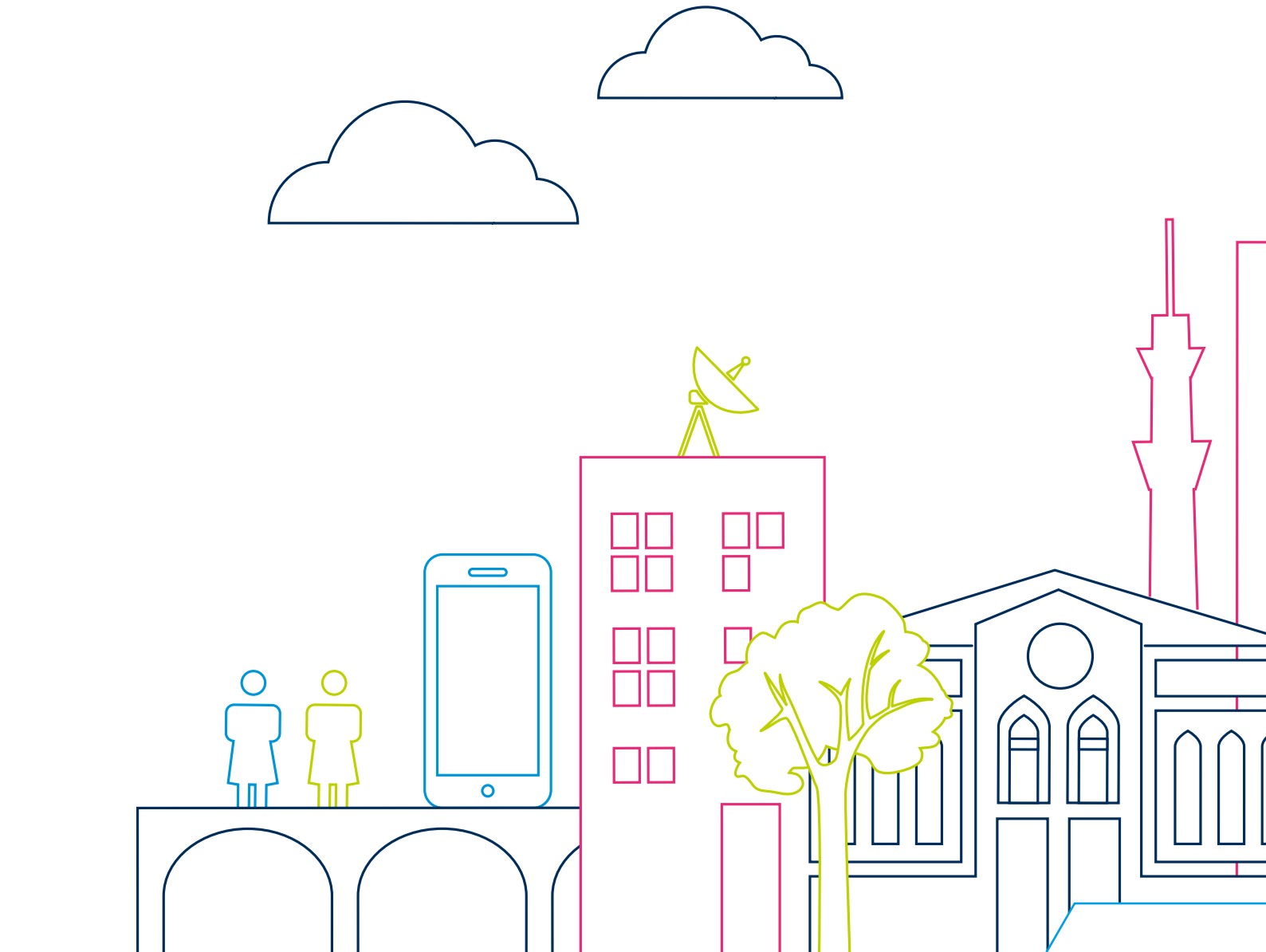




HM Courts &
Tribunals Service

COVID Operating Hours

Response to Consultation
July 2021





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Foreword from the Lord Chancellor

Over the last year we have faced an unprecedented challenge to keep our courts and tribunals delivering justice in the midst of a global pandemic. I remain enormously grateful to everyone working in the justice system for all that you have done to bring us this far. Your hard work, determination and flexibility have been fundamental to our initial response to the pandemic and our progress towards recovery.

