



HM Courts &  
Tribunals Service

Justice matters

# Flexible Operating Hours Pilots

## Evaluation Findings

IFF Research and Frontier Economics

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HM Courts &  
Tribunals Service



## Disclaimer

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# Glossary of terms

Term	Definition
Block list	A listing practice whereby several cases are listed to start at the same time, but the judge or judges hearing the cases do not necessarily hear all of those cases at that listed start time. Instead, they are heard in a particular order. For example, several cases could be listed to start at 10AM, meaning all parties turn up at 10AM, but some parties may not be actually called until after 10AM.
Box work	Paperwork processed in the absence of parties such as directions for the conduct of a case, dealing with enforcement of judgments and determining applications for adjournments of hearings. Judges will turn to this work when not sitting or preparing for listed hearings.
Cause list	A written record of the cases heard at a particular court over a given period of time.
Claimants	The individual or organisation that began civil legal proceedings by making a claim against the defendant.
Defendants	The individual or organisation against whom the claimant has made the claim being heard in the case.
Duty solicitor	A solicitor made available to public users free of charge if they do not have a solicitor of their own.
Family cases	A case type which is heard in the family court system. For the purposes of this pilot, family cases do not include children's work. A list of all of the cases which are included in this category is included in the Annex of the Technical Appendix.
Flexible operating hours	Court operating hours outside of regular court operating hours.
FOH pilots	The pilots look at maximising the use of time in specific court and tribunal hearing rooms to support a more flexible, efficient and effective justice system. The FOH project sits within the HMCTS Reform Programme.

Her Majesty's Courts and Tribunals Service (HMCTS)	Responsible for the administration of criminal, civil and family courts and tribunals in England and Wales. HMCTS is an executive agency, sponsored by the Ministry of Justice.
Housing possession	A case in which a judge decides on the occupancy of a home, e.g. if a tenant or homeowner needs to be evicted.
Housing Possession Court Duty Schemes (HPCDS)	The schemes offer "on-the-day" face to face advice and advocacy at court to anyone facing possession proceedings. Anyone in danger of eviction or having their property repossessed can get free legal advice.
Interim Possession Order (IPO)	Interim Possession Orders are used to claim possession of a property and evict squatters.
Judiciary	District and Deputy district judges that took part in the FOH pilots.
Legal aid agency (LAA)	An executive agency that provides civil and criminal legal aid and advice in England and Wales to help people deal with their legal problems.
Legal professionals	Members of the legal profession that took part in the FOH pilots, including barristers and solicitors.
Litigants in person	Public court users choosing to represent themselves in their case.
Local implementation teams (LITs)	Consisted of members of the judiciary, senior management and site staff and worked closely with the HMCTS FOH project team and with local service teams to agree strategic decisions and 'on the ground' implementation of the FOH pilots.
Non-small claims civil case	A civil case which is not of the small claims type. A list of all of the cases which are included in this category is included in the Annex of the Technical Appendix.
Opt-out	Those court users (including both public users and legal professionals) that chose to opt-out of an FOH pilot session
Over-list	A listing practice of listing more hours of work into a session than there are actual hours.

Pilot participation fee (PPF)	A fee introduced for the FOH pilots and paid to those practitioners who attended FOH sessions. The payment was administered by the Legal Aid Agency and funded by HMCTS <i>“for publicly funded practitioners taking part in Flexible Operating Hours pilots, with a fee of £100 for attendance at a housing duty solicitor slot and £50 for attending a single hearing.”</i>
Pre-pilot	The period of time running prior to the commencement of the FOH pilots. Data collected in this time served as counterfactual to data collected during the pilots. In this report, pre-pilot may refer to the time period or data collected during that time period.
Profile days	Represent the monthly ‘budget’ of how many days of cases can be heard in a given court and are allocated at the beginning of each financial year (April).
Public users	Members of the public using the court and tribunal service.
Return of Goods (ROG)	An application for the return of hire-purchase or conditional sale goods.
Sitting days	Similar to profile days, except they represent the actual number of days of cases that were heard.
Small claims	A civil case of the small claims type.
Urgent family work	Family court cases dealing with issues or orders that need to be resolved as a matter of urgency, such as emergency custody hearings.

# 1. Executive summary

This report presents the findings from an evaluation of the Flexible Operating Hours Pilots, which were intended to test whether longer court operating hours could enable a greater proportion of court time to be devoted to productive uses, supporting a more flexible, efficient and effective justice system.

## Introduction (Chapter 2)

Her Majesty's Courts and Tribunals Service (HMCTS) set up the Flexible Operating Hours (FOH) Pilots to look at maximising the use of time in specific court and tribunal hearing rooms. The FOH pilots involved afternoon and late sittings (2pm to 7pm) in two court rooms at Manchester Civil Justice Centre and early (8am to 10:30am) and late sittings (4:30pm to 7pm) in one court room at the County Court at Brentford, from 2<sup>nd</sup> September 2019 to 28<sup>th</sup> February 2020 (Manchester) and 13<sup>th</sup> March 2020 (Brentford). In Manchester, the pilot was implemented by shifting the timing of the usual court sessions (i.e. those sessions taking place during usual hours), while in Brentford, pilot sessions were run in addition to business as usual sessions.

In Manchester, cases heard during FOH sessions were small claims, non-small claims civil and family cases (not including children's work); while in Brentford, small claims and non-small claims civil cases were heard.<sup>1</sup>

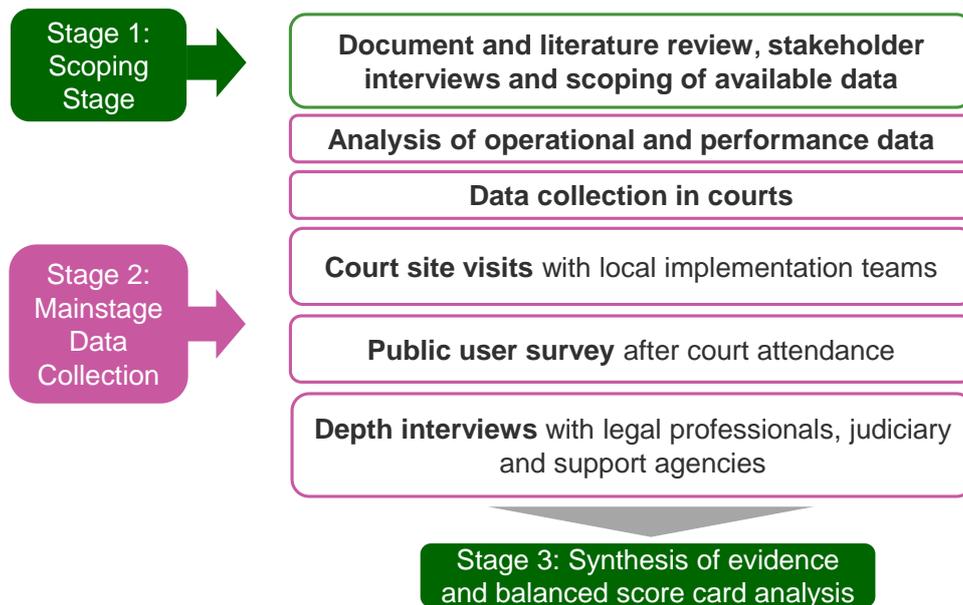
The FOH pilots were intended to test whether longer operating hours could enable a greater proportion of court time to be devoted to productive uses (including hearings and box work), with less time where the court was not in use. For public court users, the aim of the FOH pilots was to offer a possible means to reduce waiting times, increase speed of and access to justice, and reduce the number of hours needed to be taken off work. For legal professionals, HMCTS recognised that the pilots would affect people in different ways. Some would welcome the opportunity to work earlier or later in the day, but it was also recognised that the pilots would introduce a significant change to ways of working.

## Evaluation approach (Chapter 3)

HMCTS commissioned the authors of this report, IFF Research and Frontier Economics, as independent evaluators to assess whether operating courts and tribunals at different times of the day offers more open and accessible justice for citizens; to evaluate the impact of FOH on professional and public court users, and public agencies working in the justice system; and to test whether FOH can provide a sustainable, scalable and efficient way of working across the justice system, including the context of wider changes made in the Reform Programme. The evaluation used a mixed method approach, as follows:

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<sup>1</sup> A civil case which is not of the small claims type. A list of all of the cases which are included in this category is included in the Annex of the Technical Appendix.



The evaluation integrated these evidence sources to assess the impacts of the FOH pilots across eight domains. These domains were informed by a logic model which traced the expected progression from FOH pilot activities through to shorter and longer-term outcomes. Overall, the evaluation captured the views of 78 court staff, judiciary and legal professionals, 124 public users involved in the pilot, 453 public users of the courts before the pilot and 24 public users that opted-out of the pilot. It also collected and analysed a range of operational and performance data: case level data from HMCTS' centralised databases, data on claims for the pilot participation fee (PPF),<sup>2</sup> the Legal Aid Agency-funded Housing Possession Court Duty Schemes (HPCDS) claims, data on the number of profile and sitting days by court, data from hand annotated Cause lists and aggregated financial accounts.

The chosen evaluation approach was the most appropriate for the pilot given the ethical, political and logistical constraints of the pilots and the availability and quality of impact evidence. Experimental approaches to impact evaluation, like Randomised Control Trials, are typically seen as the 'gold standard.' These types of approach were not feasible for evaluating the FOH pilots because it was not possible to randomly assign cases users to FOH sessions ('treatment' group) and business as usual sessions ('control' group). Instead, to identify impacts and determine whether they were as a result of the FOH pilots, evidence has been collected before and during the pilots. The main limitation of this approach is the inability to rule out factors other than the FOH pilots that could have caused any changes observed.

## Conclusions and implications (Chapters 13 and 14)

The evidence for all the metrics of interest, across all domains of impact, is summarised in the balanced score card below. This presents the findings visually, to reach a balanced view as to the overall impact of the FOH pilots. The score card brought together evidence from all of the evidence sources for each of the eight domains of impact to arrive at an overall score. This score was calculated by assessing whether each indicator in each domain of impact suggested an FOH benefit, FOH dis-benefit or no change between the pre-pilot and FOH pilots (as per the chapter dashboards). The mix of FOH benefits, dis-benefits or no changes found across each indicator

<sup>2</sup> The pilot participation fee (PPF) was introduced for the pilots and paid to those practitioners who attended FOH sessions. The payment was administered by the Legal Aid Agency and funded by HMCTS "for publicly funded practitioners taking part in Flexible Operating Hours pilots, with a fee of £100 for attendance at a housing duty solicitor slot and £50 for attending a single hearing."

then determined what the overall calculated score for each domain of impact was. Each score had two parts:

1. A sign, indicating whether the FOH pilots had a positive, negative or no/neutral impact on that domain of impact; and
2. A level, indicating the strength of that impact, if one was found.

Each domain of impact was treated as equivalent, as there was no *a priori* reason to prioritise any one domain of impact over another.

Please note that each arrow in the chapter dashboards in the balanced score card might not necessarily relate to one indicator, but can also be a summary of several related indicators. In addition, it is worth noting that whilst indicators are grouped by domain of impact, this does not mean they do not impact other domains. It is likely that several of the indicators are interrelated, and therefore overlap across domains of impact, meaning they have influenced the balanced score card in more than one place.

As the balanced score card, overleaf, shows, indicatively positive impacts of the FOH pilots were found for the access to justice and experiences of public users domains of impact, indicatively negative impacts found for working lives of legal professionals and equality and diversity, with no/neutral impacts found for the remaining four domains of impact. No strongly positive or negative results were found.



## Flexible Operating Hours Pilots: Balanced Score Card

<b>Chapter 5: Efficiency of use of court rooms</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall neutral impact of the FOH pilot, as indicators moved in both directions.
<b>Chapter dashboard indicators</b>		
1 Number of cases listed per hour the court room was open 3 Percentage of session length spent in hearings 5 Number of minutes overrunning per session	  	2 Number of cases heard per hour the court room was open 4 Number of minutes delayed before starting per session  
<b>Chapter 6: Speed of delivery of justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ No impact of the FOH pilot detected across all of the indicators in this domain.
<b>Chapter dashboard indicators</b>		
1 Length of time from case inception to outcome 3 Ability to sustain changes over time	 	2 Number of cases heard whilst the court room is open 
<b>Chapter 7: Access to justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall indicatively positive impact of the FOH pilot, as indicators were either positive or showed no change.
<b>Chapter dashboard indicators</b>		
1 Convenience of time slot 3 Caring arrangements made 5 Availability of legal representation and advice	  	2 Time taken off work to attend court 4 Safety and ease of travelling to and from court 6 FOH opt-outs   N/A
<b>Chapter 8: Quality of justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall neutral impact of the FOH pilot, as indicators moved in both directions.
<b>Chapter dashboard indicators</b>		
1 Percentage of listed cases not heard 3 Overall satisfaction with case outcome 5 Professional user views on quality of justice	  	2 Use of HPCDS scheme 4 Public user views on quality of justice  

## Chapter 9: Experiences of public users

### Score



### Summary of findings

⇒ Overall indicatively positive impact of the FOH pilot, as indicators were either positive or showed no change

### Chapter dashboard indicators

1	Opinion of how well FOH worked	=	2	Number of litigants in person	↑
3	Whether family/friends attended	=	4	Access to food, drink and sufficient rest time	=
5	Waiting times	↓			

## Chapter 10: Working lives of legal professionals

### Score



### Summary of findings

⇒ Overall indicatively negative impact of the FOH pilot, as indicators were either negative or showed no change.

