



This Doesn't Look Like Justice

The consequences of closed
courtrooms on the Western
Circuit and beyond

Rationale for the study	p.3
Summary of findings	p.4
Background Figures	p.5
Methodology & Terminology	p.6
The amplified effect in small court centres	p.7
Delays	p.8
Ineffective trials	p.10
Trials moving between courts	p.14
Interruption of the trial process	p.15
In detail: one small court, four long weeks	p.18
A national problem	p.23
Recommendations	p.23

Rationale for the study

Courtrooms in our Crown courts are lying empty. This is because of a reduced number of ‘sitting days’, which is the number of court days in any given year which the Ministry of Justice allows that court centre to run. One court room running for one day is one sitting day.¹ When sitting days are reduced, court centres are forced to leave one or more of their court rooms empty, without hearing any cases.

Sitting days in the Crown Court have been cut by 15% in the last year alone.² The effect at a local level is stark: court centres which previously ran three-to-four courts are now running two-to-three courts as standard. Court centres which ran two courts are now running with a single court open for part of the year. Exeter has lost almost 200 days in 3 years - about 25% of sitting days³ - but *‘the workload has not decreased at anywhere near the same percentage’* according to staff. Despite the MOJ’s claim that waiting times are decreasing, anecdotal evidence has been building up of a chaotic situation on the ground, particularly in smaller court centres, with trials being listed months into the future, trials being vacated at the last minute, and judges and court staff placed under untenable pressure.

Statistics published by the MOJ are months old by the time they reach us. There is a gap in the picture, which is the real-time, real-life effect of closing courts on court users. The Western Circuit sought to capture those day-to-day consequences of reduced court sitting, particularly in smaller court centres. This will, we hope, be welcomed and taken into account by the MOJ, who have acknowledged that *‘statistics tell us that waiting times are low and the backlog is low but on the ground it is worth hearing the stories.’*⁴ Here are the stories.

The Bar in England and Wales is divided into six regions, more commonly known as Circuits. The Western Circuit represents barristers in the South West. Our regional Crown courts are Bournemouth, Bristol, Exeter, Gloucester, Plymouth, Portsmouth, Salisbury, Southampton, Swindon, Taunton, Truro, and Winchester. The Western Circuit does not speak for witnesses, complainants, the guilty, the wrongly-accused, court staff, listing officers, solicitors or judges, but those are the people our barristers work with day-in and day-out, and it is plain that the cuts to sitting days serve none of them.

The Western Circuit is very grateful to all those who have told us frankly what the situation is on the ground. We make no criticism of listing officers, other court staff, and judges who, it is recognised, are trying to serve justice in very difficult circumstances.

¹ The number of court rooms in each Crown court location varies: on the Western Circuit, for example, Taunton has two court rooms while Bristol has ten.

² From 97,400 in 2018/19, to 82,300 in 2019/20 (later increased by a relatively insignificant 700 days).

³ From 802 days in 2017, to 617 days in 2019-20.

⁴ Sir Richard Heaton, Permanent Secretary MOJ, Evidence to Select Committee; 16 October 2019.

Summary of Findings

- (i) The claimed justification for cuts in court sitting days does not stack up: work coming into the Crown court is increasing and the backlog is going up.
- (ii) Real delays are rocketing. The 'start to finish gap', between an alleged offence being committed and end of proceedings in the Crown court, is climbing steeply. Witnesses in some courts in the South West are now having to wait almost two years after the alleged offence before they give evidence. The 'current listing delay', time between a first hearing now in the Crown court and the date that the case is set down for trial, is increasing to unprecedented levels in many courts: some courts in the South West do not have capacity to hear even short trials until 9 months time.
- (iii) Reduced court sitting days, and closing courtrooms in small court centres, has a severely negative impact on all court users - complainants, witnesses, defendants, judges, advocates.
- (iv) Trials are taking days longer than they should as judges juggle other hearings. Three day trials are taking four or five days.
- (v) Witnesses, juries and advocates are kept waiting longer and longer, sometimes for days.
- (vi) More and more trials and other hearings are being adjourned or moved to other courts -sometimes 80 or 100 miles away- at the last minute.
- (vii) Adjournments of trials are at a record high. Delays, adjournments, and moving trials are causing distress to witnesses, causing witnesses to withdraw support for the prosecution, and causing financial hardship to advocates.
- (viii) These problems are amplified in small court centres, particularly where a single court has to fit in ancillary hearings around trials.

Background Figures

Across the Western Circuit, as in other parts of the country, Crown Courts are lying empty while witnesses wait anxious months to give evidence, and defendants wait months for their trials to be heard. As a member of staff at a small court centre reported: *'we have the work, we have the courts to use, and we could book judges to cover the work, but we don't have the staff to staff them or the figures [allocated sitting days] to sit them'*. That court centre was powerless, unable to open the empty courts in order to reduce delays, because it could not exceed its allocated 'sitting days'. That doesn't look like justice.