Challenges remain ahead of us. Any delay in the delivery of justice for victims is too long. To put it simply, we need more cases to be heard more quickly.

A quarter of a billion pounds was made available at the start of the pandemic to keep courts running. This was invested in people, equipment and buildings – 1,600 extra court staff with more on the way; making existing buildings COVID-safe; and the introduction of Nightingale Courts, 32 of which I am expecting to be running through to next spring.

The Lord Chief Justice and I agreed that sitting days in the Crown Court should be unlimited for this financial year – a clear indication that we are determined to do whatever it takes to rebuild our world-class justice system after the inevitable impact of the pandemic.

The effects of the actions we have taken are already being seen. Outstanding cases in the Crown Court dropped last month for the first time since the pandemic began, and we are hearing over 18,000 remote hearings each week.

But we remain in the foothills of recovery. I want to see a sustained push towards the summit before we even consider pausing for breath. The courts have already responded innovatively to respond to the challenge of the pandemic, and I want to continue doing everything I can to support them to reduce the outstanding caseload.

The series of pilots we hosted in Liverpool and around the country last year demonstrated just what is possible. Flexibility around sitting times could make a significant difference if applied to more courts, building confidence for victims, claimants and witnesses to come forward in the knowledge that the system delivers timely justice.

I have taken time to reflect on the responses to the consultation and conversations with representatives of legal professional bodies. From these, I know that there are concerns about the proposals, and the impact they may have on those who work in the system. Weighed against this, is the potential impact that the proposals could have on delivering a swifter and more efficient justice system, particularly in the context of recovery from the pandemic. What was also made clear is that there are benefits to a regional approach, and one which incorporated remote attendance where appropriate.

It is for this reason that, on balance, I have therefore decided on a short-term basis to endorse a flexible approach that supports local Resident Judges who choose to:

- sit different hours to recover from the impact of the pandemic on their local caseloads;
- use a new “remote” model for non-jury trial work that will enhance flexibility, and address concerns about changes in travel time.

These are temporary, timebound measures which will come to an end six months after any court chooses to implement them. We will carefully monitor their impact. Any use of these models is at the discretion of the local judiciary and should follow careful discussion and consideration with local court users, including legal practitioners.

Delivering justice more quickly to more people is the right thing to do. Facilitating a flexible approach to the use of court time is one useful tool among others to make it happen.

With many thanks for your continued support.

The Right Honourable Robert Buckland QC MP,
Lord Chancellor and Secretary of State for Justice

Background

1. This document sets out:
 - the approach taken to COVID Operating Hours (COH) pilots in 2020
 - the responses to HMCTS' targeted consultation of the legal professionals on the key findings from the assessment of the pilot sites and a proposal to widen the use of COH across more Crown Court centres
 - our response and decision
2. The impact of the pandemic on the Crown Court in England and Wales has been significant, particularly the operational challenges of holding socially distanced jury trials which require a large number of people to be in one room. As a result of the pandemic, outstanding caseloads and waiting times have therefore increased. The COH model – where two court lists were run in one courtroom, one in the morning (9am to 1pm) and one in the afternoon (2pm to 6pm) – was piloted in 7 Crown Court centres to test whether we could do more in the limited space we have to support recovery. Consultation with legal professionals followed these pilots in order to inform any final decision on whether to proceed with COH as part of Crown Court recovery from COVID-19. The responses to this consultation are summarised in Table 1.
3. In January 2020 the Lord Chancellor paused any decision to make further use of the COH scheme given the additional pressures faced by courts in adapting to lockdown arrangements.
4. HMCTS has continued to consider the COH proposal in the changing circumstances of the pandemic and how it may contribute to recovery in the Crown Court. To respond to feedback from the consultation, including concerns about potential impacts on those with caring responsibilities, HMCTS considered possible adaptations to the original COH model. We looked at possible models that could incorporate remote hearings, and engagement showed that numerous courts are already hearing non-trial work remotely - including the pilot of a fully remote Crown Court in Sheffield for non-trial work.
5. The Lord Chancellor has been clear that courts should have flexibility to maximise capacity in the Crown Court estate this year, with no limit on sitting days, so that progress continues to be made in tackling the outstanding caseload - which has increased by over 40% from pre COVID levels - and reduce waiting times. As such, it is critical that we explore every avenue to recover the courts and hear more cases, more quickly.
6. The Lord Chancellor has decided on a short-term basis to support a flexible approach that allows local Resident Judges to choose to sit different hours, which could include use of a "remote" model for non-jury trial work. This is proposed as a useful tool and a time-restricted measure if local judges want to use it alongside other measures to continue to tackle the impact of the pandemic. This approach to Temporary Operating Arrangements (TOA) is set out in more detail below. It involves two models, one based on the piloted COH model and the other a fully-remote extended court day – run alongside a standard hours trial courtroom – to deal with non-trial work.