### Chapter dashboard indicators

1	Working hours	↑	2	Workloads	↑
3	Caring arrangements made	↑	4	Personal agency and self-direction	=
5	Safety and ease of travel to & from court	=	6	Access to meals and refreshments	=
7	Time travelled to and from court	=	8	Availability of legal services	↓

## Chapter 11: Cost of justice

### Score



### Summary of findings

⇒ No impact of the FOH pilot detected across all of the indicators in this domain.

### Chapter dashboard indicators

1	Court operating costs	INC	2	Legal organisation costs	=
3	Professional user costs	=			

## Chapter 12: Equality and diversity

### Score



### Summary of findings

⇒ Overall indicatively negative impact of the FOH pilot, as indicators were either negative or showed no change.

### Chapter dashboard indicators

1	Public users	=	2	Opt-outs	=
3	Legal professionals	↓			

## Key to the balanced score cards scores



Strongly positive

The balanced score card is a high level visual summary of the results of the pilots, across each of the eight domains of impact. The scoring process examines the dashboard indicators presented at the start of each chapter, and assigns a score as follows:

⇒ Strongly positive: all indicators are green, showing only positive benefits of the FOH pilots.



Indicatively positive

⇒ Indicatively positive: some indicators are green and some are yellow, showing a mixture of positive benefits of the FOH pilots and no change in the FOH pilots.



No/neutral impact

⇒ No/neutral impact: indicators are either all yellow (no impact), or exist in combination with both red and green indicators, showing a mixture of no change, positive benefits and dis-benefits of the FOH pilots (neutral).



Indicatively negative

⇒ Indicatively negative: some indicators are red and some are yellow, showing a mixture of dis-benefits of the FOH pilots and no change in the FOH pilots.



Strongly negative

⇒ Strongly negative: all indicators are red, showing only dis-benefits of the FOH pilots.

## Key to the chapter dashboard indicators



No change in a metric between pre-pilot and FOH pilots



Increase in a metric, which can be interpreted as neither an FOH benefit nor dis-benefit



Decrease in a metric, which can be interpreted as an FOH benefit



Increase in a metric, which can be interpreted as an FOH benefit



Decrease in a metric, which can be interpreted as an FOH dis-benefit



Increase in a metric, which can be interpreted as an FOH dis-benefit

INC

Results for this metric are inconclusive

N/A

Results for this metric are not applicable, as there is no pre-pilot counterfactual to compare against

The implications of the evaluation in relation to the key research questions are as follows. These are in the context of the specific nature of the FOH pilots, and the case types included within them.

**1. Whether longer operating hours mean that a greater proportion of court time is devoted to productive uses (to include hearings and box work), with less time where the court is not in use:** The FOH pilots appeared to have had a broadly neutral effect on efficiency of court room use, i.e. the FOH sessions were at least as efficient as the pre-pilot sessions. Given that FOH sessions do not appear any more or less efficient, on balance, than pre-pilot sessions, FOH could feasibly lead to increased productive court time, if FOH sessions are undertaken in addition to business as usual. This requires additional judicial and staff resource to be put into the flexible hearing times.<sup>3</sup>

**2. Whether operating courtrooms at different times of the day offers more open and accessible justice to citizens:** The FOH pilots appeared to have had an indicatively positive effect on accessibility of justice to citizens, with some evidence of reductions in time taken off work

<sup>3</sup> Given Brentford ran FOH pilot's sessions in addition to the business as usual sessions, it was possible to assess across all court rooms within the court, whether the total amount of efficient time changed. As Brentford's FOH sessions were found to be at least as efficient as pre-pilot sessions, this meant that the total amount of efficient court time increased at Brentford. Whilst it is possible that running FOH sessions in the Manchester court in addition to business as usual sessions could have also led to an increase in total efficient time in the same way as Brentford, given this particular model of operation was not tested it has not been possible to assess whether this would have been the case.

and improvements to perceived convenience of hearing times and travel to and from court. That said, some legal professionals, legal organisations and court staff raised (largely hypothetical) concerns about FOH sessions being difficult to access for some public users, namely those with childcare responsibilities, those who are financially vulnerable or who do not live near the court. This implies that participation in FOH sessions might need to continue to be a matter of choice for these groups of public users if FOH were pursued in future. Further testing may be required to assess which groups of public users might require a continuing ability to opt-out.

**3. Whether and how FOH impacts professional and public court users, and the agencies working in the justice system:** The FOH pilots appeared to have had mixed effects. Accessibility aside, the FOH pilots had some positive effects on public court users, namely on public user satisfaction with case outcome, their perceptions of quality of justice, and reduced average waiting times. Legal professionals and some members of the judiciary were, however, concerned that the longer working hours demanded by the FOH pilots had affected legal professionals' energy and concentration levels (members of the judiciary did not agree that their own energy and concentration levels had been affected, however). Legal professionals' reported experiences of the FOH pilots' effects on their working lives also tended towards the negative, and there were indications of negative equality and diversity effects on women and junior barristers.

**Overall assessment:** Overall, if additional judicial and staff resource is put into flexible hearing times, then this will enable more cases to be heard within existing court rooms; and this is likely to be a more convenient option for some members of the public and individual legal professionals. However, there are indications that the FOH pilot sessions create additional childcare issues for some court staff, professionals and members of the public; and legal professionals were of the opinion that this risks placing disproportionate burden among women<sup>4</sup> and junior barristers within the legal profession. This suggests that, if pursued more widely in future, participation in FOH might need to continue to be a matter of choice for some members of the public and legal professionals.

The findings point towards the following recommendations. Again, these are in the context of the specific nature of the FOH pilots, and the case types included within them:

***Recommendations regarding the efficacy of the FOH models tested:***

1. The efficiency of use of court room analysis shows that neither the Manchester nor Brentford model are more or less efficient than one another. On a per session basis, FOH sessions in both courts were found to be at least as efficient as non-FOH sessions (albeit the composition of that efficiency changed). Therefore, if the aim is to increase flexibility for public users for the particular case types piloted, then the Manchester model of shifting some business as usual sessions to FOH timings is likely the most appropriate and is therefore recommended. If the aim is to both increase flexibility for public users and to increase the volume of cases heard in court rooms for the particular case types piloted, then the Brentford model is likely the most appropriate and is therefore recommended. It must be noted however that the Brentford model would require increased judicial and staff resource, given that additional sessions would be being run.
2. Disaggregation by session time of the efficiency of court room results identified that across both courts the percentage of session length spent in hearings tended to fall throughout the day. This suggests that running FOH sessions earlier in the day (i.e. before the business as usual 10AM sessions) might achieve similar levels of efficiency as in non-FOH business as usual sessions for this particular indicator. This could be because it is possible to list more ambitiously at these times and rely on other court rooms to pick up any overruns that might

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<sup>4</sup> Female professionals were considered more likely to be carers.

occur. It is therefore recommended that 8AM FOH sessions in the Manchester (or other) court(s) be trialled, to fully understand whether this result was unique to Brentford or not.

3. It was suggested via interviews with court staff that, due to not having additional court rooms running concurrently during FOH times, listing remained cautious during the FOH pilots. This was largely driven by a fear of not being able to cover all listed cases if hearings were to run longer than anticipated. It is therefore recommended that courts considering FOH have a plan to manage overflow of hearings if FOH pilots' listing is to be on par with business as usual listing. This could possibly be achieved by either running FOH sessions earlier in the day as per recommendation 2. above, and/or running more sessions concurrently during FOH hours – although it cannot be known for certain without this being tested.
4. If FOH were to be trialled again, it is recommended that at least 30 days of data per case type in each pilot court, in both the pre-pilot and pilot periods, be recorded. This is to reduce the issue of small sample sizes in the non-survey quantitative results. This could be achieved by either increasing the number of days the FOH pilots run for (i.e. increasing the intensity over a fixed period) and/or the length of time the pilot runs for. The benefit of extending the length of time the pilot runs for is that it is also likely to identify more of any potential longer-term effects of the pilot and also reduce the scope for any 'settling in' effects related to cautious listing to be accounted for.

***Recommendations for the implementation of FOH within the courts:***

5. Despite the publication of a pilot prospectus and the formation of local implementation teams to liaise with central HMCTS operations and services around pilot set-up, the experiences of court staff, judiciary and legal professionals not initially involved in the FOH pilots suggested a need for more and clearer communications about the FOH pilots to these groups, and at an earlier stage. These should address what the FOH pilots' intended purpose was (and was not); why it was expected to be beneficial to different audiences; and the practicalities involved – namely, when the FOH pilots were to start and finish, what the operating hours would be at each court, how the FOH pilots would impact on the day-to-day responsibilities of staff, whether court staff will work longer or shifted hours, whether they will receive time off in lieu or overtime, and what support and services will be available during FOH hours.
6. Mapping the staffing resources required for delivering Flexible Operating Hours, planning in contingency resource and being prepared to adapt to changing pilot needs will be important for any other courts considering such hours. This should be accompanied by a process mapping exercise to sense-check what other services or audiences need to be part of the implementation discussions. For example, speaking with security providers early to explore practicalities of securing the building outside typical operating hours, reviewing the fire evacuation plan, and liaising with other building staff, like cleaners and administrative staff, about the days the building will be open earlier and later.
7. Consideration should be given to how best to assess which court staff are able to work alternative hours. This could be through an initial staff poll then an opt-in or an opt-out approach. If the terms of participation in FOH sessions changes after staff have initially agreed to participate, then it will be important to communicate this and seek staff consent to participate again.
8. To enable legal professionals to feel safe when travelling to and from court, courts need to work with their security teams to avoid the process of beginning closing down the building before late sessions are concluded, and to consider how well lit the court entrance and carpark is. Another potential way to help legal professionals feel safe when travelling to and from court would be to not run late sessions. Legal professionals were more likely to have concerns about their welfare when travelling to and from late sessions than early sessions.

9. Courts considering implementing FOH in future may want to reflect on how best to space FOH and standard sessions to allow legal professionals and judiciary to access meals and refreshments outside the court. They may also consider reminding these court users before attending sessions outside standard hours, what facilities are available and state the operating hours for these.

***Recommendations for liaising with members of the public using the courts in FOH sessions:***

10. Court website details should be updated with the court opening times for FOH days so that public users know their listing for an early or late hearing is not an error and the court is operating at that time.
11. Careful consideration should be given to whether and how public court users are able to opt-out in future. Some legal professionals, legal organisations and court staff raised concerns about FOH sessions potentially being difficult to access for public users with childcare responsibilities, those who are financially vulnerable or who do not live near the court – suggesting a need to test further whether the opt-out feature would need to be maintained in some form, for some court users. On the other hand, court staff and members of the judiciary were of the view that a more rigorous opt-out process should be adopted, that is more in line with the adjournment process for normal operating hours. For example, introducing time constraints, and the need for justification. It would also be advisable to establish a dedicated inbox for receiving opt-outs, and a systematic process for reviewing and rescheduling each opt-out. This will require further investigation.
12. As with legal professionals, courts considering implementing FOH in future may also wish to remind public court users what facilities are available and state the operating hours for these, before they attend sessions outside standard hours.

***Recommendations for wider consultation and engagement around the implementation of FOH:***

13. In its current form, the FOH pilots were not well received by some legal professionals, who are concerned about the personal and professional implications of FOH. The wider context FOH operates in influences its success and so HMCTS will need to consider how to constructively engage with the wider legal profession, to make FOH work. This is likely to require further consultation and engagement with solicitors' firms and barristers' chambers, to encourage them to adapt their expectations of working hours, and their processes for allocating cases to individual legal professionals, to FOH sessions (particularly to ensure that legal professionals work time-shifted hours where they can, rather than extended hours).
14. It will also be important to systematically map the other parties that legal professionals will need to engage with in order for a case to progress smoothly; and engage with these parties to explore what conditions would enable them to be available within the extended hours that the FOH sessions run. Otherwise it is likely that legal professionals will continue to have difficulty accessing information and direction during FOH sessions, thus slowing down the progress of the case.

These conclusions and recommendations are based on the findings from the eight domains of interest, summarised below and discussed in more detail in the relevant chapters.

## Implementing Flexible Operating Hours in Brentford and Manchester (Chapter 4)

The evaluation captured the experiences of implementing the FOH pilots at each court, through interviews with members of the judiciary, court staff, legal professionals and legal organisations, including both barristers' chambers and solicitor firms.

Despite the publication of a pilot prospectus and the formation of local implementation teams to liaise with central HMCTS operations and services around pilot set-up, uncertainty about the main purpose of FOH among court staff, judiciary and legal professionals *not* initially involved in the FOH pilots limited the number of individuals willing to take part in delivery of the pilots. Concern about the pilot's purpose and the practical arrangements was particularly pronounced in Manchester. More and clearer communications at an earlier stage, giving consistent messages about the pilots' purpose and practical arrangements, would have been helpful to support buy-in.

Despite this, both courts had enough staff to deliver the FOH pilots. However, in Brentford, on rare occasions this was achieved by using administrative staff to usher FOH sessions (commonplace in business as usual sessions); while in Manchester this was achieved by assuming initial staff agreement to participate would still apply even when the terms of taking part changed. This highlights the importance of engaging staff and mapping the resources needed to deliver Flexible Operating Hours, including contingency planning for changing needs. Both courts were initially cautious in listing hearings in FOH sessions, due to concern about not being able to cover all listed hearings if hearings were to run longer than expected.