The Ministry of Justice has justified the cuts with reference to decreasing 'receipts'- new cases-coming into the Crown court. The difficulties with that approach include:

- (i) Receipts have risen – according to the latest MOJ statistics⁵.
- (ii) The official statistics do not reflect the up-to-date position: the latest are from July-September 2019, and even those are a record of the waiting times in trials which have concluded. Those cases would have been set down for trial about 6 months before. In other words, the latest statistics are looking at cases which first came to the Crown court about a year ago, when the effect of reduced sitting days had not taken hold.
- (iii) The MOJ does not report the 'current listing delay', which the Western Circuit shows times below is increasing. The listing delay is how long you would have to wait for a trial if your case arrived in the Crown court today. That must be the best guide to the delays which are being experienced on the ground in the moment.
- (iv) The start to finish gap, between an offence and the end of a case in the Crown court has increased. The most important waiting time for defendants and witnesses must be the time between the incident/offence and the end of proceedings. That has been climbing steeply. The national average time between an offence and completion of the case in the Crown court has rocketed over the last decade from 392 days in 2010 to 525 days in 2019⁶. That does not separate out trials, where the delay will be longest. The increase is partly the result of many offenders not being bailed, but 'released under investigation', with no time pressure to charge them.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/851932/ccsq-bulletin-q3-2019.pdf

⁶ ONS Criminal Court case timeliness tool link [here](#) , select Court type Crown, Grouping England and Wales, Row 2.0 is mean offence to completion. Last available stats from April-June 2019, subsequently suspended.

Methodology & Terminology

We conducted a full survey of all cases listed at Gloucester Crown court over a period of 4 weeks in November and December 2019. We used a short questionnaire about the effects, if any, of reduced sitting days on a particular case, including identifying any delay and any effect on participants. We sought a completed questionnaire from at least one advocate in each trial and substantial ancillary hearing.

We have also obtained data for the same period from other small Crown courts on Circuit, defining a small Crown court as one which usually has three or fewer court rooms. We spoke to court staff, judges, advocates, and clerks. We examined trial listing delays from data available to barristers' chambers and from court lists. We analysed official statistics available from the Office of National Statistics, which can be broken down to look at areas, and individual courts.

The MOJ's definition of 'waiting time' is the length of time between the sending or committal from the Magistrates' court and the start of the substantive Crown court hearing. This figure is within statistics published by the MOJ quarterly. The 'Criminal Courts Statistics Quarterly' is a series of tables accompanied by a press release summary, which uses calendar year quarters. The MOJ frequently reports the median of this figure.

The 'waiting time for effective trials' is used by the Western Circuit for the mean time between a case being transferred from the magistrates' court and the start of an effective trial in front of a jury. This figure is within statistics published by the MOJ quarterly: such trials are referred to as 'trial-not guilty' in the statistics, filtered for Crown court and mean number of weeks. This is to be contrasted with 'trials-guilty' which refers to cracked trials where a defendant has originally pleaded not guilty and then pleaded guilty at a later stage before having a trial.

The 'start to finish gap' is used by the Western Circuit for the mean time between an alleged offence being committed and end of proceedings in the Crown court. This is a figure within statistics published by the MOJ quarterly: it is referred to in those statistics as 'offence to completion' in figures which are filtered to show Crown court, and mean number of weeks.

The 'current listing delay' is used by the Western Circuit as the mean time between a first hearing now in the Crown court where a defendant pleads not guilty and the date that the case is set down for trial. That data is readily available at each court centre, but is not published by the MOJ.

The amplified effect in small court centres

Where a two-court centre is reduced to a single sitting court (as happens in Taunton, Truro, Plymouth, and Gloucester) the effect of reduced sitting days is amplified. A single judge in a single court has to deal with all of the ancillary hearings as well as trials. Ancillary hearings include production orders, reviews, breaches, mentions, POCA applications, bail applications, and sentences. The same effect occurs when a three-court centre is reduced to sitting two courts (e.g. Exeter), if one of the two courts is tied up with a longer trial, as often happens.

There is a cascade effect. Dealing with ancillary matters, judges have less time per day to spend on a trial, which must lead to either increased time estimates for trials (which, in turn, reduces the number of trials that a single court can progress), or leads to overrunning trials. The knock-on effect of overrunning trials is that witnesses, complainants and defendants in the follow-on trials are (sometimes repeatedly) told at the last minute that their case cannot go ahead as planned. This leads to enormous stress on witnesses, with some abandoning the process, and is therefore a direct cause of injustice. Small court centres are struggling.

'In my view, the impact of reduced sitting days falls disproportionately on a two court centre. With only one Court sitting, that Court is forced to deal with all of the Court business for that day. That includes everything from production orders, bails, PTPHs sentences, trials and appeals. There is no other Court to share the work load and/or to pick up the slack.' (Barrister AS)

Criminal clerks on the Western Circuit, who have an overview of the diaries of many barristers, told us of the uncertainties and delays in small courts as a result of reduced sitting days.