The COH Pilots

COVID Operating Hours pilots

7. On 1 July 2020, HMCTS published its plan for the recovery of the courts following the impacts of COVID-19, which had led to increased backlogs of cases. Since then, HMCTS has published more detailed updates on the plan to recover the criminal courts. One of the four pillars of this plan is to maximise the use of our existing estate through opening our buildings for longer. We committed to piloting this measure in order to see if it would be a feasible way to increase court capacity in the longer term and thereby reduce the backlogs.
8. A working group was formed, chaired by His Honour Judge Menary, including stakeholders and partners working in the Criminal Justice System, HMCTS, the Criminal Bar Association, the Bar Council and the Law Society, as well as members of the judiciary. The working group proposed a “blended” model which would see a COH court run a morning and afternoon session for certain types of cases, alongside a standard hours court into which cases unsuitable for COH could be listed. Assessment data was collected from the pilot sites and compiled into an assessment report to test the effectiveness of the pilots, which was published as part of the initial consultation.
9. The pilots are separate from previous pilots which have tested extended and flexible operating hours in the civil and family courts as part of the HMCTS reform programme. They were purposefully designed to respond to the impacts of COVID-19, increasing the capacity of the system to dispose of trials as a temporary response to accelerating trial backlogs.
10. The COH model was tested initially in Liverpool before being piloted in 6 further sites (Cardiff, Kingston-Upon-Hull, Portsmouth, Reading, Snaresbrook and Stafford). The aim of the pilots was to assess whether COH is a viable option to increase capacity to list and dispose of jury trials to support the recovery of the Crown Courts from the impacts of COVID-19.

The COH Model

11. The COH model assessed the running of 2 separate court sessions operating in one courtroom over a working day, compared to the normal single session across the day (see diagram below): one in a morning session, and the second in the afternoon. Each court participating also ran at least one 'standard hours' trial court operated: this is referred to as the 'blended approach'. 6 of the 7 pilot courts ran a morning COH session from 9am-1pm, and an afternoon COH session from 2pm-6pm. Stafford ran COH sessions from 9:30am-1pm and 1pm-5:30pm.
12. No individual was expected to participate in both the morning and afternoon session in one day. For example, morning trials that lasted more than one session would return for the morning session the next day.

How the COH pilots were implemented

13. Following the proposals set out by the working group chaired by His Honour Judge Menary, the key principles decided upon for the first pilot at Liverpool Crown Court were used to establish a further 6 pilot sites at Hull, Cardiff, Stafford, Reading, Portsmouth and Snaresbrook.
14. The key principles ensured that pilot sites were provided with guidance to support implementation that could be adapted to their local circumstances, which covered the areas below.

Jurors

- Considering how space in court buildings would be used to allow for sufficient capacity for jury rooms
- Putting plans in place to secure sufficient juror capacity, manage contact with jurors, and manage social distancing and room use throughout the day
- Monitoring safety measures to ensure that jury trials were COVID-secure where implemented across all sites. These measures included supporting social distancing and appropriate cleaning standard (the same approach as non-pilot sites)

AM and PM shift court

9am to 1pm

Group A of staff, judge, advocates and jurors.

Listing is a judicial decision. It is suggested that **custody and bail** cases will be listed in the am session.

s.28 cases could be listed in either am or pm session.

1pm to 2pm

Handover
Close of first session

Court staff to clear as they would overnight/lunchtime.

Cleaning of courtroom

Changeover of judge and jurors

2pm to 6pm

Group B of staff, judge, advocates and jurors.

Listing is a judicial decision. It is suggested that **only bail** cases will be listed in the pm session.

s.28 cases could be listed in either am or pm session.



Standard hours court

10:00 - 16:30

This is a blended solution where we have one courtroom running the am/pm session courts and another running a standard 5-hour trial day.

It would ensure trials that could not be heard in the am/pm session courts can still proceed and would also mitigate against the diversity challenges of practitioners with caring or other responsibilities being unable to attend the earlier morning or later afternoon session.