## Efficiency of use of court rooms (Chapter 5)

The effect of FOH on the efficiency of use of court rooms was explored by looking at: the number of cases *listed* per hour the court room was open, the number of cases *heard* per hour the court room was open, the percentage of session length spent in hearings, the number of minutes delayed before starting per session and the number of minutes overrunning per session.<sup>5</sup>

Overall, there was a broadly neutral effect of FOH on the efficiency of court rooms in the FOH pilots compared to the pre-pilot period. This meant that FOH sessions were at least as efficient as pre-pilot sessions, although the composition of that efficiency did change.<sup>6</sup>

At both Manchester and Brentford, less time was spent hearing cases in FOH sessions than in the pre-pilot period, a key metric of efficiency of use. On the other hand, in both courts, there had also been a corresponding reduction in delays and overruns – which points to an improvement in court room efficiency. In other respects, the evidence was also mixed. For some case types, the number of cases listed and heard was higher than in the pre-pilot period (e.g. Manchester non-small claims civil), whereas for others the number of cases listed and heard was lower (e.g. Brentford small claims) or did not seem to have changed at all (e.g. Manchester small claims).

Given Brentford ran FOH pilot sessions in addition to business as usual sessions, it was also possible to assess across all court rooms within the court, whether the total amount of efficient time changed. Like with the Manchester court, Brentford's FOH sessions were found to be at least as efficient as pre-pilot sessions. As such, this meant that the total amount of efficient court time

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<sup>5</sup> Case time estimates can vary significantly. This means that the two case-based indicators are imperfect measures of court room efficiency, and should not be interpreted in isolation. Instead, they should be understood in combination with the latter three indicators, which are more direct time-based measures, to fully understand the impact of the FOH pilots on court room efficiency.

<sup>6</sup> For this chapter, the pre-pilot period is the two months prior to the pilots starting; looking only at sessions that contained similar case types to the FOH pilots.

increased at Brentford. This was, however, conditional on an increase in available judicial and staff resource, as additional sessions were run. Whilst it is possible that running FOH sessions in the Manchester court in addition to business as usual sessions could have also led to an increase in total efficient time in the same way as Brentford, this particular model of operation was not tested so it has not been possible to assess whether this would have been the case.

In addition, disaggregation by session time indicated that across both courts, the percentage of session length spent in hearings indicator tended to fall throughout the day. This suggests that running FOH sessions earlier during the day (i.e. before the business as usual 10AM sessions) might achieve similar levels of efficiency as in non-FOH business as usual sessions for this particular indicator. This could be because it is possible to list more and rely on other court rooms to pick up any overruns that might occur.

## Speed of delivery of justice (Chapter 6)

The effect of the FOH pilots on the speed of delivery of justice was explored by looking at the average length of time taken to receive an outcome. This was examined by using HMCTS case-level data and calculating the number of days between when a case was issued and when a judgment was made. It was only possible to do this for the small claims case type. Based on this evidence, the FOH pilots did not appear to have had any impact on speed of delivery of justice. In Brentford, the number of days that elapsed between when a case was issued and a judgment made was 276 days (39 weeks) during the pre-pilot period, increasing to 321 days (46 weeks) during the FOH pilots; whereas in Manchester this was 284 days (41 weeks) during the pre-pilot period, falling to 256 days (37 weeks) during the FOH pilots. Neither of these differences were statistically significant.

Factors which could contribute to this i.e. the number of cases heard per hour and the number of profile and sitting days were also explored. As noted in relation to efficiency of use of court rooms (Chapter 5), the effect of the pilot on number of cases heard per hour was mixed: for some case types, this was higher whereas for others it was lower or unchanged.<sup>7</sup> That said, in Brentford, the FOH pilot's sessions being run in addition to business as usual sessions means that conceptually, across all court rooms in the court it was likely that the speed of justice was faster, as on any given day there was more time available to hear cases. Again, this was conditional on an increase in available judicial and staff resource.

There was no evidence from the profile and sitting days analysis that the FOH pilots were pulling forward judicial resource from later periods, thus reducing the amount of judicial resource available in later periods of the financial year. However, profile and sitting days are effectively a finite resource across the court system as a whole. Conceptually, using more profile or sitting days in Brentford for the FOH pilots therefore meant that less of this fixed resource was available for other activities. The fact the evidence presented did not show this however was possibly due to the small scale of the pilots, although it is difficult to say for certain.

## Access to justice (Chapter 7)

The effects of the FOH pilots on access to justice were explored by looking at: convenience of hearing location and hearing time; time taken off work and caring arrangements made to attend a hearing; perceptions of safety and ease of travel to court; distance and time travelled to and from court and availability of legal representation and advice. The reasons given for public users opting out of hearings listed in FOH pilot sessions were also explored to see if these related to access. Overall, the FOH pilots appeared to have positive effects on perceived convenience of hearing

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<sup>7</sup> The case time estimate caveat discussed in Chapter 5 also applies here, as it is a case-based measure.

times, amount of time taken off work and perceptions of ease and safety when travelling to and from court. The FOH pilots had a neutral effect on other indicators.

In the survey of public users, the majority of users who attended an FOH session agreed that the time slot allocated to them was convenient (63%); and FOH users were more likely than pre-pilot users to strongly agree (21% compared to 13%). This supported the views of many legal professionals, legal organisations and court staff interviewed qualitatively, that public users in employment appeared to find the sessions convenient, enabling them to fit hearings around their work commitments.

The survey found no difference between FOH public users and pre-pilot public users in likelihood to have had to take time off work to attend court (47% compared to 51%); however FOH pilot users were more likely than pre-pilot users to have taken four hours or less off work to attend their hearing (11% compared to 5%). Among those that attended an FOH session and took time off work to do so, a third (35%) were required to use annual leave or holiday. This is significantly lower than the proportion of pre-pilot public users that were required to use annual leave or holiday (52%). There was no difference between FOH public users and pre-pilot public users in the proportion who had to arrange care for dependents.

Regarding perceived ease of travel, pre-pilot public users were more likely than FOH public users to consider their journey to be difficult, both to court (20% compared to 12%) and from court (16% compared to 10%). A similar picture emerged regarding the perceived safety of the journey; pre-pilot public users were more likely than FOH users to report having felt unsafe when travelling, both to court (4% strongly disagreed that they felt safe compared to 1%) and from court (again 4% compared to 1%).

The survey evidence suggested that the FOH pilots had not negatively affected the ability of public users to access legal representation and advice. Among public users that attended an FOH session and had a lawyer represent them, more than four-fifths (81%) agreed that it was easy to find a lawyer to represent them and three-quarters (76%) agreed that they were able to get the lawyer they wanted. There were no significant differences between the responses of pre-pilot public users and FOH public users.

In Manchester, 18% of cases listed in the FOH pilots opted-out, while in Brentford this was 16%. Where reasons were given, the most common reason for opting out was the hearing being inconvenient for work commitments, followed by childcare commitments – suggesting that, while overall the FOH pilot sessions tended to be seen as convenient by members of the public who attended, they were not convenient for everyone.

## Quality of justice (Chapter 8)

The effects of the FOH pilots on quality of justice were explored by looking at: the percentage of listed cases not heard; use of duty solicitors; satisfaction with case outcomes; and public and professional user perceptions of quality of justice. Overall, the FOH pilots appeared to have positive effects on public user satisfaction with case outcome and perceptions of quality of justice, and, in Manchester, positive effects on the percentage of cases listed that were not heard; but negative effects on perceived quality of justice among legal professionals and some members of the judiciary. The FOH pilots had a neutral effect on other indicators.

Considering the extent to which hearings were listed but not heard, in Manchester this was lower within the FOH pilots for all three case types included in the pilot, whereas for Brentford there were no significant differences. The differences in Manchester may be a function of the opt-out mechanism (i.e. those cases that ended up listed were for individuals more likely to go ahead). For this indicator, the effect of the FOH pilots was a small increase in the quality of justice for Manchester, and no change for Brentford.

There was also no difference in levels of use of the Legal Aid Agency-funded Housing Possession Court Duty Schemes (HPCDS) during the FOH pilots, which is an indicator of the extent to which public users needed on-the-day emergency advice and advocacy when facing housing possession proceedings.

The survey found that most FOH public users were satisfied with the outcome of their case (68%). Pre-pilot users were more likely than FOH users to be very dissatisfied with the outcome (23% compared to 13%); although this may be influenced by case outcomes (there was an indication that FOH users were also more likely to have received a judgment from their hearing than pre-pilot users).

There was no difference between FOH and pre-pilot users in the proportion that felt they received a fair hearing (69% compared to 62%) or in the proportion that had confidence in the way the court handled their case (68% compared to 60%). However, FOH public users surveyed were more likely than pre-pilot users to agree that their case was given an appropriate amount of care and attention (71% compared to 59%). They were also more likely to strongly agree that they were fully informed about the process of their case being heard (20% compared to 11%) and about court procedures and facilities (19% compared to 10%). A potential explanation for this is that, in qualitative interviews, court staff and members of the judiciary noted that, during FOH sessions, fewer cases being heard overall enabled court staff and judges to give more time to individual public users.

In qualitative interviews, legal professionals and members of the judiciary felt that the FOH pilots had had negative effects on quality of justice. The most common reason for this was that earlier starts and later finishes to the working day had affected concentration and energy levels of legal professionals. Members of the judiciary did not agree that their own energy and concentration levels had been affected, however.

## Experiences of public users (Chapter 9)

The experiences of public users were explored by looking at: how well FOH worked for public users overall; access to refreshments and breaks; the number of litigants in person; whether friends and family attended; and waiting times. Overall, the FOH public users were more likely to represent themselves; and the FOH pilots appeared to have a positive effect on waiting times. The FOH pilots had a neutral effect on other indicators.

When asked how their experience of attending court compared to their expectations, most FOH public users surveyed said that it was about the same (32%) or better than expected (42%). This is in line with pre-pilot users (about the same: 34%; better than expected: 33%).

The survey indicated that, compared to pre-pilot users, FOH users were more likely to have represented themselves (66% compared to 55%). There was no significant difference between pre-pilot users and FOH users in the proportion that used legal representation.

Most FOH users were not accompanied by a friend or family member, and this is in line with pre-pilot users (60% for FOH users; 55% for pre-pilot users), suggesting that the timing of FOH sessions did not impact on the ability of public court users to obtain support from family or friends.

Amongst both FOH and pre-pilot public users surveyed, a minority said they were able to get sufficient food and refreshments and a break while at court.

Most public users that attended an FOH session reported that they experienced a wait between the time their hearing was scheduled to start and the time it actually started, but FOH users reported shorter waiting times (45 minutes on average within FOH sessions compared to 60 minutes within pre-pilot sessions). This result is broadly in line with the findings regarding delays, presented in Chapter 5.

## Working lives of legal professionals (Chapter 10)

The effect of the FOH pilots on the working lives of legal professionals, including the judiciary, barristers, and solicitors, as well as court staff, legal aid practitioners, letting agents, and local authorities, was explored by looking at: legal professionals' working hours, workloads, personal agency and self-direction, caring arrangements made, their perceptions of safety and ease of travel to and from court, time taken to travel to and from court, their access to meals and refreshments, the availability of legal support services and the reasons for legal professionals' opting out of FOH.

Many solicitors and barristers attended only one to two FOH sessions and a small number of judges sat most FOH sessions so the true impact of FOH on legal professionals' lives if it were to be rolled out or scaled up is hard to establish.<sup>8</sup> That said, there were indications of negative impacts on the working hours of legal professionals; workloads of legal professionals and listing staff; childcare arrangements; and the availability of duty solicitors to enable courts to hear housing possession proceedings. The FOH pilots had a neutral effect on other indicators.

FOH impacted the working lives of different legal professionals, judges and court staff in different ways. Working hours for judges were typically shifted on a FOH hearing day whereas legal professionals' hours were sometimes extended, and their workload displaced from one part of the day to another, or to the next day. Consequently, the workloads for judges on FOH hearing days were largely unchanged. In contrast, listing staff experienced increased workloads because of FOH (for instance, listing staff managing opt-outs). A recurring view from legal professionals was that FOH would entail extended working hours because chambers and firms, and self-employed practitioners, had not adapted their operating hours to allow barristers and solicitors to shift, rather than extend their working day (due to the short-term nature and small scale of the pilot). In practice, however, a minority reported actually having worked longer hours when participating in FOH hearings.

Those with young children reported increased contingency planning with colleagues, friends and family, adding to their workload, and making work/life balance more emotionally and practically challenging than it was under business as usual. Professionals who opted out of the FOH pilots often did so because of their childcare responsibilities, which prevented them from having the time and capacity to accommodate displaced workloads. The small scale of the FOH pilots and the few FOH sessions attended by most barristers and solicitors meant many could accommodate the occasional FOH session, usually drawing on the goodwill of their support networks. However, they reported that there would be issues with them covering FOH sessions if they were to become commonplace and at scale.

Judges did not feel their professional agency was impacted by the FOH pilots but some did find late hearings limited their progress with box work, due to unavailability of colleagues to discuss cases or challenges. Like chambers and firms, other organisations involved in a case did not adjust their operating hours on FOH days because of the small scale and short nature of the pilots. This meant solicitors and barristers could not always progress a case because they could not access instruction.

Judiciary, legal professionals and court staff living near their court had no issues with travelling to and from court around FOH sessions. Travel for FOH sessions was more burdensome for individuals who took public transport to the courts and live further from the courts. Whilst legal professionals were generally less likely to mention concerns about their safety in travelling to and

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<sup>8</sup> In addition, there was a wider discourse about the FOH pilots within the legal profession which may have informed some of the views expressed. To account for this, this report gives more weight to reports of what has actually happened to date, than to concerns about what might happen in future. That said, it is not possible to fully unpick in what ways and to what extent views were informed by wider debate within the profession.

from work, some female legal professionals attending late FOH sessions in both courts did express concerns. These professionals felt less safe leaving late hearings because of fewer people around and the courts being darker.

Legal professionals, except one, did not experience issues with access to meals and refreshments during FOH sessions because they either brought their own refreshments to court or in the case of Brentford, legal professionals were already aware the court does not have food or drink facilities on site.