'I manage the practices of 26 busy criminal barristers. Our work is spread across the Western Circuit. Increasing amounts of clerking time is being spent dealing with the difficulties arising out of reduced court sittings, most notably the reduction to one court in two court centres. We are having to question whether any fixture is actually going to remain in the list; even in cases involving very serious offences and/or young or vulnerable witnesses. For those cases that do actually proceed, we are having to rearrange many other professional commitments as trials will inevitably over-run as a result of the need for other court business to be listed during them' (Senior criminal barristers' clerk)

Delays

Justice delayed is unquestionably justice denied. A reduction in the amount of work coming into the Crown court was an ideal opportunity to reduce the delay which victims and others face in their cases coming to trial. That has not happened. It is taking longer and longer for victims of crime to find justice, and for the wrongly-accused to be released. In the last five years the brakes have been put on the wheels of justice: a victim of crime in the South West in 2019 had to wait on average 18 months after the offence before their case was concluded in the Crown Court, and significantly longer if the case went to trial. That was about 4 months longer than they would have had to wait in 2014.⁷

The current listing delay is information which is gathered by every court, but not available through the public figures. HMCTS was reluctant to provide this information, but it is available to us from local courts, from court lists and from chambers' records.

In November 2019, Exeter Crown court was listing non-custody trials 9 months after the pre-trial hearing. In Gloucester, the court was listing trials for defendants on bail in May 2020; 7 months away. That, of course, would be 7 months after the pre-trial hearing which itself would be many months after the offence. That was a longer wait than in previous years:

'a 7 month delay for non-custody trials is the worst timeliness that I have personally experienced' (Court officer, Gloucester)

A typical defendant who was before Gloucester Crown court in September 2015 at a pre-trial hearing would be told that she had to wait until December 2015 before her 3 day trial could be heard by the court. The same typical defendant in September 2019 would be told that she had to wait until the following April 2020.

The current listing delay in courts on the Western Circuit in January 2020 for an average 3 day trial of a defendant on bail includes:

Bristol: end of June 2020 (5m)

Gloucester: beginning of August 2020 (6½ m)

Taunton: early July 2020 (5½ m)

Bournemouth: beginning of October 2020 (8½ m)

Exeter: mid-October 2020 (9m)

These listing delays are significantly longer for longer trials.

⁷ Mean charge to completion in Q1 2014, 412 days in Q2 2019 542 days, ONS [timeliness table](#) filtered for region-South West.

The average defendant in the South West would already have waited over a year (13½ months) between the alleged offence and first listing of the case in the Crown court.⁸ That means everyone involved in that average case will have to wait for nearly two years in some courts between the incident and the trial - including witnesses who may be challenged on their recall of events, and the defendant who may or may not be guilty.

Reduced sitting days has also affected the listing time for other hearings, particularly appeals. Staff at Gloucester reported:

'we are no longer in a position to easily list appeals. We used to list within 6-8 weeks, we are now listing in approx. 4-5 months. There is quite simply no room in the diary for appeals where the only court sitting is accommodating all the work' (Court staff member, small court centre)

The overall effect is summarised as 'catastrophic' by a barrister who regularly works in small court centres on the Western Circuit:

'The effect of the reduction in sitting days in both Swindon and Gloucester has been catastrophic. There is the effect on counsel's income. Bail trials are routinely being listed 5, 6 or 7 months after a PTPH. Adjournments on account of lack of court time are becoming more frequent and it is now the norm for even simple trials to take place 18 months - 2 years after the event. This is very typical of the direction of travel at the moment - longer and longer delays as courtrooms sit idle.' (Barrister DM)

Delays hit everybody involved in the criminal justice system. The effect on witnesses of waiting longer and longer before they give evidence at trial is likely to lead to increased anxiety, disengagement, and more prosecutions failing because witnesses no longer support the court process.

⁸ The regional average in the latest figures between offence and first hearing in the Crown court is 407 days, adding mean offence to charge, and mean charge to first listing, criminal court case timeliness table at <https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2019>. Filtered for South West region. Old statistics: now likely to be higher.

Ineffective trials

A remarkable 17% of trials were ineffective in the last statistics (2019 Q3 June-September 2019), the highest percentage since those records began in 2007. That means, in almost 1 in 5 trials, the witnesses, defendants, and barristers were told on the day that the trial was meant to start that it had to be postponed to another day - probably months away.⁹ The pressures on small court centres mean that they are listing more cases than they can deal with, in the hope that some of the cases will end in guilty pleas. Typically, the court will list one trial as a fixture, and another trial as a 'backer' or 'floating trial', which will only be reached if the first trial does not take place. When that doesn't happen, the second trial is adjourned, to be relisted months in the future. Cases where defendants are in custody take priority, because of Custody Time Limits (which require that a case has to be heard within a defined time when a defendant is imprisoned awaiting trial). Courts have often used backer trials, and they can be a good way to ensure that courts do not sit empty, but they are being used more often because of the reduction in court sitting days, which has brought difficulties:

'we are double listing in the hope that we will lose a trial through natural resolve (ie guilty plea before trial) The likelihood of the trial being ineffective due to lack of court time is increased. As time goes on, if we need to list a Custody Time Limit case we will bump out the bail cases to accommodate the CTL cases' (Listing officer C)

'we list backers when and where we can. We are very much over-listing. The courts are now more over-loaded than ever before' (Listing officer D)

We are told that more trials are being listed as backers. We have no national figures available to us, but the local figures bear that out. In one small court centre on Circuit, in September 2016 the court listed 15 trials, with two courts open. In September 2019 the court listed almost as many trials - 14 - but with only one court running for most of the month. The resulting pressure on that one court was obviously extreme, and it was inevitable that the court adjourned many more trials to another day (although we do not know how many). In those adjourned trials, witnesses would have been expecting the trial to be heard and may well have been waiting anxiously at court, perhaps having taken a day off work or made arrangements for children to be cared for. Those witnesses would have been sent away to another day. Police officers who have prepared the case would have been waiting at court or on standby. They too would have been sent away to another day – a further waste of reduced police resources.

⁹ Criminal Quarterly Statistics June-Sept 2019 [link](#). Spreadsheet called July-Sept 2019 tables,: open Table C2 Effectiveness of Trials.

Adjourning trials is becoming the norm in small court centres:

'It's causing chaos generally. Courts never seem to have enough days for the trials they have. In the last week alone I have had two trials listed in courts, which have been stood out due to lack of court time' (Barrister AS)

Advocates who have prepared the case for trial, including writing jury speeches and preparing cross-examination, will be waiting at court. They are sent away to another day. They will not be paid for the rest of the week, although they had to keep it free in the expectation that the trial would take place. If they are unable to do the trial when it is re-listed then they are not paid at all for the preparation work that they have done. Unsurprisingly, barristers report a decrease in earnings as a result, which comes on top of swingeing cuts to prosecution and defence fees.

'it must be frustrating to them [advocates] to have to return trials...and have both a financial and health/wellbeing impact on them. Not to mention the level of trust a client may have built with their counsel' (Listing Officer C)

'Those trials vacated at short notice, often when already fully prepared by Counsel, are regularly having to be re-listed without regard to the availability of Counsel causing further additional financial loss. This situation cannot continue. It will further contribute to the number of excellent criminal advocates being driven away from the criminal Bar.' (Senior criminal clerk, Bristol)

'Trials are now more likely to be adjourned, and more likely to be relisted when advocates can't do it because of a lack of flexibility in the courts. That means a serious loss of income. If trials are pulled or crack at short notice, it is now much less likely that there will be as many of the Tues/Wed type trials that can be picked up at short notice. Losing a week can really mean losing a week nowadays, especially at the more senior end' (Criminal clerk, Bristol)

'I have had a 4 day case in my diary for five months and been unable to book in other work in that trial slot. It was a fixture! I have just heard with 3 weeks' notice that the trial can't go ahead because a custody case has to be heard in that slot, and the court centre only has one court sitting. It will of course have an effect on income as there's so little coming through, it'll be hard to replace.' (Barrister MH)

The impact on barristers' fees and lives is just one of the unintended but inevitable consequences of the changes. Recent minor increases in criminal fees are off-set by the reduction in work for advocates: that zero-sum game will continue to make life at the criminal bar difficult for many, and make the criminal bar unattractive to the brightest law students. What is bad for the bar is bad for the judiciary: where are the stellar judges of the future to come from if the criminal bar is depleted of its best?

It should not be presumed that backer trials are minor offences. They are increasingly trials of serious offences, but where the defendant is on bail, and where therefore there is no statutory time window for the trial to be listed in. As an example, it is relatively common for a defendant accused of historical sexual offences to be on bail, while a burglar may well be in custody. The burglary trial would trump the sexual offences trial, regardless of the number or vulnerability of witnesses in the sexual offences trial.

'We have always had backer trials, but now there are more of them, they are for more serious cases, they are more likely to be adjourned into the long grass' (Criminal clerk)

'Courts are often having to stand trials out now, much more than before, due to only having one Court sitting. Sometimes we will see serious trials with vulnerable witnesses vacated, in favour of less serious trials on which custody time limits are running. The adjourning of these trials at short notice, has an impact on the income levels of the practitioners affected.' (Barristers' clerk N)

'It is very difficult for vulnerable witnesses to understand why their case is not being heard for at least six months. Cases with vulnerable witnesses are having to be re-fixed due to CTL cases that take priority.' (Resident Judge, small court centre)

The long-term effect of witnesses deciding not to cooperate with the criminal justice process is likely to be significant, and is another unmeasured effect of cuts to sitting days. We know of one case in the period we examined where a witness withdrew because of delays, and, given that we were only examining one court in detail, there must be many others:

'one witness refused to cooperate with the prosecution any further after the second adjournment of the trial.' (Barrister AM)

Even where witnesses are persuaded not to withdraw, many are deeply affected by the delays, as the example below from a case being adjourned in a small court centre in December 2019 shows:

'Yesterday I prosecuted a case which was listed as a floating trial, despite the fact that it involved 5 civilian witnesses, four of whom were due to attend on Day 1 of trial. It was listed for 3 days. The defendant was charged with two counts of ABH, dating back to June 2018. Needless to say there was no court available to take the case, and it was adjourned to the middle of January. Two victims will now have this case hanging over them during the Christmas break, as will the Defendant. As one witness said to me "this is the sort of reason that means when you see something come through the door telling you that you need to go to court, you wonder if there's any point in going". The other witnesses nodded in agreement. What a shocking state of affairs. One of the witnesses who will have to reattend in January is currently undergoing cancer treatment, and has an appointment for further treatment tomorrow. Victims have regularly seen the Defendant, who is on unconditional bail, as their children attend the same school. We are left with the deeply unsatisfactory situation of a case which will be more than 18 months old when it comes to trial, with witnesses who are discouraged and deflated, wondering why they bother to make complaints of criminal activity. I could only apologise, and encourage them to make their dissatisfaction and disappointment known.' (Barrister AW)

At Plymouth Crown Court in November 2019, the court service announced that they were re-introducing 'short warned trials'. The trial will only be listed if other cases collapse earlier in the week:

'The process is that a trial is given a normal backing date and the case will continue towards that date following the timetable. It will also appear on a short warned list, these trials will appear on a Monday list in the floating cases section. These cases will only be called into the list between Tuesday and Thursday, will be low priority offences short time estimates and between 1-4 witness only.' (Member of staff, Plymouth)

It is recognised that this is an attempt by the court to bring on trials quickly, and make the best use of court time. The process is limited to trials which are straightforward and which any junior barrister should be able to pick up. Nevertheless, the procedure creates uncertainty and stress for all those involved in the process, from witnesses to defendants. Defendants are likely not to be able to have their advocate of choice, and to have to deal with an advocate on the day who they are not familiar with. If an advocate feels a responsibility to a client who they have met and advised, as they may well, that advocate would keep their week free to accommodate the trial, which may or may not happen. It is

another unsatisfactory solution to the untenable pressures which have been put on Crown Court listing.

Trials moving between courts

One of the ways in which over-stretched courts are trying to cope is by moving cases at the last minute to other court centres where court rooms have unexpectedly become free.

'Due to over listing and double listing, we are regularly asking other courts to take our trials to avoid an ineffective trial. This causes disruption, to not only witnesses, but counsel. Counsel may have other cases listed here and the late change causes disruption to other cases' (Listing officer, small court)

A court change does not involve a stroll down the street, but a journey from one city to another. Counsel and witnesses may already be travelling a significant distance to the planned court: court closures mean that 35% of people now live further away from their nearest court than they did in 2010.¹⁰ A last-minute change to a court which may be 100 miles away creates further stress, complication, and expense.

An example of the effect of court change from Gloucester to Salisbury (75 miles away) is below:

'The case had originally been listed in Gloucester Crown Court. However, it was not effective on that day because only one court was sitting and it was heavily overlisted. There were two backer trials in addition to other matters. The case had to be adjourned out, and the only available court was Salisbury Crown Court. This was a tremendous inconvenience to defence counsel who were travelling from Birmingham. When the case was dealt with in Salisbury it was not effective in part because the prison had thought to send the prisoner to Gloucester and could not get him to Salisbury'
(Barrister OM)

In the same case, another barrister reports that at least one new defence counsel had to be briefed because the case had moved, and the instructed barrister could not travel to the new court centre. Where barristers hold on to cases despite a long-distance move, the effect on the barrister can be profoundly unfair. One case in our survey period moved from a small court centre to Bristol, almost 100 miles away. Defence barristers decided that it was their duty to keep representing their clients, at great financial and personal cost.

¹⁰ Institute for Government Performance Tracker 2019.

Barristers have to pay expenses upfront, only some of which are recoverable after the end of the case:

'The case was transferred from our local court because it could not be listed with CTL limitations due to a lack of sitting days. I am haemorrhaging money – I am spending about £2500 a month on expenses and travel - money that I know I will not be able to recoup all of because of the level of expenses that we are allowed to claim - £55.25 for a hotel which is laughable in a major city such as Bristol. I am racking up interest on my credit card – I cannot claim that back. I have a tax bill to pay in January - I had all the money set aside - I don't now - I have had to use it to get to court and fulfil my professional obligations. It is Christmas. I am doing a case away from home, missing my children and my husband. I have missed nativity plays and birthdays. I am broke - financially and emotionally' (Barrister P)

At Gloucester the resident judge has been compelled to announce in open court that, when giving a trial date for a custody case within the custody time limit, there is a risk that it will have to move to another court:

'the court is fixing trials within the custody time limit even though, as the resident judge states in every case concerned, in open court, they may not in fact be able to hear the trial in Gloucester on the date given. A three week trial of mine was moved from Gloucester to Bristol, requiring other trials which had already been listed in Bristol to be vacated. The move was really inconvenient for witnesses.' (Barrister SR)