Notes:

- Available sitting time: 8 hours with 2 x 30 minute breaks
- Trials continuing from the am session go into the am session the following day, trials continuing from the pm session go into the pm session the following day.
- Custody trials involving a female or young defendant will not be listed in an am/pm session court
- A trial with a vulnerable witness (where s.28 has not been utilised) is unlikely to be suitable for a shift court.
- A trial with a large number of witnesses is unlikely to be suitable for a shift court.

Notes:

- Available sitting time: 6 hours with a 60 minute break.
- This solution would require a minimum of two courtrooms being available for jury trials in the same courthouse

Stakeholders & partners

- Working with key stakeholders to ensure support for witnesses (including providing support for those arriving for early start times or leaving late in the day)
- Agreeing an approach with Prisoner Escort and Custody Services (PECS) including defendants' attendance at the start or end of days, distances to and from the nearest prison and the approach to transport (it was agreed that for the pilot sites it would not be appropriate to list female or juvenile custody cases in COH because of the distance to the respective establishments)
- Setting up Local Implementation Teams (LITs) to bring together partner agencies and other interested parties to provide oversight of the preparations and agree readiness for commencement of COH at the court. These were established to support effective operation of the pilots and support communication throughout the process

Assessment and monitoring

- The pilot sites were monitored by way of a bespoke assessment and monitoring process. involving management information data collection, interviews and surveys. The assessment of the COH pilots was published on GOV.UK on Friday 27 November

Listing

- An approach to listing was devised by HHJ Menary QC for the original pilot in Liverpool. This approach was shared with the other 6 pilot sites and modified, where required, by the respective Resident Judges and agreed with the LITs

COH consultation

15. Following the conclusion of the pilots, a short, targeted consultation for legal professionals was launched on Thursday 26 November 2020 with a virtual roundtable event with the legal professions, with the consultation documents published on GOV.UK on Friday 27 November 2020. The consultation documents included a pilot assessment report, proposals for potential roll-out of the COH model, and a Public Sector Equality Duty (PSED) statement. The consultation was targeted at legal professionals, who had raised concerns about the potential wider roll-out of COH in the courts. The consultation closed on Monday 14 December 2020.
16. The consultation proposed that HMCTS would support courts adopt the COH model where Resident Judges wished to adopt the blended model as a tool for tackling trial backlogs at their court. At the time we estimated that this would be a maximum of around 65 courts across England and Wales. When compared to the same number of standard hours courtrooms dealing with a similar case mix (i.e. short, simpler cases), every 10 COH rooms could enable us to dispose of 40 additional jury trials every 4 weeks.
17. To begin the consultation, we held a roundtable event with the legal professions to present the findings from the assessment process, explain the proposal to roll out COH to more Crown Court sites and set out our consultation questions:
 - How do you think we could improve the proposed COH model?
 - What features of the COH model work well and should be strengthened?
 - What would we need to consider in the transition and roll-out of COH?
 - Are there other user groups in the Criminal Justice System that we should consider, and why?
 - Do you agree that, should we proceed with further roll-out, the operation of COH should be reviewed in April 2021 and *should cease in June 2021¹*, and what do you consider are the key points the review should focus on?
18. Following the roundtable event, legal professional bodies provided written responses to the assessment findings and the proposed next steps for COH in advance of Ministers taking a final decision on whether to proceed with COH.
19. We also held a separate roundtable with the legal professions to discuss the PSED statement in detail, as well as publishing a pre-recorded webinar to answer some specific questions from legal professional bodies.
20. The PSED statement has been updated in response to the consultation responses provided and advice provided to HMCTS by the Equality and Human Rights Commission (EHRC). This has been published alongside this consultation response on GOV.UK. This assesses impacts of the COH model linked to the protected characteristics listed in the Equality Act 2010. It also sets out how we propose to mitigate aspects of indirect discrimination identified by the consultation process.
21. HMCTS, in line with advice received from the EHRC, will continue to monitor and assess Temporary Operating Arrangements at every site at which the Resident Judge opts to deploy them.

¹ The cessation date will now be 6 months after a court's first implementation of TOA.