Some legal aid practitioners for the Housing Possession Court Duty Schemes (HPCDS) at each court opted-out of taking part in FOH because of the challenges with arranging childcare during early and late hearings and the expected knock-on effects to their work/life balance. This meant that most FOH sessions in both courts involving a duty solicitor were attended by one of two solicitors, limiting the days of possession proceedings that the court could offer. The duty solicitors that attended FOH sessions reported a relatively light workload within the session compared to standard operating hours.

## Cost of justice (Chapter 11)

Cost of justice effects were explored by looking at: court operating costs, firm and personal costs to solicitors, barristers and judges, letting agents, local authorities, the courts and HMCTS, changes in LAA legal aid claims and claims related to the duty solicitor scheme and LAA collated data on pilot participation fees. Whilst running the FOH pilots did lead to an increase in total court costs, which was expected (in particular for Brentford), it has not been possible with the data available to definitively say whether on a per session basis the FOH pilots' sessions had higher or lower costs versus pre-pilot sessions. As such, the effect on court costs of the FOH pilots is recorded as inconclusive. The FOH pilots had a neutral effect on the other cost indicators.

The total estimated additional costs to the courts for running the FOH pilots was £10,500 - £11,500 for Manchester and £46,500 - £48,500 for Brentford. For Manchester, this additional cost represents 0.1% of the total 2019/20 financial year costs, and for Brentford between 2.8% and 2.9%. The reason the figure is higher for Brentford is because the pilot was much larger in relative terms to the size of the court than in Manchester. The higher total estimated costs for Brentford compared with Manchester mainly reflects the fact that FOH sessions were held in addition to business as usual, and that both FOH sessions were held outside of business as usual hours.

There was no statistically significant difference in the number of eligible Housing Possession Court Duty Schemes (or nil sessions) claims made between the FOH pilots and pre-pilot periods – likely due to the small scale of the pilots relative to the courts as a whole. The take-up of the pilot participation fee<sup>9</sup> was much lower than expected, and no claims were made in Manchester.

Professional users did not typically incur costs for attending FOH sessions. For the minority that did incur costs, these ranged from relatively small (e.g. £5-£10 for a meal) to quite large (e.g. £180 for taxis) costs on a per session basis. The tendency of professional users not to incur these additional costs may be explained by the few FOH pilot sessions most barristers and solicitors sat. Further costs may be incurred if flexible operating hours became standard.

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<sup>9</sup> The pilot participation fee was a payment administered by the LAA and funded by HMCTS “for publicly funded practitioners taking part in Flexible Operating Hours pilots, with a fee of £100 for attendance at a housing duty solicitor slot and £50 for attending a single hearing.”

## Equality and diversity (Chapter 12)

Equality and diversity effects were explored by examining: the profile of public users that participated in pre-pilot and FOH pilot sessions; the views of legal professionals on the effect the FOH pilots had on them and public users; the profile of public users that opted-out of the FOH pilots, and their reasons for doing so.

Some concerns that have been expressed about the potential equality and diversity impact of FOH relate to relatively long-term impacts (for example the attractiveness of legal professions to some groups) that were not possible to test within the evaluation of a pilot of this duration. The indicators also do not cover all protected characteristics.<sup>10</sup>

The FOH pilots appeared to have had a neutral equality and diversity effect on public court users. However, there were indications of negative equality and diversity effects on legal professionals.

The survey found little difference across each of the protected characteristics in the profile of pre-pilot and FOH pilot public users. FOH pilot court users were more likely to be male and married, which may reflect the types of cases included in the FOH pilots. Beyond this, there was little demographic difference recorded. Legal professionals did express concern, however, that the FOH pilots could have a greater negative impact on vulnerable clients with caring responsibilities, but there was no statistically significant evidence from the public user survey to support this.

The opt-out survey indicated no statistically significant difference in the profile of public users opting-out of an FOH session compared to those who attended, although this is likely to be a function of the small number of responses. The reasons for public users opting out were predominantly to do with inconvenience to working hours. Caring responsibilities, especially childcare responsibilities, also featured prominently.

Legal professionals expressed concern that, within their profession, the FOH pilots had impacted more negatively on women and junior barristers. Female professionals were considered more likely to be carers, and therefore more likely to need to make alternative care arrangements for an FOH session than their male counterparts. There was concern that they would be more likely to have to turn down FOH sessions as a result.<sup>11</sup> Junior barristers were seen as less able to be selective with their work, and therefore would likely cover the cases listed in FOH sessions in addition to their normal caseloads. This, in turn, could leave them more exposed to the associated potential adverse effects of working during FOH sessions (as discussed in Chapter 10).

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<sup>10</sup> ONS standardised diversity and inclusion questions were asked during the public user survey and public user opt-out survey, in line with HMCTS' commitment to diversity and inclusion best practice. However, this evaluation is not an Equality Impact Assessment and it was not feasible to pick up changes relating to the full range of protected characteristics because the sample sizes involved were not large enough.

<sup>11</sup> Again, there was a wider discourse about the FOH pilots within the legal profession which may have informed some of the views expressed here. To account for this, this report gives more weight to reports of what has actually happened to date, than to concerns about what might happen in future. That said, it is not possible to fully unpick in what ways and to what extent views were informed by wider debate within the profession.

## 2. Introduction

### 2.1. Background

Her Majesty's Courts and Tribunals Service (HMCTS) set up the Flexible Operating Hours (FOH) pilots to look at maximising the use of time in specific court and tribunal hearing rooms to support a more flexible, efficient and effective justice system. The FOH project sits within the HMCTS reform programme.<sup>12</sup>

HMCTS is investing over £1 billion to modernise the courts and tribunals and bring the justice system into the 21st century. Its aim is for a system that is just, proportionate and accessible. The reform programme spans the full range of its work and is ambitious. There are currently more than 50 distinct projects working across all jurisdictions. HMCTS are designing processes around the people who use and need them, to improve access to justice, and to create a system that is more considerate of others' time and convenience, as well as more efficient.

The intention behind the FOH pilots was that longer operating hours should mean that a greater proportion of court time was devoted to productive uses (including hearings and box work), with less time where the court was not in use. For public court users, the aim of the FOH pilots was to offer a possible means to reduce waiting times, increase speed of and access to justice, and reduce the number of hours needed to be taken off work. For legal professionals, HMCTS recognised that the pilots would affect people in different ways. Some would welcome the opportunity to work earlier or later in the day, but it was also recognised that the pilots would introduce a significant change to ways of working.

### 2.2. FOH pilots overview

On 16 November 2018, HMCTS announced Flexible Operating Hours would be piloted in Manchester Civil Justice Centre and Brentford County Court.<sup>13</sup> The initial plans for the FOH pilots were captured in the prospectus<sup>14</sup> and are summarised below.

Late sessions (4:30pm to 7pm) and business as usual (2pm to 4pm) sessions would be piloted in two court rooms at Manchester Civil Justice Centre. The cases were expected to include small claims, housing possession, chancery applications, financial dispute resolutions and urgent family work. The plan was for five additional hours to start; split evenly across two afternoons, then building to three afternoons after the FOH pilots was established in Manchester.

Early (8am to 10:30am) and late sessions (4:30pm to 7pm) in one court room would be piloted at the County Court at Brentford. The cases would potentially include housing possession, mortgage possession and small claim trials. The plan was for five additional hours to start with, on a morning and an evening, building to 12.5 hours after 12 weeks.

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<sup>12</sup> <https://www.gov.uk/guidance/the-hmcts-reform-programme>

<sup>13</sup> The Flexible Operating Hours Pilots: Prospectus for Civil and Family Court Pilots document, published on 16 November 2018, sets out FOH objectives and plans in more detail.

<sup>14</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819570/FOH\\_Pilots\\_Evaluation\\_Plan\\_Summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819570/FOH_Pilots_Evaluation_Plan_Summary.pdf)

Each court established local implementation teams (LITs) including members of the judiciary, senior management and site staff. These teams worked closely with the HMCTS FOH project team and with local service teams to agree strategic decisions and 'on the ground' implementation of the FOH pilots. The precise evolution of the FOH pilots was informed by feedback from the judiciary, legal professionals, court staff and representative bodies for legal professionals, in collaboration with HMCTS, as the project developed. The FOH pilots were implemented as follows:

- In Manchester, FOH pilot sessions began with 4.5 hours a week across one 2PM and one 4:30PM session. This then increased, until week 14 of the FOH pilot, where operations reached an initial peak of 18 hours across four 2PM and four 4:30PM sessions. A two-week break where no cases were heard took place over Christmas. A second peak of 22.5 hours was then reached in the last week of the FOH pilot. Two court rooms were used, and the rooms varied from day to day. Cases heard during FOH sessions were small claims, non-small claims civil, and family cases (not including children's work).
- In Brentford, FOH pilot sessions started with five additional hours across one morning and one evening as planned. This then increased, until week 10 of the pilot, where operations reached a peak of 12.5 hours across three mornings and two evenings. A two-week break where no cases were heard also took place over Christmas. This peak of 12.5 hours a week was then sustained until the end of the pilot. The same court room was used during the FOH pilots. Cases heard during FOH sessions were small claims and non-small claims civil.
- The ability for public users to opt-out of attending a hearing during FOH hours and request a new session time was introduced for the FOH pilots. HMCTS in consultation with the judiciary, legal professions, court staff and legal representative bodies agreed the opt-out function as a condition for the pilots going forward.
- The pilot participation fee (PPF) was introduced for the FOH pilots and paid to those practitioners who attended FOH sessions.<sup>15</sup> The payment was administered by the Legal Aid Agency and funded by HMCTS "*for publicly funded practitioners taking part in Flexible Operating Hours pilots, with a fee of £100 for attendance at a housing duty solicitor slot and £50 for attending a single hearing.*"<sup>16</sup>

The pilot FOH court rooms began hearing FOH cases in the Manchester Civil Justice Centre and Brentford County Court, on 2 September 2019 and concluded on 28 February 2020 in Manchester and 13 March 2020 in Brentford.

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<sup>15</sup> Initially in the FOH pilots' prospectus, this fee was only eligible for those practitioners who attended court outside the hours of 9AM and 5.30PM, however this was later clarified to include all cases that are listed within a FOH session (except for the 2PM Manchester FOH session)

<sup>16</sup> <https://www.gov.uk/government/news/funding-available-for-professionals-testing-extended-court-hours>

# 3. Evaluation approach

## 3.1. Evaluation aims

HMCTS commissioned independent evaluators, IFF Research in partnership with Frontier Economics, to answer the following questions about the FOH pilots:

1. Whether longer operating hours mean that a greater proportion of court time is devoted to productive uses (to include hearings and box work), with less time where the court is not in use;
2. Whether operating court rooms at different times of the day offers more open and accessible justice to citizens; and
3. Whether and how FOH impacts professional and public court users, and the agencies working in the justice system.

The evaluation aimed to assess the impact of the FOH pilots across eight domains, as shown in Figure 1.

Figure 1 Eight domains of impact of the FOH pilots



## 3.2. Logic model

These domains of impact were informed by a logic model which the consortium developed (see Figure 2 below) based on a review of published literature and reports on FOH and similar or related policies combined with consultations and meetings with HMCTS staff, local implementation teams (LITs) and other stakeholders.<sup>17</sup> The logic model traced the expected progression from FOH pilot activities through to shorter- and longer-term outcomes. The evaluation was then designed to collect the data necessary to understand the impact of the FOH pilots across all domains of impact. A list of the reviewed documents and stakeholders consulted is set out in the References section of the Evaluation Plan Summary.<sup>18</sup>

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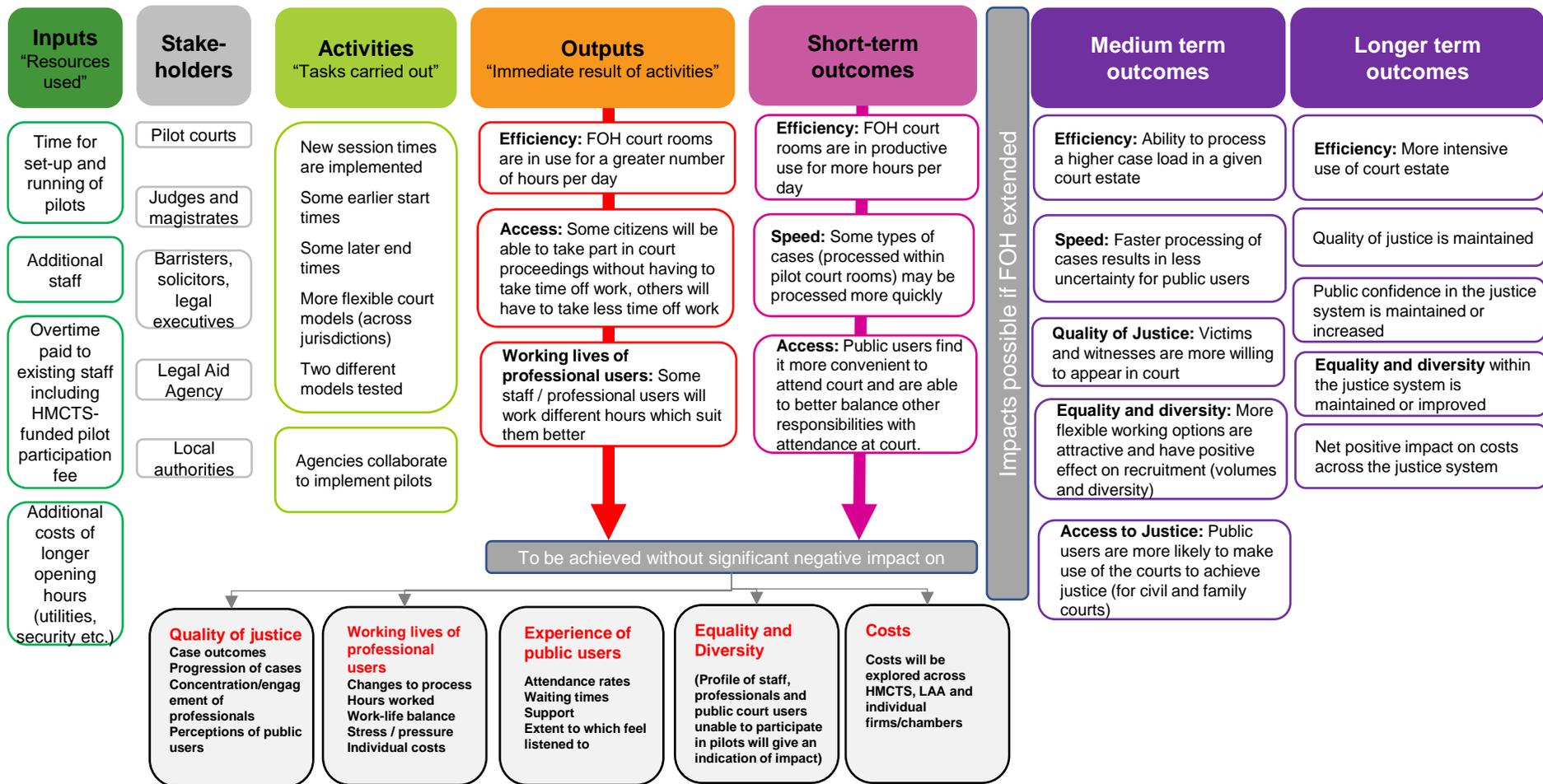
<sup>17</sup> Legal Aid Agency, the Judiciary, Bar Standards Board, Family Law Bar Association, Resolution's Children Committee, The Law Society, The Bar Council, Bar Standards Board, DTUS, Shelter and CILEx