Interruption of the trial process

Where a two-court centre is reduced to one court, that one court is burdened with all ancillary hearings as well as trials. Court lists are over-burdened, and the pressure on court staff and the judiciary must be extreme. As an example, on the first day of this study, on 18th November 2019 in Gloucester, there was 1 court sitting. There are usually 2. The Recorder of Gloucester had an ongoing trial where evidence was being heard, which he had listed at 11am. He also had in his list from 10am -11am: a production order, a review, a mention, a guilty plea, and two applications for bail. At 2pm he had a 30 minute case for a dismissal application and two sentence hearings. Small court centres are sitting later to try to deal with the work, which has a knock-on effect on all court users. The effect, of course, is that witnesses, juries, and others involved in trials are kept waiting at court, while the judge and court staff manage other hearings. Those are not straightforward short hearings: some are lengthy and require significant preparation, such as sentences.

The delays are significant:

'we take on average 90 minutes each day on other matters which interrupt the normal trial day, and on Thursday and Fridays this an increase to 2 hours. Witnesses are sadly kept waiting.' (Listing officer, centre where 2 courts reduced to 1)

'We are often finding that trials will run over their time estimate because of fewer sitting days, due to the trial Judge having to take other matters, which ordinarily would have been dealt with by a Judge in the second Court. It is not uncommon to lose a whole morning while the trial Judge deals with various sentences and case progression hearings. We recently had a seven day child cruelty trial run for eleven days, as the trial Judge had to take other Court work, not reserved to himself. The barristers involved all had to return cases for the following week which upset their clients and meant they lost money as they weren't paid for the prep they had done on those cases.' (Clerk N)

'The trial which was taking place, which involved vulnerable witnesses, took longer than it otherwise would have done because the trial judge had to slot PTPHs into the trial court, which took up 'anything between 1 and 2 hours' of each trial day' (Barrister IF, court centre reduced to one court)

'Jurors are often sat around waiting for the Judge to deal with other matters e.g. PTPHs and sentences before he can start the trial' (A resident judge at a small court centre)

It seems that an average 3 day trial is taking a day longer than it otherwise would in many court centres. That means, of course, that the court can hear fewer trials in any month, and means the backlog will be increasing. The interruption in each trial is a strain to the witnesses, and others, who are already facing a stressful situation. The interruptions are imposed on all trials, including those with serious charges.

On 6th December in a two-court centre where only one court was sitting, a serious trial involving a road traffic fatality could not start until midday because of other cases in the list. On each day other cases had to be dealt with first, so the trial took longer than it would have done otherwise, and was disjointed:

'it does increase the strain [on the family of the victim] in addition to the stress of the lengthy delay of the case being able to be listed in the first place. The jury are repeatedly being kept waiting. The delays have elongated the trial to the extent that I have had to arrange a video-link hearing to another court centre to be interposed into the middle of this trial. It has affected all counsel in the case. My case involved expert witnesses who have had to be present to watch the evidence of prosecution witnesses. The delays occasioned by other work interfering with the trial has meant that they have also had to attend additional hearings, as well as counsel. This will inevitably be adding to the trial costs.' (Barrister BM)

Another Resident Judge explained the pressures of the daily juggling act at a small court:

'It is difficult to list and deal with PTPHs, sentences and appeals especially when dealing with a trial that is listed all week. In some cases these matters are moved from week to week. If we are unable to list backing trials we try to find a home for them elsewhere (and we similarly take cases from them if necessary and possible). If that is not possible the date for the backing trials are relisted currently six months later. This causes considerable concern to witnesses and advocates when they have attended anticipating the trial only to find it has to be adjourned and which is especially galling if one of the judges is 'reading papers; preparing etc' so as to ensure we do not exceed the limited number of sitting days. We have the Court and judge available but not the sitting days within which to do the work' (Resident judge at a small court centre)

Regular 'reading days' are a recent phenomenon in the Crown Court. It is clearly a sensible idea to give judges sufficient time to prepare cases. However, the judge above is not the first to suggest that reading days are being imposed on judges to keep sitting days down. Although the judge is paid on an annual salary, money is still being saved by not paying court staff, advocates' fees etc. Official figures for judges' 'reading days' are not available, but it is understood that they have increased as court sitting days have been decreased. The result is that judges are available, being paid, perhaps not working, while a single judge hears an over-burdened list, and witnesses are told that the trial which they have already waited a year for will have to be adjourned.

In detail: one small court, four long weeks

Week one

On 18.11.19 there was one court sitting at Gloucester Crown court. The other courtroom was closed because the court had insufficient sitting days to run it. A rape trial was ongoing with a vulnerable defendant about to give evidence. The trial was not due to restart until 11am because the judge had six other hearings to deal with first. There were two sentencing hearings and an application to dismiss a case listed for 2pm. Inevitable disarray ensued. Both of the sentencing hearings had to be adjourned: the first because the defendant had not been brought, and the second because the court did not have time to deal with it, given that the court was hearing a trial.