Summary of responses

22. We received 266 responses to the consultation, comprising 243 responses from legal professionals, and 23 from organisations. While the consultation was targeted at legal professional bodies, others chose to respond, the vast majority being barristers or groups from chambers. These individual responses made up around 90% of the number of responses. The CBA's response was referred to by approximately one third of individuals who chose to respond to the consultation.
23. The organisations who responded to the consultation were:
- The Criminal Bar Association
 - The Bar Council (produced in partnership with the Circuit Leaders and Young Barristers Committee)
 - The Law Society
 - Witness Service
 - Victims Commissioner
 - Manchester City Council
 - Women in Criminal Law
 - FDA Crown Prosecution Service
 - Criminal Law Solicitors Association
 - Western Circuit Women's Forum
 - Council of Circuit Judges
 - Midland's Circuit Women's Forum
 - Criminal Sub Committee of the Circuit Judges
 - CILEx
 - Retention Committee of the CBA
 - Solicitor Association of Higher Court Advocates
 - CBA Young Bar Committee
 - National Association for Probation Officers
 - Young Legal Aid Lawyers
 - London Criminal Courts Solicitors Association
 - Humberside Police & Crime Commissioner's Office
 - South Yorkshire Police & Crime Commissioner's Office
 - Black Solicitors Network
24. The responses, the majority of which came from individual legal professionals, varied considerably in length and addressed a range of different topics. Approximately two thirds of the responses did not specifically address the questions set out in the COH pilot consultation, so we have reviewed the key themes of the responses analysing the concerns which were raised consistently across the responses.

Overview of responses of all consultees

25. The table below sets out each of the key themes and our responses to the issues which were raised.

Work life balance and caring responsibilities	HMCTS comments and actions
<p>Respondents expressed views about their general wellbeing and with difficulties of arranging child-care during non-standard working hours, including the direct costs and availability of child-care.</p>	<p>We recognise that TOA could affect legal professionals, and others, in different ways. Some, including HMCTS employees, may welcome working earlier or later in the day, but we recognise the significant change to ways of working during the recovery period.</p> <p>We are clear that extending the hours a courtroom is used does not, and should not, automatically equate to extended working hours. We are asking people to work differently, not longer.</p> <p>Moreover, with the blended model, there will be more courtrooms operating standard operating hours than TOA, which means that nearly all cases will continue to be heard in standard operating hours.</p> <p>Furthermore, TOA are a temporary measure which should not be used for longer than 6 months after their first implementation at any court, to reflect their status as a response measure to COVID-19 and the recovery of the courts.</p> <p>The PSED statement notes mitigating actions, including that:</p> <p><i>...[Parties] attend a further hearing in advance of trial where a judge can review whether a case should be listed into a standard hours court or is suitable to be listed into a TOA court. Parties may also make representations to the judge about which of these listing approaches is suitable.</i></p> <p><i>...There are provisions in place for practitioners to make an application to move a case listed in a TOA to a standard hours court should attendance at a TOA AM or PM session subsequently become impractical, supported by reasons.</i></p> <p>A more general mitigation, also noted in the PSED statement, is <i>the development of a remote working TOA model which would create savings in travel time to offset earlier start or finish times.</i></p>
Equality impacts	HMCTS comments and actions
<p>Some respondents stated that, due to the type of cases more likely to be heard in a COH session, junior barristers and female or BAME group members are more likely to be representing at these sessions and therefore potentially more disadvantaged by the timing of them. This potential for different equality and diversity considerations to intersect – and therefore have an increased impact on individuals – was raised by respondents.</p>	<p>Linked to points above on TOA’s impact on people with caring responsibilities, HMCTS’ PSED statement acknowledges consultation evidence that such impacts would have a disproportionate impact on women compared with men. The PSED statement also refers to the pregnancy & maternity characteristic, and the intersection between race and sex.</p> <p>In terms of mitigations, many are the same as have already been listed under the ‘caring responsibilities’ theme.</p> <p>On days of religious observance (the religion and belief protected characteristic in the Equality Act), the Equal Treatment Bench Book already covers earlier finishes on Fridays.</p> <p>HMCTS will seek to collect data on protected characteristics from legal professionals via a survey, at any sites that choose to implement TOA.</p>