<sup>18</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819570/FOH\\_Pilots\\_Evaluation\\_Plan\\_Summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819570/FOH_Pilots_Evaluation_Plan_Summary.pdf)

Figure 2 FOH pilots logic model

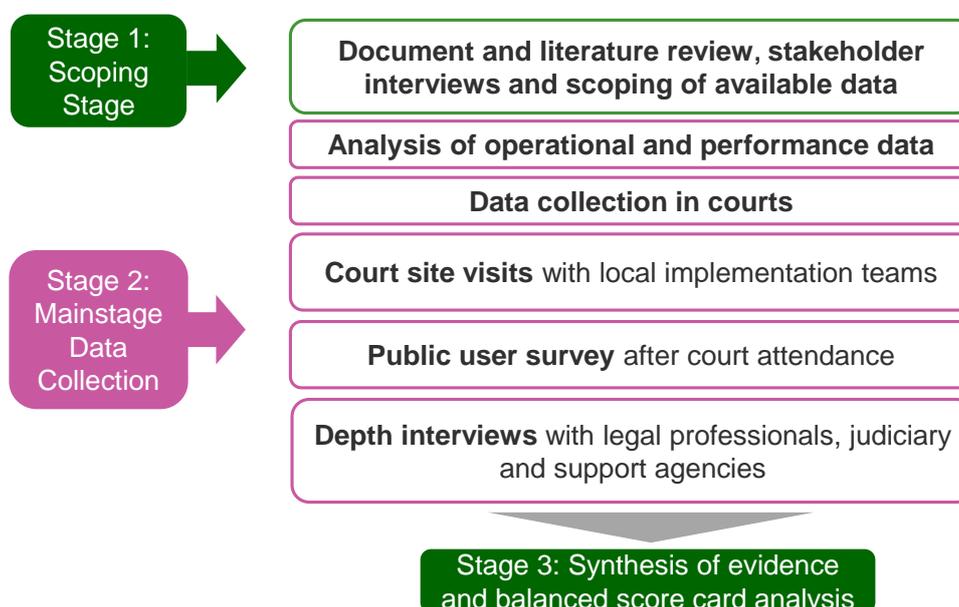
**Pilot rationale (“the problem to be addressed”):** The current usual sitting hours of 10am – 4.30pm (including 1 hour for lunch) do not make best use of the courts’ estate and are not convenient for public users.



### 3.3. Overview of the evaluation approach

No existing data source provided the full range of evidence that was required to evaluate the FOH pilots effectively. Considering the data that was required and the budget and timescales available, an evaluation design combining quantitative and qualitative research methods was developed to answer the three research questions above. Figure 3 below summarises the evaluation approach taken for the FOH pilots.

Figure 3 FOH pilots evaluation approach



Research was conducted in three stages, with the findings from each stage complementing those of the others to develop a complete picture of the FOH pilots. The accompanying Technical Appendix (published separately) gives further details of the methodology, including details on the sample composition, ethical considerations, robustness checks and copies of research materials.

Stage One was carried out from April to May 2018.<sup>19</sup> The policy and programme landscape were mapped, the existing evidence base on the subject reviewed, key stakeholders consulted and available data scoped, ultimately to produce a programme logic model to govern the evaluation. Documents relating to the selection of pilots and the implementation plans for each of the pilots were reviewed, to develop our understanding of aims, objectives and proposed activities and inform logic model development. To ensure the evaluation was underpinned by the latest available evidence on the use of Flexible Operating Hours in courts, a focussed literature review was undertaken, to inform the evaluation design.<sup>20</sup>

Stage Two was carried out from September 2019 to July 2020. Stage Two involved quantitative and qualitative approaches:

- To assess the impact of the FOH pilots in each of the relevant domains of impact, analysis of operational and performance data was carried out. Case level data from HMCTS' centralised databases, data on claims for the PPF, the Legal Aid Agency-funded Housing

<sup>19</sup> The design of the pilots was revisited after further consultation from May 2018, and set-up for Stage Two of the evaluation before September 2019.

<sup>20</sup> See the accompanying Technical Appendix for the list of documents reviewed and stakeholders consulted in this stage.

Possession Court Duty Schemes (HPCDS) claims, and data on the number of profile and sitting days by court was analysed.

- Operational and performance data was also collected from courts. It included data from hand annotated Cause lists and aggregated financial accounts. The hand annotated Cause lists provided important information on the cases that were listed in each court room on a given day in a given session, whether each case went ahead, whether individuals had legal representation, and the scheduled start time and the actual start and finish times of each case and/or session. The aggregated financial accounts contained the monthly ledger entries for the costs incurred by each court.
- Three waves of court site visits were conducted to map the experiences of the court staff tasked with implementing the FOH pilots, to capture any changes to their working lives and to understand any impacts the FOH pilots had on the court operations. The first site visit was conducted in early October 2019 shortly after the FOH pilots were launched. The second site visit was conducted in January 2020, mid-way through the FOH pilots. The final site visit was planned for March 2020, after the FOH pilots had concluded. Due to the outbreak of Covid-19, and the corresponding lockdown measures, interviews for the final site visit were conducted by telephone and video conference in May 2020. The views of 22 court staff operating the FOH pilots were captured through 40 interviews across the three site visits.<sup>21</sup>
- Online and paper self-completion questionnaires were used to survey the court experiences of claimants and respondents in civil cases and applicants and respondents in family cases before and during the pilots. The pre-pilot and FOH public user survey response rates were both 10% (453 of 4740 pre-pilot eligible sample compared with 124 of 1191 eligible FOH pilots' sample).
- Depth interviews captured the views and experiences of judiciary, legal professionals and legal organisations involved in the FOH pilots, including the views of those who opted-out of the pilots. Participants were purposefully sampled to reflect the full range of individuals and organisations that experienced the FOH pilots. The evaluation captured the views of 33 judiciary and legal professionals that took part in FOH pilots, 17 organisations whose staff took part in FOH and six legal professionals that opted out of FOH pilots.

Stage Three was carried out from July to August 2020. This involved producing a balanced score card, which brought together evidence from all of the evidence sources for each of the eight domains of impact to arrive at an overall score. This score was calculated by assessing whether each indicator in each domain of impact suggested an FOH benefit, FOH dis-benefit or no change between the pre-pilot and FOH pilots. The mix of FOH benefits, dis-benefits or no changes found across each indicator then determined what the overall calculated score for each domain of impact was. Each score had two parts:

1. A sign, indicating whether the FOH pilots had a positive, negative or no/neutral impact on that domain of impact; and
2. A level, indicating the strength of that impact, if one was found.

Each domain of impact was treated as equivalent, as there was no *a priori* reason to prioritise any one domain of impact over another.

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<sup>21</sup> Court staff were interviewed at three points in time and we count them once. The format of interviews included one-to-one, paired and mini groups.

## Measuring impact through counterfactuals

To identify impacts and determine whether they were as a result of the FOH pilots, evidence has been collected before and during the pilots. The evidence collected to assess what might have been expected to happen in the absence of the FOH pilots – the counterfactual – varied according to the eight domains of impact under consideration. This included:

- A survey of public users of the courts before the FOH pilots. This was the counterfactual for impacts related to public users;
- Operational and performance information was collected from the courts and HMCTS from before the FOH pilots. This was the counterfactual for efficiency of use of court rooms, access to justice, quality and speed of justice, and cost of justice; and
- Legal professionals' recall of business as usual operations before the FOH pilots. This was the counterfactual for impacts related to legal professionals.

Each evidence type was analysed separately, with the findings from different evidence types then brought together, compared and contrasted where appropriate, to explain what was done to deliver the FOH pilots and to explain its effectiveness.

## 3.4. Changes to the evaluation approach

Changes to the FOH pilots' design and implementation in both courts over the course of the evaluation made it necessary to take an iterative approach to the evaluation methodology to account for both alterations to the FOH pilots and the needs of the courts and HMCTS. In summary, these changes included:

- Reducing sample sizes for the public user survey and the in-depth interviews with legal professionals to reflect the lower than expected number of FOH cases listed because of a combination of over-estimating and under-listing cases to FOH sessions.
- The original plan was to issue the postal survey and one reminder to public users. To support public user engagement in the survey with those that attended a FOH session, ushers issued questionnaires to litigants in person at the end of their hearing, and a second reminder was issued to all public users.
- In response to the coronavirus pandemic, interviews with court staff for the third and final site visit were conducted by video conference and telephone. Fewer interviews were conducted because of staff being unavailable for various reasons. For example, due to staff self-isolating, staff being redeployed to other courts and staff being asked to work from home or work on a rota to reduce the number of staff on sites to maintain social distancing. A mix of perspectives from staff of different job roles were captured, nonetheless.
- HMCTS case level management information data was explored in detail but was not well suited for the evaluation needs of the FOH pilots, particularly with regard to court room utilisation. The use of bespoke specific utilisation logs was also designed and explored in detail for this purpose, but ultimately, to minimise the burden on court staff, the decision was taken to rely on annotated Cause lists to collect data on utilisation. As these Cause lists contained less detailed information than the bespoke utilisation logs, this meant some aspects of the analysis could not be performed. For example, it was not possible to undertake detailed systematic analysis of the reasons for delays in sessions. Additional robustness checks were however carried out on the analysis that could be performed.
- Professional user cost templates were also simplified several times to minimise the data collection burden on professional users. Ultimately, this meant that self-reported estimates

of cost and time impacts were collected, rather than those drawn from actual cost records, as originally envisaged.

- A court costs template was developed, but to minimise data collection burden on courts, it was subsequently agreed that courts would provide higher level general ledger data instead. This reduced the precision with which costs incurred by the courts due to the FOH pilots could be estimated.
- Originally, the intention was to analyse whether there had been any change to legal aid claims more generally, in addition to the HPCDS scheme. This was not possible, given the large time lag of seven months on average between when such claims are made and the end of the eligible hearing. As such, only higher-level data on the HPCDS scheme was analysed.

### 3.5. Limitations of the evaluation

The evaluation draws on a range of methods most appropriate for evaluating the FOH pilots, taking into consideration the pilots' design and evaluation parameters. There are however limitations to the evaluation the readers of this report should keep in mind.

The chosen methodological approach for the evaluation, detailed above, is the most appropriate for the pilot given the ethical, political and logistical constraints of the pilots and the availability and quality of impact evidence. Experimental approaches to impact evaluation, like Randomised Control Trials, are typically seen as the 'gold standard.' This was not feasible for evaluating the FOH pilots because it was not possible to randomly assign cases to FOH sessions ('treatment' group) and business as usual sessions ('control' group) so the best way to evaluate impact and try to attribute that impact to the activities of the FOH pilots was through a quasi-experimental design, gathering evidence before and during the pilots. The main limitation of this approach is the inability to rule out factors other than the FOH pilots that could have caused any changes we see.

Every court is different in terms of its physical structure, its staffing arrangements, its case mix and its profile of professional and public users. As the FOH pilots operated in two courts only, the impacts seen in these two courts could be different to those that would be experienced in others using the same model.

The FOH pilots court rooms were not just operating 'business as usual' for a longer time-period. Instead, for the FOH pilots, very specific types of hearings were listed into the flexible hours slots. This means that an impact in terms of the profile of hearings and the speed with which particular cases progress has been designed-in to the pilots. This approach to listing particular case types into the FOH sessions means that findings for these case types cannot be used to infer the potential impact of rolling out flexible hours sessions to other areas of law, for example, public family law work involving children. In addition, the payment of participation fees to professional users and the ability of public users to opt-out of the FOH pilots, both of which are not part of business as usual activities, limited the ability to infer potential impacts when these factors are not present.