'Both my hearings were listed at 2pm. On arrival at court I was told that the trial unlikely to be able to accommodate the 2pm list but every effort would be made. As all counsel for the trial and the afternoon list saw the judge in court in an effort to him timetable the afternoon. The judge was trying his absolute best to accommodate everyone but this was frankly a dreadful position in my opinion for him to have been in by the lack of a second court to deal with these additional cases. The other sentencing (not mine) was adjourned as it was a serious matter and the defendant was of character and included psychiatric reports. By pure chance my sentence was adjourned as the defendant had refused to attend from his cell. My application to dismiss was to be heard around 3.30 at the conclusion of the defendant's evidence. The overall point reducing in court sitting days is in my opinion a total false economy. All it leads to is wasting adjournments and unnecessary stress on the remaining court' (Barrister)

It is the judge, of course, who has to preside over the court, and manage the competing interests of parties, under significant pressure:

'Not only is time wasted but the pressure placed on the judge in the middle of a trial such as the one that was ongoing this week is in my view unacceptable.' (Barrister GF)

That situation was chaotic enough, but it had nearly been worse still: until the previous Friday there had been another trial which was also listed to start on 18.11.19:

'I was due to prosecute a trial listed to start on 18/11/19. Luckily, we heard on Friday 15/11/19 that the defendant intended to plead guilty. Had this not happened [the trial would have been adjourned] as on Monday 18/11 there was a part-heard trial in the list where the prosecution had not yet finished their case' (Barrister DT)

On 19.11.19 there were 2 courts sitting, and no effect of reduced court sitting days.

On 20.11.19 there was 1 court sitting, and huge difficulties returned. A trial was ongoing. The trial was listed to start at 10.45, and before then the judge had four hearings in his list, including an appeal. The 2pm list included another appeal and a committal for sentence. That sentence case was not concluded, resulting in an anxious wait for the victims:

'I have been waiting at court on a committal for sentence in a sex case with victims present. The hearing was listed for 2pm 20.11.19 - reached at 3pm then adjourned overnight. Victims present again for an 11:30 am sentence case reached at 3:30 pm (victims attending at 11:30am – 1pm and returning at 3pm. The waiting at court for the victims has been approx 5 hours. The sentence hearing was adjourned on the previous occasion of listing owing to lack of court time. The court was overloaded with work' (Barrister GN)

On 21.11.19 there were two busy courts. The court heard 1 mention and 2 sentences before the trial started at midday. Witnesses were kept waiting.

Week two

On 25.11 one court was sitting. The court list was overloaded with ten cases including a lengthy appeal and two trials:

'My two-handed 6-day trial was listed on the Monday behind 2 mentions, 4 reviews, an appeal in respect of a firearms certificate and 4 sentences (one of which had a time estimate of 1 hour). There was also another 2-3 day trial listed as backer. As it happens, the other defence counsel in our case was unwell and for that reason the case would not have been ready to start that day. Even if we had been able to start the trial couldn't have gone ahead in any event. We were told that whatever else happened the judge was not sitting on the Friday or the following week. When I left court at around 3pm, the court was still hearing the firearms appeal and the waiting room at court was still packed with defendants waiting to be dealt with. The firearms appeal was still being heard when I returned to the court on another matter on the Wednesday!' (Barrister DM)

That trial was relisted in the earliest slot available- which was in 7 months' time in June 2020, over two years after the alleged offence:

'The witnesses and defendants must now wait a further 7 months to resolve an issue dating back to May 2018, by which time it will be over 2 years since the incident. The evidence will be 2 years old by the time the trial is heard, with all the obvious deleterious effects on witnesses' recollection etc' (Barrister DM)

There were two trials listed that Monday. The court was unable to start either of them. Counsel in the second trial reports:

'My trial was listed as the backer. Even when the trial in front came out of the list, there were so many other hearings in the list that the trial could not be called on. The trial was listed for three days, but, because the court was not sitting on Friday, and the Judge was also not sitting the next week, the court felt unable/unwilling to start the trial the next day (Tuesday) in case the jury had not returned a verdict by the end of Thursday. The trial (a domestic violence assault) was therefore vacated and adjourned. The complainant in my DV trial was kept waiting until 15:30, when I took it upon myself to send her home for the day. I hope the DV complainant will return. Three police officers were kept waiting all day. I don't know when the jury panel were sent home, I believe they would likely have been kept waiting until at least into the afternoon session. There were at least three days' works crammed into one court' (Barrister GG)

As a result of the trials not going ahead (which would have been the case regardless of counsel's illness) barristers were paid a trial stand-out fee of £380. That fee is to cover the many hours of case preparation, as well as travel to court, expenses, meetings with the client at court, and waiting time.

'We have all lost a whole week's work and income. Typically in the present climate there is little or no alternative work to replace lost trials on account of the low number of court sitting days in

In summary, on that single day, the court was extremely busy and dealt with: 2 mentions, 4 reviews, 2 sentences and part of a firearms appeal. The court adjourned two trials and two sentences. The firearms appeal was not concluded until Wednesday 27.11.19. The appellant, who was privately paying, had to pay more in fees because the case took longer to conclude.