Travel & accessibility	HMCTS comments and actions
<p>An area which has been highlighted is the extensive travel for barristers to and from court. Respondents suggested this would be exacerbated by COH timings.</p>	<p>We accept that TOA will affect people differently, depending on their personal circumstances and the reasons why they are coming to court. We think that creating a more flexible day with some courts starting earlier, and finishing later, could make it easier for some people to make arrangements for attending court and improve access to justice.</p> <p>We continue to work with partner agencies, such as witness service, at pilot sites to ensure that support services for people attending court at different times are not compromised. We have also committed to include representatives from the legal professions in Local Implementation teams at each site which plans to implement TOA.</p> <p>As discussed in the PSED statement, the remote working TOA model aims to mitigate impacts linked to travel time as it would create savings in travel time to offset earlier start or finish times.</p> <p>The HMCTS PSED statement notes that the piloted model:</p> <p><i>... involves using each TOA court with one or more standard operating hours court in each Crown Court centre ... but they would still have more standard operating hours provision.</i></p>
Impact on work done outside of courtroom hours	HMCTS comments and actions
<p>Some respondents expressed views around a perceived lack of understanding of the volume of work that takes place outside of and before the hearing itself, and how earlier start times, and later finish times would impact on the working day's needs, both prior to/after and at the court.</p>	<p>We understand that working days extend well beyond the 'in-court' day, and that this means there is a feeling that starting earlier or finishing later is very difficult, especially if patterns are not predictable. However, attending court in a TOA session reduces the time spent in the courtroom when compared to a standard hours court. This is because only one session would be attended by an individual lawyer. No practitioner will be expected to attend both a morning and afternoon TOA session.</p> <p>The PSED statement also notes some evidence, from much earlier trials of extended operating hours models, "<i>defendants who were employed during traditional workhours were felt to welcome the opportunity to attend court early.</i>"²</p> <p>The remote working model could offset this impact as it saves travel time.</p> <p>Any courts that use the blended model would still offer more standard hours courts than TOA ones. Other options available to judges (including moving to standard hours) are discussed in relation to other themes above.</p>
Potential impacts on the diversity of the Criminal Bar	HMCTS comments and actions
<p>COH was linked to the potential to negatively impact the diversity of the Criminal Bar, e.g. junior barristers being more likely to be BAME or females, and their being more likely to be given the less legally complex COH cases.</p>	<p>TOA are a temporary measure. The current exceptional circumstances brought about by the COVID-19 pandemic require exceptional measures and unless we do something different, the number of trials that need hearing will increase as time passes. As we recover from COVID-19 it is essential that we continue to adapt and strengthen our services to deliver access to justice for all our users.</p> <p>We propose that TOA will end 6 months after initial implementation – to reflect their status as a response to the impacts of COVID-19 and recovery.</p>

Costs	HMCTS comments and actions
<p>Some responses mentioned the potential for a higher cost of travel, and that this might particularly impact professionals at an earlier stage in their careers.</p>	<p>The existing fees will remain in place for the new operating model. The blended model with 2 separate trials taking place in the morning and afternoon would see advocates doing broadly the same work in a slightly shorter space of time, at a different time of day (around 3.5 hours per day as compared to the current 4.4 on average). Barristers are paid a daily fee, so we think the current payment scheme is justified and advocates are likely to benefit from an increase in payment if the number of trial days increase due to the slightly shorter court sitting day. There is also a length of trial uplift in the scheme for solicitors.</p>
Responses in support of COH / improvements	HMCTS comments and actions
<p>Some respondents made comments that were in support of COH, or were a mix of positive and negative, or neutral.</p>	<p>We recognise that the consultation yielded responses from only a small cross-section of the overall profession and may not have been representative of the profession at large.</p> <p>We continue to believe that our justice system needs to respond to the rapidly changing needs of our society, so that it works better for everyone, from judges and legal professionals to court users.</p>
Other matters	HMCTS comments and actions
<p>Other issues raised included or indicated:</p> <ul style="list-style-type: none"> • suggestions that more courts should be open during normal hours • a lack of mention of the use of technology (CVP) in conjunction with, or as an alternative to COH • the import of health and safety, and wellbeing safeguards for professionals and other court users, including a full impact assessment and a COVID-19 risk assessment • Some consultation responses refer to potential public health implications of having two groups, in different trials, using the same courtroom in one day. For example, the CBA response refers to risks associated with 'crunch points' during the day (page 36). 	<p>HMCTS will undertake health and safety risk assessments at any site choosing to adopt TOA. These assessments will take account of potential increases in footfall and occupancy at certain times of day because of the increased number of trials in progress. Adjustments will be made accordingly, including where necessary, additional cleaning.</p> <p>The TOA model provides for cleaning of the TOA courtroom over the course of an hour between the sessions. This cleaning, to the standard expected at the end of any court day in the context of the pandemic, will be carried out as standard at any TOA court.</p> <p>The remote model of TOA provides an alternative to the original COH model that maximises the use of technology to deal with Crown Court work.</p>