Conclusions on impact are made challenging by the small volumes of cases listed into the FOH sessions in general and for some specific case types in particular. Impacts that are statistically significant and those which suggest a particular direction of change (but were not statistically significant) are reported as such. Whilst statistically significant findings can be interpreted with more confidence than statistically insignificant findings, it remains difficult to draw firm conclusions given the small sample sizes involved. A combination of statistically significant and insignificant directional changes, alongside other FOH pilot evidence sources, may however add up to a more compelling body of evidence against which other studies in the future can be compared.

The evaluation is unable to comment on long term or sustained impacts (e.g. on the diversity of professional users) because of the nature of the FOH pilots and the evaluation parameters.

### 3.6. Reading this report

The remainder of the report presents the key findings from the evaluation, thematically organised around the early implementation experiences and the eight domains of impact described above:

- Chapter 4: Implementing Flexible Operating Hours in Brentford and Manchester
- Chapter 5: Efficiency of use of court rooms
- Chapter 6: The speed of delivery of justice
- Chapter 7: Access to justice
- Chapter 8: Quality of justice
- Chapter 9: Experiences of public users
- Chapter 10: Working lives of legal professionals
- Chapter 11: Costs of justice
- Chapter 12: Equality and diversity
- Chapter 13: Conclusions
- Chapter 14: Implications

The findings draw upon a wide range of different evidence sources and the report signposts to the sources as relevant.

The terms pre-pilot and FOH pilots are used throughout the report to distinguish between views, experiences and impacts related to the time before the pilots and the time during the pilots. The actual definition of the pre-pilot period depends on the type of evidence and analysis conducted. For example, the pre-pilot survey refers to the year before the FOH pilots began (September 2018 to the end of August 2019) and pre-pilot is used to generally convey business as usual or standard operating hours when discussing findings from qualitative discussions.

For survey results, significance tests indicate how likely it is that a pattern seen in data is due to chance, and therefore how likely it is that this is a genuine difference between the groups being compared. All differences noted are significant to a 5% confidence level: by convention, this is the statistical 'cut off point' used to mean a difference is large enough to be believed as genuine. This means the significant differences noted throughout this report have a 95% chance of being 'true', i.e. due to a genuine difference in the groups being compared, and only a 5% chance that the results are just due to chance.

For the analysis of non-survey quantitative results, results are deemed as not statistically significant if they have less than a 90% chance of being true. If results have a greater than 90% chance of being true, then the level of significance (i.e. the degree of statistical confidence in the result) is reported. This lower minimum level of significance is used for the non-survey results, as a result of smaller sample sizes. Given the lower degree of confidence in a statistically significant

result between the 90% and 95% confidence levels, these particular results are termed indicatively significant to differentiate them from the higher confidence results at the 95%+ levels.<sup>22</sup>

Charts presented in the report may not add up to 100% due to rounding and exclusion of responses under one per cent.

Quotes from qualitative interviews reflect the personal views and experiences of participants and are used throughout to illustrate findings. Attributions are included to indicate the type of audience.

Figure 4 below is the key for reading the dashboards included at the start of each chapter reporting on an evaluation metric. A reminder of this key is included in each chapter. A yellow equals symbol indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; and a red down or up arrow indicates a FOH dis-benefit.

**Figure 4 Key for interpreting the findings dashboard**

	No change in a metric between pre-pilot and FOH pilots		Increase in a metric, which can be interpreted as neither an FOH benefit nor dis-benefit
	Decrease in a metric, which can be interpreted as an FOH benefit		Increase in a metric, which can be interpreted as an FOH benefit
	Decrease in a metric, which can be interpreted as an FOH dis-benefit		Increase in a metric, which can be interpreted as an FOH dis-benefit
INC	Results for this metric are inconclusive	N/A	Results for this metric are not applicable, as there is no pre-pilot counterfactual to compare against

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<sup>22</sup> This reduced confidence is because there is an increased chance of reporting false positives at the 90% level – that is, concluding there is a difference when in fact there is none. Whilst there is always a chance of this occurring in any statistical significance test, the likelihood of this is greater at the 90% confidence level.

# 4. Implementing Flexible Operating Hours in Brentford and Manchester

## 4.1. Introduction

Chapter 2 introduced the plan for the FOH pilots. This chapter discusses how each court adapted the implementation of the pilots to their local contexts. The evaluation captured these experiences of local implementation through interviews with members of the judiciary, court staff, legal professionals and legal organisations, including both barristers' chambers and solicitor firms. Lessons learned by those involved in implementing the FOH pilots are discussed in this chapter and may be useful if implementing similar initiatives in the future.

## 4.2. Understanding the purpose of FOH

The extent to which the purpose of the FOH pilots was understood depended on how directly involved individuals were with the pilots. Court staff, legal professionals and judiciary directly involved in FOH understood the purpose of FOH was to offer convenience to the public so they could access courts at different times, as HMCTS intended. Individuals not directly involved in the FOH pilots' delivery in Manchester were either uncertain or misunderstood the purpose of the pilots.

Court staff, legal professionals and judiciary also thought legal professionals might find alternative working hours more convenient, but they understood a purpose of the FOH pilots was to offer convenience to the public.

*"Lots of other places have extended opening hours so it didn't seem that alien that we would do it as well. If you're working, I think it would be a benefit to [attend a hearing] outside of work hours so you don't have to take a whole day off for it." (Court staff, Brentford)*

Less common was the view that FOH intended to maximise the use of time in court and tribunal hearing rooms and thus make better use of court buildings – the main purpose of the FOH pilots - expressed by some legal professionals and judiciary in both courts.

*"Make more use of court[rooms] and make it accessible for longer hours." (Duty Solicitor, 2 FOH sessions, Manchester)*

The understanding of the purpose of FOH was supported by some key channels of communication. In-person meetings led by judiciary in Brentford and led by senior managers in Manchester and in firms and chambers helped attendees hear the same messages at the same time and created a space for immediate responses to questions. Following this up with emails reinforced the messages and reached individuals who could not attend the meetings.

Despite the publication of a pilot prospectus and the formation of local implementation teams to liaise with central HMCTS operations and services around pilot set-up, uncertainty about the main purpose of FOH among court staff, judiciary and legal professionals *not* initially involved in the FOH pilots limited the number of individuals willing to take part in delivery of the pilots. Their

experiences suggested more and clearer communications about the FOH pilots, and at an earlier stage, would have been helpful to support buy-in to the FOH pilots. For example, ensuring consistent messages across court user audiences about what the FOH pilots was (and was not) and why it was expected to be beneficial to different audiences. Communicating the practical elements of the FOH pilots early would also have been beneficial. For example, when the FOH pilots was planned to start and finish, what the operating hours would be at each court, how the FOH pilots would impact on the day-to-day responsibilities of staff and what support and services were available during these Flexible Operating Hours.

### 4.3. Early implementation experiences

#### Staffing the FOH pilots

Each court had different experiences of staffing the FOH pilots with both court staff and judiciary, but overall, both courts had enough staff to deliver the FOH pilots. The different experiences were largely due to the operating contexts of each court. Brentford did not experience much resistance from staff on the FOH pilots launch because their smaller-scale operations made it easier to manage communications and the FOH pilots were the only major initiative that it was trialling at the time.

*“The staff have been really accommodating so far, and so [the pilot] has gone pretty smoothly.” (Court staff, Brentford)*

On rare occasions, after listing levels in FOH sessions increased, Brentford were unable to fully staff some FOH sessions. This affected administrative staff workloads because they were required to usher some FOH sessions. In response, the court outsourced some business as usual listing work to another court to free up listing resource to list to FOH sessions. Mapping the staffing resources required for delivering Flexible Operating Hours, planning in contingency resource and being prepared to adapt to changing needs will be important for any other courts considering such hours.

Manchester initially had relatively few staff interested in taking part in FOH because staff preferred the traditional hours of 10am-4pm. There was also some initial uncertainty about the pilot’s purpose, whether it had union backing and what the practical arrangements for their day-to-day work would be. Unlike Brentford, Manchester had multiple initiatives underway or recently concluded that also occupied staff time and, in the context of these other initiatives, there was concern from some Manchester court staff that FOH might eventually be expected of court staff as a matter of course, as a way of achieving more with the same resource.

*“People, including judges, were suspicious this was about getting more out of them, not out of the rooms.” (Court staff, Manchester)*

Despite this, Manchester was able to secure sufficient resource to run the FOH pilots, and, as the FOH pilots bedded in, staff reported their concern diminished. However, some court staff noted that this was achieved by assuming their initial agreement to participate would still apply even when the terms of taking part changed. For example, ushers were informed they could start late on FOH days before the FOH pilots began but then were no longer able to after it began because of the need to staff the pilots. Similarly, usher participation in the FOH pilots was assumed to extend beyond the original one day agreed when a second FOH day was added. These ushers remained on the FOH pilots because it was operating for a short time.

Staff at Brentford and Manchester courts were paid overtime and had the option of taking time off in lieu for hours worked outside their normal working hours during the FOH pilots. Other courts, in future, considering Flexible Operating Hours can maintain staff engagement and reduce anxiety about change by communicating sensitively and early on how changes will affect work - for

instance, whether court staff will work longer or shifted hours, and whether they will receive time off in lieu or overtime.

### Listing hearings to the FOH court rooms

Both courts were initially cautious in listing hearings in FOH sessions, due to concern about not being able to cover all listed hearings if hearings were to run longer than expected. Manchester continued to list conservatively for this reason. In practice, this meant listing under the more typical 120% for the courts. After this bedding in period, Brentford reportedly began to increase the number of cases listed into each FOH session.

*"We started off a little bit gentle... but we are now aiming to list in the same way as we would in an ordinary equivalent session." (Court staff, Brentford)*

Manchester continued to list conservatively rather than listing hearings in line with pre-pilot operations - around 120% to account for no-shows and early settlements. This was largely driven by a fear of not being able to cover all listed cases if hearings were to run longer than anticipated. During normal operating hours Manchester normally has 20-30 judges available giving lots of scope for moving hearings between judges/courtrooms where necessary but during FOH sessions there were only two judges available, which greatly reduced the scope for moving hearings around.

*"On a normal day we'll list four judges doing 30 hours in the morning and 25 hours in the afternoon, so at least double or triple listing. The back-up is that we have 20 to 30 judges in the building that can jump on it if needs be. When we've only got one or two judges in the building [for FOH sessions], they're obviously going to be more cautious with listings." (Court staff, Manchester)*

The FOH pilots did not experience overflow issues because of the small scale of the operations and the conservative listing. Other courts, in future, considering Flexible Operating Hours would benefit from having a plan to manage overflow of hearings if FOH pilots' listing is to be on par with business as usual listing. With reduced judiciary resource and therefore useable court room space available outside of normal operating hours, courts will need plans for managing any overflow of cases.

Brentford had a dedicated court room for FOH and Manchester did not. Without a dedicated court room for FOH, Manchester's listing staff found the practicalities of regularly identifying an available court room to hear FOH sessions an extra consideration, though manageable given the small scale of the pilot. Regardless of what approach other courts considering Flexible Operating Hours take, they will need a process and the administrative resources for hearing FOH sessions.

### Processing public users who opted out of a FOH session

The ability for public users to opt-out of attending a hearing during FOH hours and request a new session time was unique to the FOH pilots. HMCTS in consultation with the judiciary, legal professions, court staff and legal representative bodies agreed the opt-out function as a condition for the FOH pilots going forward. The opt-out function introduced additional administrative work for the listing teams to receive and process the opt-outs.

Each court took different approaches to responding to opt-outs. Opt-outs by email were permitted up to 24 hours before the hearing date for civil cases in Manchester or by email and telephone until the day of the hearing in Brentford.

*"What we didn't realise would create quite so much work is the people opting out and the additional work that created. Because of the nature of how the opt-outs could be done - they could just telephone the court or email right up until the last minute, then that had quite an*

*impact because work then had to be done immediately. Because if one party opted out you immediately had to notify the other side and draw the order.” (Court staff, Brentford)*

There was scope for replacing a hearing slot with a new case when a public user opted out, depending on how much notice was given. Both courts also sought to find the next available hearing time for those individuals opting out. Those opting out were reported to be sometimes requesting an alternative FOH session – i.e. this was less about how convenient or otherwise the FOH sessions were, than the opt-out process having simply given them the option of choosing.

Other courts, in future, if considering a pilot such as this with opt-outs may want to develop a consistent approach to managing opt-outs and back-filling hearings before they start operating FOH sessions. Another consideration is whether to increase listing levels to compensate for opt-outs. Given the added complication of administration, ideally the opt-out option would not be provided for FOH sessions, or only available for public users with certain circumstances. However, if it were to be retained then it would be sensible to record the reasons for opt-out in more detail to encourage fair use and collect more detailed insight. If retaining the opt-out mechanism, then it would be advisable to establish a dedicated inbox for receiving opt-outs, and a systematic process for reviewing and rescheduling each opt-out.

### **Other practical lessons learned about implementing FOH pilots**

The evaluation captured additional lessons from the practical implementation of the FOH pilots that may be useful for other courts, and the individuals and organisations they work with, considering flexible operating hours. These include:

- Conducting a process mapping exercise to sense check what other services or audiences need to be part of the implementation discussions. For example, speaking with security providers early to explore practicalities of securing the building outside typical operating hours and reviewing the fire evacuation plan.
- Considering how best to assess which staff are able to work alternative hours. This could be through an initial staff poll then an opt-in or an opt-out approach.
- Considering the contracts and operating hours of all connected to a hearing, encouraging time-shifted rota work where possible for judges, solicitors and barristers instead of extended hours.
- Updating court website details with the court opening times for FOH days so professional and public users know their listing for an early or late hearing is not an error and the court is operating at that time.
- Liaising with building staff, like cleaners, security and administrative staff about the days the building will be open earlier and later.

The remainder of the report discusses the effect of the FOH pilots across all eight domains of impact, and in which ways.

