. In summary cases, a person charged with an offence could not be held for a total of more than 40 days after the bringing of the complaint in court unless their trial was commenced within that period.
- 15** Coronavirus (Recovery and Reform) (Scotland) Bill: Policy Memorandum, Scottish Parliament, January 2022.
- 16** Justice vision and priorities delivery report – key achievements and impact of Covid-19, Scottish Government, March 2021.
- 17** SCTS Covid-19 Recovery Modelling Reports, SCTS, August 2020.

Endnotes

- 18** Virtual trials paper for meeting of the Criminal Justice Committee – 22 February 2023, Scottish Parliament, February 2023.
- 19** Ibid.
- 20** Official report from Criminal Justice Committee meeting – 9 March 2022, Scottish Parliament, March 2022.
- 21** Victims taskforce papers, Scottish Government, January 2022
- 22** Official report from Criminal Justice Committee - 3 November 2021, Scottish Parliament, November 2021
- 23** Prison Population Statistics 2021-22, Scottish Government, November 2022.
- 24** Vision for Justice in Scotland, Scottish Government, February 2022.
- 25** Vision for Justice in Scotland – Annex B – Year One Delivery Plan, Scottish Government, February 2022.
- 26** The summary case management pilot: The transition from EPR and way forward, SCTS, August 2022.
- 27** The revised pilot introduced more extensive case management powers for the sheriff, as well as the automatic disclosure of the key evidence in domestic abuse cases as early as possible in the proceedings.
- 28** Evidence and procedure review report, SCTS, March 2015.
- 29** Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019.
- 30** Improving the management of sexual offence cases: Final report from the Lord Justice Clerk’s review group, March 2021.
- 31** Report to the Lord Justice General, Virtual Trials National Project Board, January 2022.
- 32** The Virtual Trials National Project Board was a working group which was set up to support the virtual summary trials RRT workstream. This included representatives from across the criminal justice system.
- 33** [Coronavirus \(Recovery and Reform\) Scotland Act 2022](#)
- 34** Report to Lord Justice General, Virtual Trials National Project Board, January 2022
- 35** Court user satisfaction survey 2021/22 - Phase 1: Jury trials, SCTS, February 2022
- 36** Criminal Justice Committee meeting – 7 September 2022: Paper 2 - Correspondence received during recess, Scottish Parliament, September 2022.
- 37** Ibid.
- 38** Legal aid fees dispute letter from the Minister of Community Safety to the Criminal Justice Committee Convener – 23 January 2023, Scottish Parliament, January 2023.

Criminal courts backlog

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24 July 2023

Richard Leonard MSP
Convener
Public Audit Committee
Scottish Parliament

Dear Convener

On 8 June 2023 I provided evidence to the Committee on my [Criminal courts backlog](#) performance audit report. As part of this, Committee members requested further information, which I have responded to below.

Digital Evidence Sharing Capability system

The Digital Evidence Sharing Capability system is being piloted in Dundee. This is currently focused on summary cases. When fully implemented, the Scottish Government anticipates that the system will support all case types including solemn.

Remand time limit extensions

The Coronavirus (Scotland) Act 2020 introduced time limit extensions for those being held on remand prior to a trial without the court granting an extension. For solemn proceedings, remand time limits were extended by six months, and for summary proceedings remand time limits were extended by three months. Full details of the pre-Covid remand time limits and current remand time limits are included in the appendix to this letter.

I hope that committee members find this information helpful. The Scottish Government and Scottish Courts and Tribunals Service would be best placed to provide additional detail should this be required by the committee.

Yours sincerely

Stephen Boyle
Auditor General for Scotland

Appendix: Remand time limit extensions

Solemn proceedings

Prior to the pandemic, in solemn proceedings, an accused person could not be detained for a total period of more than:

- 80 days, unless within that period an indictment was served on them, failing which they would be entitled to bail

where an indictment had been served on the accused –

- 110 days if no first diet (sheriff solemn cases) or preliminary hearing (High Court cases) had been held, failing which the accused would be entitled to bail
- 140 days unless the trial began within that period.

The periods above could be extended by the court under section 65(5) or on appeal under section 65(8) of the Criminal Procedure (Scotland) Act 1995.

The Coronavirus (Scotland) Act 2020 extended these time limits by 6 months.

The Coronavirus (Recovery and Reform) Act 2022 states that an accused person who is remanded in custody in connection with an offence in solemn proceedings must not be detained for a total period of more than:

- 260 days, unless within that period an indictment is served on the accused, failing which the accused will be entitled to bail, and

where an indictment has been served on the accused –

- 290 days, unless a preliminary hearing (High Court cases), or a first diet (Sheriff Court cases) is commenced within that period, failing which the accused will be entitled to bail,
- 320 days, unless the trial of the case is commenced within that period, failing which the accused will be entitled to bail.

The periods mentioned in the Coronavirus (Recovery and Reform) Act 2022 above may still be extended under section 65(5) or on appeal under section 65(8) of the Criminal Procedure (Scotland) Act 1995.

Summary proceedings

Prior to the pandemic, in summary proceedings, a person charged with an offence in summary proceedings could not be detained in that respect for a total of more than 40 days after the bringing of the complaint in court unless their trial was commenced within that period. These periods could be extended by the court under section 147(2), or on appeal under subsection (3) of that section of the Criminal Procedure (Scotland) Act 1995.

The Coronavirus (Scotland) Act 2020 extended these time limits by 3 months.

The Coronavirus (Recovery and Reform) Act 2022 states that an accused person who is remanded in custody charged in connection with an offence in summary proceedings must not be detained for a total period of more than 130 days after the bringing of the complaint in court unless the trial has commenced within that period, failing which the accused must be released

and discharged for ever in connection with the offence. The period may still be extended under section 147(2), or on appeal under subsection (3) of that section of the Criminal Procedure (Scotland) Act 1995.