A vulnerable witness waited around:

'There was a vulnerable witness: As part of the appeal, the appellant called his partner. His partner was the alleged victim. She attended Court for the first day of the appeal. Her evidence was not reached so she was forced to return to Court the next day (and then the day after) to give evidence. She had certain vulnerabilities and was uncertain (due to Court delays) as to when she would have to give her evidence. Both counsel were forced to amend diaries in order to attend the part heard second day.' (Barrister GG)

On 26.11.19 there was one court sitting. Eleven cases were listed, including the over-running appeal case.

On 27.11.19 there was one court sitting. Eight cases were listed.

On 28.11.19 there were two courts sitting.

Week three

On 2.12.19 there was one court sitting. A case management hearing was not affected by the reduced court sitting days. A trial began, which was delayed each day because of other matters:

'the delay was approx an hour per day' as the judge had to deal with other matters. 'The jury were impacted and there were delays. It was a short and simple trial, but it could have been heard over two, rather than three days' (Barrister DS)

On 4.12.19 there was one court sitting. The judge had to deal with four cases, including two sentence/breach hearings, before a trial could resume.

On 5.12.19 the trial continued. In addition, the judge had to fit in eight other hearings, including sentences.

On 6.12.19 there was one court sitting (with a judge hearing a further sentence at another court centre). The court had six plea and case management hearings, three sentences, two appeals against sentence and other hearings.

Week four

On 9.12.19 there was one court sitting. There was a busy list including two trials.

One of the trials started in the afternoon. In another of the trials, counsel were ready to start at 10am, but were not called into court until the afternoon. That trial was then

adjourned to a different court centre which was 80 miles away, to start in two days' time. The effect:

'Two witnesses waited in court all morning. The jury were left waiting all day. When the trial was moved, the defence advocates, who are higher court advocates, have had no choice but to brief out trials which were in their diaries for months.' (Barrister AS)

On 10.12.19 and further days the trial continued. It took longer than it otherwise would because the trial judge had to slot other cases in. Ordinarily a trial would be expected to resume at 10 or 10.30, and continue uninterrupted until the end of the court day. Instead, the judge had to slot in eight other hearings, including sentences.

'About half of each trial day taken up with other matters, except for one day. Some witnesses were kept waiting and had to return the next day due to lack of court time. The jury spent half the day waiting around and had to go out for a couple of hours between speeches and summing up. The trial felt very disjointed.' (Barrister CP)

Counsel in the trial of issue hearing reports:

'There was only one court sitting and the Resident Judge had a trial with interpreters and a video link abroad. Unusually, he was interposing his List of Sentences between witnesses in the trial! Although the Defendant in my case decided to withdraw his Basis of Plea, the case was not called on until 4.50pm, by which time I had been at court for over 7 hours. (I sent my witnesses away as soon as I knew that the Defendant had withdrawn his basis - but I had to remain for several more hours.) In the event, the judge then decided to adjourn sentence to tie up with a Co-Defendant. I will be paid £91.50 for my attendance before expenses of petrol, car parking, etc.; it takes me an hour to drive to the Court and an hour back, that is over 9 hours, meaning that I am barely making the minimum wage' (Barrister GT)

On 12.12.19 there was one court sitting. The court had to deal with an ongoing trial as well as an appeal, and fifteen other cases.

On 13.12.19 there was one court sitting. The trial had concluded but the judge had thirteen new cases to deal with, each of which required preparation.

A National Problem

The issues identified in this study are not unique to the Western Circuit: across the country, courtrooms are closed. Analysis by the twitter feed 'Idle Courts' @CourtsIdle shows that, at the time of this study, on 11 November 2019, 21% of all court rooms in Crown courts across the country were closed for business (99 of 470). In January 2020 the percentage of closed courtrooms has increased to 27%.

Other Circuit leaders have confirmed that their smaller courts are experiencing similar problems to those identified in this study, and the Criminal Bar Association has been publishing similar difficulties in its Monday Messages.

What is happening in our Crown courts today does not look like justice. Chaotic scenes are being played out of delays, last-minute adjournments and interruptions. The toll this is taking on witnesses, professionals, judges, and others is being ignored.

Recommendations

1. Sitting days should be increased substantially and urgently. The backlog needs to be tackled before the inevitable increase in cases brings the court system grinding to a halt.
2. Two-court centres should remain two-court centres.
3. The MOJ should publish the current listing delay for trials across all courts.
4. The calculation of sitting days should not be based on old statistics, or on receipts alone. The calculation should take into account the current listing delay for trials, the start-to-finish gap, the backlog, and seek to reduce all.
5. Greater weight should be placed on the views of the Resident Judges and listing officers who know the problems at their courts caused by closed courtrooms.
6. The calculation of court sitting days should take into account the effect on the ground of reductions in sitting days on all court users including professionals, witnesses, court staff, and judges.

Kate Brunner QC

Leader of the Western Circuit

22nd January 2020

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