# 5. Efficiency of use of court rooms

## Summary of findings on efficiency of use of court rooms

**At a glance... Efficiency of use of court rooms**

1	Number of cases listed per hour the court room was open	=	2	Number of cases heard per hour the court room was open	=
3	Percentage of session length spent in hearings	↓	4	Number of minutes delayed before starting per session	↓
5	Number of minutes overrunning per session	↓			

1 The impact of the FOH pilots appears to differ by case type, with some types experiencing no change, some an increase in cases listed per hour and some a reduction. Which case types differed between the two courts.

2 In a similar vein, the impact of the FOH pilots appears to differ by case type, and largely moved in the same direction as the results for the number of cases listed per hour.

3 This indicator was lower in the FOH pilots for all of the case types across both courts – although for small claims cases, it did appear to trend upwards over time.

4 This indicator showed that during the FOH pilots for both courts, there was either a reduction in the number of minutes delayed before starting per session versus the pre-pilot, or no change.

5 Similarly, the impact of the FOH pilots for both courts showed predominantly a reduction in the number of minutes delayed before starting per session versus the pre-pilot, or no change. The magnitude of differences were however smaller than for delays.

A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

### 5.1. Introduction

The effect of FOH on the efficiency of use of court rooms was explored by looking at five indicators: the number of cases listed per hour the court room was open, the number of cases heard per hour the court room was open, the percentage of session length spent in hearings, the number of minutes delayed before starting per session and the number of minutes overrunning per session.<sup>23</sup> No indicator provides a clear cut view on court room efficiency but together they provide a picture of the way in which court rooms were used during the FOH pilots and how that compared to pre-pilot uses. These indicators are presented separately for each court. Within each court, indicators are disaggregated by case type.

A positive outcome in this domain would be that during the FOH pilots, court rooms were used more efficiently than court rooms which did not run flexible operating hours– i.e. on average they heard more cases (holding constant the type of case), used more of the time available to hear cases, experienced fewer/shorter delays to starting and had fewer/shorter overruns. A negative outcome would be that they heard fewer cases, used less of the time available to hear cases,

<sup>23</sup> Each of the five indicators are calculated on a per unit of time basis (e.g. per session, per hour and as a percentage of time available) so that comparisons between pre-pilot sessions and pilot FOH sessions are performed on as close to a like-for-like basis as possible. This is performed because the length of sessions differs e.g. the 10AM pre-pilot session is 3 hours long, whereas the 4:30PM pilot session is 2.5 hours long.

experienced more/longer delays to starting and had more frequent/longer overruns. A neutral outcome would be no change in these indicators.

Whether FOH had an overall positive, negative or neutral impact on the efficiency of use of court rooms cannot be determined by looking at any one of the five indicators in isolation – as many different combinations of indicators could suggest an overall positive, negative or neutral effect.

In addition, taking a wider definition of efficiency, which includes whether a FOH session was run *in addition* or *in place of* business as usual sessions, it is possible to assess the impact of FOH on the total amount of efficient time spent in FOH pilot court rooms. If FOH sessions were run in addition to business as usual sessions and cases were heard, across all court rooms within the court, the total amount of efficient time would increase. The extent to which FOH sessions were more, less or no different in their efficiency to business as usual sessions would determine the size of any increase.

The two key questions this chapter therefore aims to answer are:

1. Was the time set aside for FOH sessions in pilot court rooms used more or less efficiently than equivalent sessions run at business as usual times of day?
2. Across all court rooms within the court during the FOH pilots, did the total amount of efficient time go up, down or stay the same compared to pre-pilot period?

This chapter draws on evidence from hand annotated Cause lists<sup>24</sup> and qualitative interviews with professional users. Findings are thematically organised by indicator.

## 5.2. Analytical approach

To determine the impact of Flexible Operating Hours on the efficiency of use of court rooms, sessions in court rooms which did not run Flexible Operating Hours (which took place before the pilot began, and are termed pre-pilot) were compared with sessions in court rooms during the pilots, which introduced FOH.<sup>25</sup> In both of the courts, it was possible to split this analysis by case type.<sup>26</sup>

For this chapter of the report, the pre-pilot period is defined as the 2 months prior to the FOH pilots starting (i.e. from the end of June 2019 to the end of August 2019). The pre-pilot period does not contain all the cases that were listed during the pre-pilot period in each court, rather it contains a sample of sessions that contained similar case types to the FOH pilots. This pre-pilot period acted as a ‘business as usual’ benchmark against which the FOH pilots was compared.

Of the five indicators presented<sup>27</sup>, the three key indicators that help answer this first question are 3) the percentage of session length spent in hearings, 4) the number of minutes delayed before starting per session and 5) the number of minutes overrunning per session. Whilst indicator 1) the number of cases listed per hour the court room is open, and 2) the number of cases heard per hour the court room is open are insightful, they are used in this chapter to uncover potential listing differences – rather than to directly assess court room efficiency. This is because case time

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<sup>24</sup> A Cause list is a document which contains the list of cases to be heard in a session. An illustrative example is provided in the Annex of the Technical Appendix

<sup>25</sup> By comparing the FOH pilot and pre-pilot averages for each of the five indicators and performing statistical tests to understand whether any differences are statistically significant or not, the impact of introducing FOH can be assessed as a whole.

<sup>26</sup> This has been performed to ensure that similar case types are compared before and during the FOH pilot, so that any differences seen are more likely to reflect the impact of the pilot, rather than the case mix.

<sup>27</sup> A detailed explanation for how these indicators were calculated is included in the Annex of the Technical Appendix

estimates can vary significantly, even if they are of the same type. As such, these two case-based indicators are imperfect measures of court room efficiency, and should not be interpreted in isolation – rather in combination with the three more direct time-based measures of court room efficiency.

In addition to the above, it is worth noting that the Manchester and Brentford courts implemented different FOH operating models. The key differences between these different operating models, which are relevant when interpreting the results in this chapter, are outlined below:

1. In Manchester, the court piloted a shift in their business as usual non-FOH sessions to FOH times. This aimed to assess the impact on court room efficiency of replacing non-FOH sessions with FOH timed sessions. This meant the Manchester model aimed to answer the first key question above: was the time set aside for FOH sessions in pilot court rooms used more or less efficiently than equivalent sessions run at business as usual times of day? In Brentford however, the pilot involved running FOH sessions in addition to non-FOH sessions. This was possible because Brentford, along with other courts in the region, had an increase in their allocation of profile days<sup>28</sup> and decided to use some of that allocation to cover all of the FOH sessions. This operating model aimed therefore to answer both the first key question outlined above and the following second key question: across all court rooms within the court during the FOH pilots, did the total amount of efficient time go up, down or stay the same compared to pre-pilot period?
2. In Manchester, FOH sessions ran from 2PM to 4PM and from 4:30PM to 7PM – whereas in Brentford, the FOH sessions ran from 8AM to 10:30AM and from 4:30PM to 7PM. So, whilst both of Brentford’s FOH sessions were in FOH hours, the 2PM FOH session for Manchester had the same start and finish time as their business as usual non-FOH sessions. This meant that the 2PM FOH session in Manchester may or may not show an FOH effect.

### 5.3. Case types in the FOH pilots

In the Manchester court, during the FOH pilot a total of 237 cases were listed on published Cause lists that were processable, across the three case types. As Table 1 shows, the distribution of these cases was heavily weighted towards Manchester non-small claims civil cases.<sup>29</sup> This is because this category includes RTA Stage 3 and Rents cases, which typically list high numbers in a given court session. What is key to note here is that the analysis does not use individual cases as the unit of observation, rather the five indicators are calculated on a per-day basis. On that measure, the case type with the most observations in the FOH pilots are Manchester small claims cases, with a total of 16 days of data, and the least being non-small claims data with 10 days of data.

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<sup>28</sup> Brentford was not given this additional allocation specifically for FOH. More information on profile days is provided in Chapter 6

<sup>29</sup> Additional details on the specific types of cases in the non-small claims civil and family (not including children’s work) categories is provided in the Annex of the Technical Appendix.

**Table 1: Number of cases listed on the Cause lists that were able to be processed by case type for Manchester Civil Justice Centre**

	Manchester small claims		Manchester non-small claims civil		Manchester family	
	Days	Cases Listed	Days	Cases Listed	Days	Cases Listed
Pre-pilot	20	316	27	386	15	96
FOH pilot	16	71	10	131	11	35

*Source: Annotated Cause lists*

In Brentford County Court, during the FOH pilots the total number of cases that were listed on published Cause lists that were processable were 393 across the two case types. As Table 2 shows, this is heavily weighted on both a day and case number basis towards the non-small claims civil case types, in contrast to Manchester.

The key result to note from Table 1 and Table 2 is that the total number of days upon which the analysis is based is small, and as such the results should be treated with caution and may not be generalisable. As a general rule though, those categories with greater number of days, such as Brentford non-small claims civil cases, can be interpreted with relatively more confidence than those with fewer days of data, such as Manchester non-small claims civil cases.

**Table 2: Number of cases listed on the Cause lists that were able to be processed by case type for Brentford County Court**

	Brentford Small Claims		Brentford Non-Small Claims Civil	
	Days	Cases Listed	Days	Cases Listed
Pre-pilot	12	128	26	269
FOH pilot	30	66	81	327

*Source: Annotated Cause lists*

It's also worth noting that the figures in both Table 1 and Table 2 are taken from annotated Cause lists and represent the final figures the analysis is based on, after any adjustments were made. Information on the adjustments made to the final sample can be found in the Annex of the Technical Appendix.

## 5.4. Summary of results

The results of the five indicators for each court, split by case type are presented in Table 3 and Table 4. In both of these tables, there is an arrow next to each of the five indicators for each case type. This arrow shows the direction of any change in averages between the pre-pilot and FOH-pilot averages (it does not indicate whether a change was a positive or negative result). For example, an upward arrow suggests the FOH pilots had a higher average than the pre-pilot for that indicator. Next to each arrow for each case type, there is also a box which states a) whether the difference is statistically significant, and if so b) how statistically significant that difference is.<sup>30</sup>

The evidence in Table 3 and Table 4 suggests that, for the first key question this chapter sought to answer (i.e. was the time set aside for FOH sessions in pilot court rooms used more or less

<sup>30</sup> To aid the reading of these two tables, there is a traffic light system which ranges from red through to dark green. Red means that the reported differences are not statistically significant, as they have a probability of being due to chance that is greater than 10% - which is above a generally accepted threshold for statistical significance. Amber is used when the probability lies between 5% and 10% (making it more of an indicative result), light green when it lies between 1% and 5% and dark green when it falls below 1%. Moving from red to green therefore indicates increasing confidence that any difference observed is not due to chance.

efficiently than equivalent sessions run at business as usual times of day?), there has been a broadly neutral effect of FOH on the efficiency of court rooms in the FOH pilots compared to the pre-pilot period for both courts. While less time has been spent hearing cases in FOH sessions, a key metric of efficiency of use, there has also been a corresponding reduction in delays and overruns – which points to an improvement in court room efficiency. Whilst there has been an overall broadly neutral effect of the FOH pilots on the efficiency of use of court rooms, the composition of that efficiency has changed.

From the interviews with court staff however, it appears that FOH cases were listed more conservatively in Manchester – which could be driving the fall in the percentage of session length spent in hearings. Given the rationale for this was that during FOH hours, there were no other court rooms available if proceedings overran – unlike during non-FOH hours – then including additional FOH court rooms running concurrently might reduce this conservative listing, although this cannot be known for certain.

The second key question this chapter sought to answer was whether the total amount of efficient time in FOH pilot court rooms went up, down or stayed the same. This question only applies to the Brentford operating model, as FOH pilot sessions were run in addition to business as usual sessions. Given the additional sessions were broadly similar in their efficiency to the business as usual sessions, running additional FOH sessions meant that across all court rooms within the court, the total amount of efficient time increased at Brentford. This was however conditional on an increase in available judicial and staff resource, as additional sessions were ran (see the court costs section in Chapter 11 for more information on the additional costs incurred). Whilst it is possible that running FOH sessions in the Manchester court in addition to business as usual sessions could have also led to an increase in total efficient time in the same way as Brentford, given this particular model of operation was not tested it has not been possible to assess whether this would have been the case. A more detailed discussion of the results lying behind Table 3 and Table 4 are presented below, and are split by indicator.