Summary of responses to the consultation questions

26. The consultation stated that as part of consulting on this proposal to widen the roll out of COH we would like to hear views about what else HMCTS could do to make sure that the operation of the COH courts is managed in the most effective way and limits negative impacts on those who work within the justice system. This section summarises the approximately one third of all responses which directly addressed the questions.
- professionals should be given the right to request a case not be listed into a COH court
 - there should be more resources input & increased recorder use
 - witnesses require adequate support
 - a longer consultation and means for dialogue should be established
27. **How do you think we could improve the proposed COH model?** The majority of answers stated that there are no improvements that could sufficiently remedy issues with COH, however this notwithstanding we received the following suggestions for improvement:
- there should be a guaranteed end date
 - the court day should not end past 5pm
28. **What features of the COH model work well and should be strengthened?** As above, most consultees responded to this question negatively, again with views that COH has irreconcilable flaws. However, comments included suggestions such as:
- COH is particularly suited to certain types of trials (e.g. domestic abuse,) which often resolve when a trial slot is available; shorter bail; case progression, bail review hearings;

- triaging for effectiveness, exploring resolution options with judicial help, are helpful and are being adopted for local listing practices
- start the PM list before 2pm
- shorter trials of three days or less have a place in courts and can be carried out alongside more significant trials
- clear start and end times are helpful, but suited to fixtures, not warned lists
- LIT meetings are essential but must include S/Hs, Witness Services, PECS, HMPPS

29. **What would we need to consider in the transition and roll out of COH?** The majority of consultees responded to this question negatively. However, comments suggested the following considerations:

- recruitment [of staff] and tweaking of hours
- clear regulatory framework needed including certification by courts that counsels' options have been discussed
- considering that certain participants may refuse to work the hours, due to other responsibilities at the time, or for other reasons
- clear cost implications need to be assessed
- guarantee of six-months maximum, with nationwide review at close
- normal hours courts must run alongside COH
- sufficient rooms needed over lunch for conferences, and adequate staffing
- full consideration of impact on The Bar, including those with protected characteristics
- witness waiting room capacity should be considered when listing
- risk assessments at courts to ensure the safety of all court users
- setting up an 'evaluation advisory group' similar to the group set up for the Flexible Operating Hours pilot

30. **Are there other user groups in the Criminal Justice System that we should consider, and why?** Suggested groups included:

- witnesses and jurors (see above and below)
- defendants, including vulnerable defendants
- specific groups among these and among professionals (see below);
- parents with childcare responsibilities
- groups representing court users from a Black, Asian and Minority Ethnic (BAME) background
- chambers staff
- families involved with the CJS
- CPS caseworkers
- security staff

Additionally, it was recommended (including by the CBA) to consult:

- the Victims' Commissioner
- BAME, female, disabled and specialist Associations/ Groups
- JUSTICE and NGOs, Trade Unions, Probation, EHRC

31. **Do you agree that the operation of COH should be reviewed in June 2021³, and what do you consider are the key points the review should focus on?** The majority of consultees responded to this question negatively. However, comments included suggestions, such as:

- earlier review (8 weeks) with ongoing assessment, to include number of requests made for change to standard hours, reason given, characteristics of counsel
- quantify resourcing and staff wellbeing
- monitoring of effect on junior barristers, and those with caring responsibilities
- monitoring of impact on witnesses (including victims of crime), jurors
- vulnerability of witnesses in COH cases
- health and safety of [all] users
- ensure a larger sample size than previous assessment and increase robustness and relevance of data collection and analysis

³ The cessation date will now be 6 months after a court's first implementation of TOA.

Conclusion and next steps

Proposed approach following feedback from consultation

32. The pandemic has presented challenges to the way in which the courts operate, throughout the lockdowns and the need to maintain socially distancing, which have led to increased levels of caseloads and waiting times. We have had to invest in the capacity and resources available to the courts, and consider and implement innovative solutions, such as the roll out of remote hearings and the use of Nightingale courts across England and Wales. The challenges of recovering from the pandemic are why we consulted on the question of whether different operating hours could increase the number of cases courts can complete, reduce the outstanding caseload, and ensure more cases are heard quickly.
33. We have carefully considered all of the responses to the consultation when deciding how best to adapt the proposals and mitigate against any potential negative impacts. However, the Lord Chancellor has a duty to enable the efficient and effective operation of the Crown Court. This includes considering the impact of the pandemic and the delays in delivering justice, the increased outstanding caseload, and the impacts on other groups. We must consider the needs of everyone involved before we make a decision.
34. The pilots showed that COH rooms disposed of higher volumes of cases than standard hours and that this difference is driven by the different types of cases listed into each court. COH rooms were dealing with shorter, simpler cases, and standard hours courts were dealing with more complex cases. The pilots showed that on average COH courtrooms disposed of 3.5 trials per room per week. We estimate that a standard hours courtroom, operating with the same case mix as a COH courtroom, could dispose of approximately 2.5 trials per room per week - the extended hours therefore grant an estimated one extra disposal per room per week. In the context of the profound impact which the pandemic has had on the Crown Court, any measure which allows more cases to be heard must be seriously considered.
35. In designing TOA models, we have sought to directly mitigate against the potential impacts which legal professionals raised in the consultation. The remote model set out below is intended to minimise any such impacts on those with caring responsibilities.

The two proposed TOA models

Blended model

36. A model based on the original piloted COH model which involves the running of two separate jury trials listed in one courtroom; one in the morning from 9am to 1pm, and one in the afternoon from 2pm to 6pm, but with discretion to adjust this based on local circumstances, and in agreement with the LITs. Alongside the 'COH court', one or more 'standard hours' trial court will operate. Judges will be able to use time before the morning COH session commences and after the afternoon session, if it runs short, to complete non-trial work or remote hearings.

Remote model

37. A second model where sessions operate for longer than the standard court hours (for example, 9am-5pm), but those **sessions are held entirely remotely**. The remote sessions would consist of non-trial work, e.g. Pre-Trial Preparation Hearings (PTPHs), mentions, sentencing etc. Extended remote sessions would run for a minimum of 7 hours, accommodating any potential delays with technology but also reflecting that the need to travel would be removed, thus allowing for a longer day.
38. The new remote model has been developed in response to consultation feedback from legal professionals. It could mitigate potential negative equalities impacts on those with caring responsibilities, removing the different travel time impacts of the piloted model. There are further benefits for court capacity by operating remotely, as they would free up the physical estate so that trial rooms can be used exclusively for trials. HMCTS' analysis shows there is a significant pipeline of work appropriate to be heard remotely. A comparable all-remote model has been piloted effectively in Sheffield (as well as other venues) with promising results, both in performance and enabling flexibility. There has also been positive response to remote hearings (outside of this particular context) from some groups, such as a recent Women in Criminal Law survey, which found that "96% of respondents were in favour of retaining a presumption of remote hearings in Court, where no one has requested otherwise, in some circumstances".

Flexible implementation of Temporary Operating Arrangements

39. The Lord Chancellor has decided to allow the time limited use of the TOA models to any court where the Resident Judge is supportive of its use as a tool in tackling their outstanding caseload. He will provide support to those courts which choose to implement either of the TOA models.
40. We have taken on board the feedback of legal professional bodies in recommending a locally led approach and enabling remote options. This will enable judges to use this as an option where it is a workable solution in their area. Use of the TOA models will be for a maximum of 6 months from the first date of implementation at each court.
41. The Resident Judge at each court site would be responsible for determining whether implementation is appropriate, and HMCTS would be responsible for determining whether this could be done safely in line with building risk assessments.
42. LITs will be established to oversee deployment in every court agreed as being suitable by the Resident Judge, and TOA would be a temporary measure in response to COVID-19, with a stop point 6 months after first implementation. These LITs will incorporate representatives from the legal professions, and partners and stakeholders working within the local criminal justice system.

Equalities impact assessment

43. Throughout the consultation period, we highlighted the need to assess COH to ensure that it is working as it should, and to monitor any potentially discriminatory impacts. In any implementation of TOA, we are committed to monitoring and assessment to identify and mitigate the impacts of the proposal on protected characteristics. If the proposal is in place in any court, we will work with the Bar and the Circuit Leaders to review the data on an ongoing basis through existing engagement groups. We will continue to examine whether this option could be further tailored to mitigate equalities impacts. We have incorporated and will continue to seek the expert advice of the EHRC in ensuring we have a robust approach to monitoring equality impacts.



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