**Table 3: Summary of results for Manchester Civil Justice Centre**

Indicator	Manchester small claims		Manchester non-small claims civil		Manchester family	
	Change vs. pre-pilot	Statistical test result	Change vs. pre-pilot	Statistical test result	Change vs. pre-pilot	Statistical test result
Cases listed per hour the court room is open	–	NOT SIGNIFICANT	↑	10% LEVEL	↓	5% LEVEL
Cases heard per hour the court room is open	–	NOT SIGNIFICANT	↑	5% LEVEL	–	NOT SIGNIFICANT
Percentage of session length spent in hearings	↓	10% LEVEL	↓	1% LEVEL	*	*
Number of minutes delayed before starting per session	↓	1% LEVEL	–	NOT SIGNIFICANT	*	*
Number of minutes overrunning per session	↓	5% LEVEL	–	NOT SIGNIFICANT	*	*

\*Indicator not available

Source: *Annotated Cause lists*

**Table 4: Summary of results for Brentford County Court**

Indicator	Brentford small claims		Brentford non-small claims civil	
	Change vs. pre-pilot	Statistical test result	Change vs. pre-pilot	Statistical test result
Cases listed per hour the court room is open	↓	5% LEVEL	—	NOT SIGNIFICANT
Cases heard per hour the court room is open	↓	1% LEVEL	—	NOT SIGNIFICANT
Percentage of session length spent in hearings	↓	1% LEVEL	↓	5% LEVEL
Number of minutes delayed before starting per session	—	NOT SIGNIFICANT	↓	1% LEVEL
Number of minutes overrunning per session	↓	10% LEVEL	↓	5% LEVEL

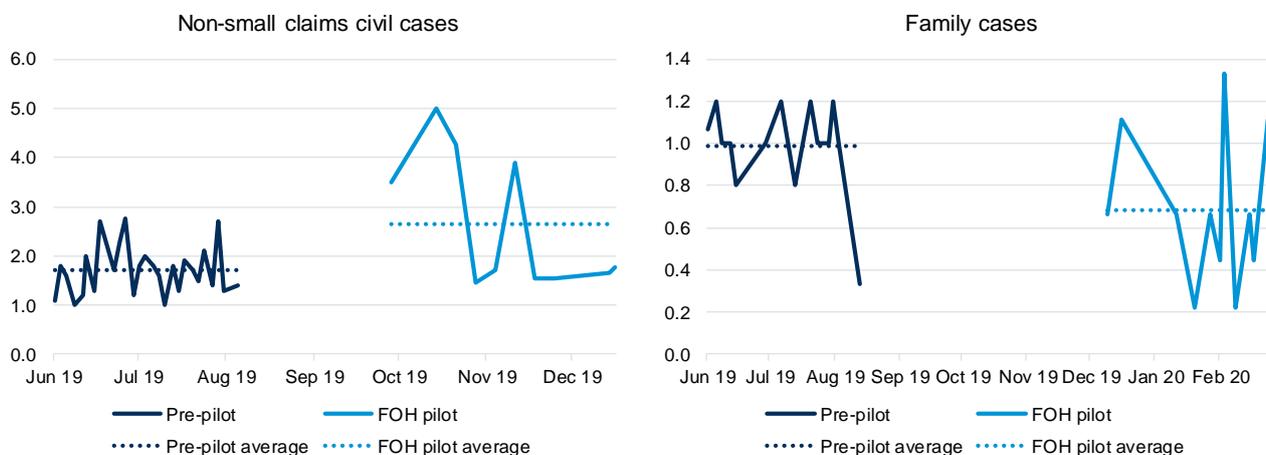
Source: Annotated Cause lists

### Number of cases listed per hour the court room is open

Starting with the Manchester court for the first indicator for small claims cases, there was no statistically significant difference found between the pre-pilot and FOH pilots' period averages.<sup>31</sup> This suggests that the number of cases listed per hour the court room is open was similar in the pre-pilot and FOH pilots.

Looking at the results for Manchester non-small claims, as shown in Figure 5, the FOH pilot's average was found to be higher (2.6 cases per hour) than in the pre-pilot period (1.7 cases per hour) – with this statistically significant at the 10% level (making it only an indicative result, at the lowest level of statistical significance). This lower level of statistical significance likely reflects the relatively large difference in the variability between the pre-pilot and FOH pilot periods, possibly owed to differences in listing patterns between the two. For family cases (which does not include children's work) however, the number of cases listed on average was lower in the pilot period (0.7 cases listed per hour, versus 1 case listed per hour), with this statistically significant at the 5% level. The impact of the FOH pilots therefore appears to differ by case type.

**Figure 5: Number of cases listed per hour the court room is open for Manchester Civil Justice Centre, split by case type**

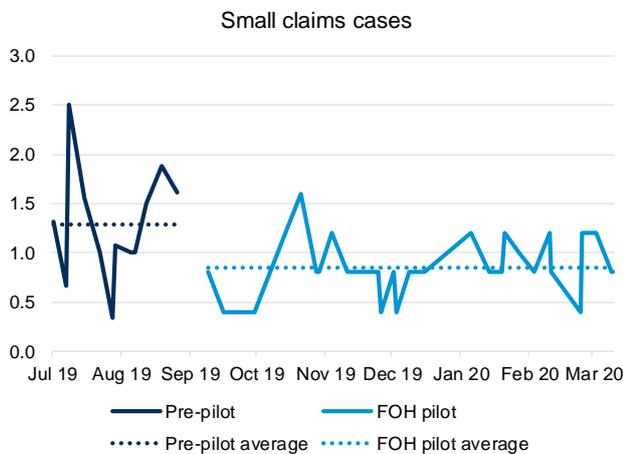


Source: Annotated Cause lists

<sup>31</sup> Graphs which contain results that are not statistically significant are not presented in this chapter. Instead, they are included in the Annex of the Technical Appendix.

Looking at the results for Brentford in Figure 6, the average number of cases listed per hour was found to be lower (0.8 cases per hour, versus 1.3 cases per hour) in the FOH pilots for small claims cases (with this difference significant at the 5% level). In contrast, for Brentford non-small claims civil cases, no statistically significant difference was found.

**Figure 6: Number of cases listed per hour the court room is open for Brentford County Court, split by case type**



**Source: Annotated Cause lists**

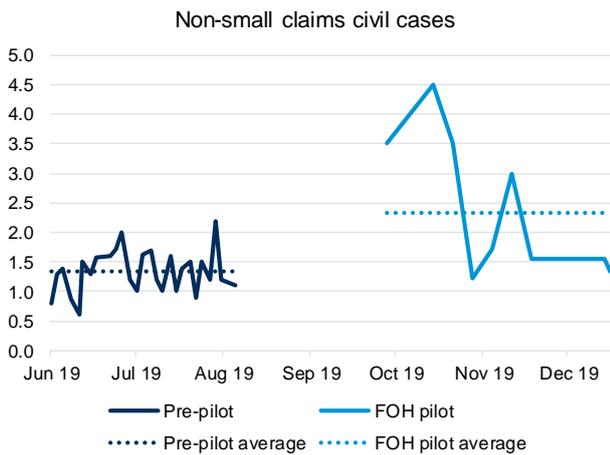
### Number of cases heard per hour the court room is open

Turning to the second indicator, which is similar to the first but only includes the number of cases *heard* per hour the court room is open, the findings are broadly similar. Taking Manchester non-small claims as an example, Figure 7 shows that the FOH pilot’s average was found to be higher (2.3 cases per hour) than in the pre-pilot period (1.3 cases per hour) – with this statistically significant at the 5% level. Similar results to the previous indicator were also found in Figure 8 for Brentford.

The only key difference to the previous indicator’s results is found for Manchester family cases (which does not include children’s work). On a cases heard basis, the FOH pilot was not found to be statistically different to the pre-pilot average. This means that whilst the number of cases *listed* per hour was lower for Manchester family cases during FOH, the cases that were listed during FOH must have been more likely to be *heard* than in the pre-pilot period. This is because whilst fewer cases were *listed* during FOH versus the pre-pilot period, the only way that the number of cases *heard* could then be found to be the same during FOH versus the pre-pilot period, is if those fewer cases that were initially listed during FOH were then more likely to be heard. The results in Chapter 8, which present the average percentage of listed cases *not* heard, confirm that the percentage was indeed lower in the FOH pilot (10% of cases were not heard) versus the pre-pilot period (26% of cases not heard). This was however only significant at the 10% level, making it an indicative result. The reason why family cases were therefore more likely to be heard in the FOH pilot is not however clear.

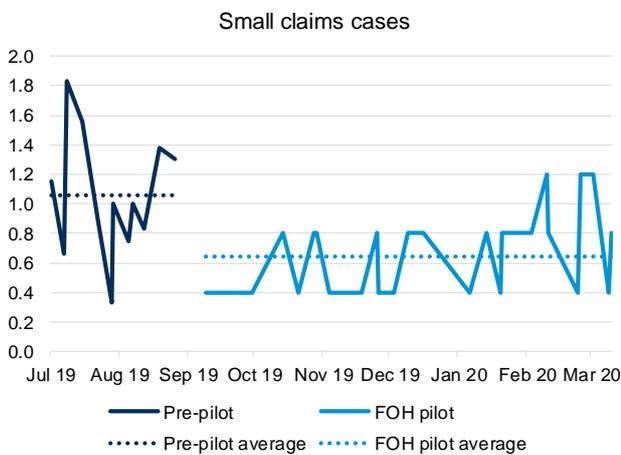
Taking the results for this indicator together with the first, as they largely move in the same direction, it shows the effect of the FOH pilots on listing differed by case type. For some case types, the number of cases listed and heard were higher (e.g. Manchester non-small claims civil), whereas for some listing appears to have been more cautious (e.g. Brentford small claims) or did not seem to change at all (e.g. Manchester small claims). The FOH pilots do not therefore appear to have affected these two indicators in one clear direction.

**Figure 7: Number of cases heard per hour the court room is open for Manchester Civil Justice Centre, by case type**



**Source: Annotated Cause lists**

**Figure 8: Number of cases heard per hour the court room is open for Brentford County Court, by case type**



**Source: Annotated Cause lists**

### Percentage of session length spent in hearings

Whilst the previous two indicators have suggested that listing patterns for certain case types may have been affected by the FOH pilots, this third indicator is the first of three which aims to directly assess the impact of the FOH pilots on the efficiency of use of court rooms. This is because it measures how much time has been spent in hearings in a given court room, rather than just the number of cases listed or heard. This makes it a more direct measure of court room efficiency. It does not however provide a full representation, as it does not take into account time spent on box work for example, which ideally would also be included in this indicator.<sup>32</sup> This means this indicator is likely an underestimate of the total time spent in court rooms.

Starting with Manchester small claims in Figure 9, the percentage of session length spent in hearings was found to be lower in the FOH pilot (38%) versus the pre-pilot (48%) – with the

<sup>32</sup> Capturing such a granular view of court room use has not been possible for this study given the need to limit demands on court staff.

difference significant at only the 10% level (making it an indicative result). A similar directional result was also found for non-small claims, albeit with the difference more pronounced – with a pre-pilot average of 75% versus 51% in the FOH pilot, with this statistically significant at the much higher 1% level. Interestingly, Figure 9 shows that for small claims cases, the percentage of session length spent in hearings appeared to trend upwards over time.

The results for family cases for this indicator and the following two are not presented, as information on case start and finish times were not available. As such, it has only been possible to comment on listing patterns, rather than the efficiency of use of court rooms that heard family cases (which does not include children's work).

Turning to Figure 10 and the results for Brentford, a similar pattern is reported. For both case types, the percentage of session length spent in hearings was lower in the FOH pilot versus the pre-pilot – with both differences statistically significant to at least at the 5% level. In a similar vein to Manchester, for small claims cases in Brentford the percentage of session length spent in hearings also appeared to trend upwards over time.

One explanation for this trend over time for small claims cases could be that after a 'settling in' period, listing staff got used to the new procedures during the FOH pilot and started to list more aggressively in those sessions. Interviews with court staff in both courts suggest the process of listing did improve over time. This suggests that similar levels to those seen in the pre-pilot period for this particular indicator may have ultimately been arrived at – but it is hard to say for certain whether this trend would have continued and whether this settling in effect was driving it.

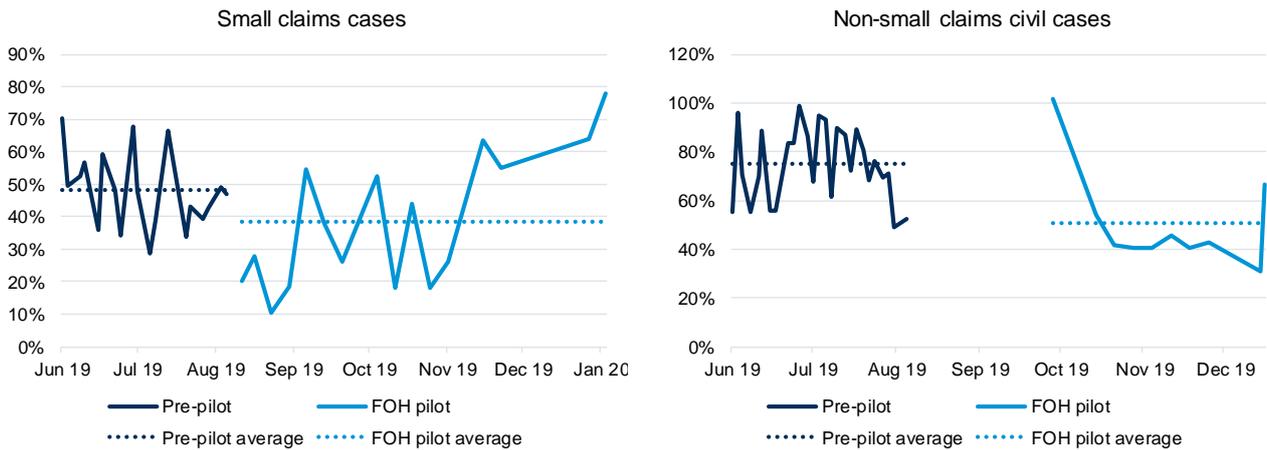
Another contributing factor to this upward trend for small claims cases could have been the nature of these cases. Listings officers in Manchester described the nature of small claims cases made them easier to blocklist, overlist and list at shorter notice compared to the other case types relevant for FOH.

*“FOH works well for small claims listings. Typically, quite quick to resolve, so able to block list and overlist which ensures full use of time. RTA cases (bulk of work on FOH) are suitable to list as they only need 4-5 weeks' notice to list so gaps can be filled later on than for other case types.” (Listing officers, Manchester)*

In Manchester, the increase in small claims cases may have also had to do with the types of cases available around the time of the upward trend; Manchester prioritised cases in FOH that were likely to be settled in under two hours so it is possible there were more small claims cases around this time that fit this criteria and thus made it into FOH sessions. If that were indeed the case, then the results presented for this indicator for Manchester may therefore reflect wider case trends, rather than the impact of just the FOH pilot itself.

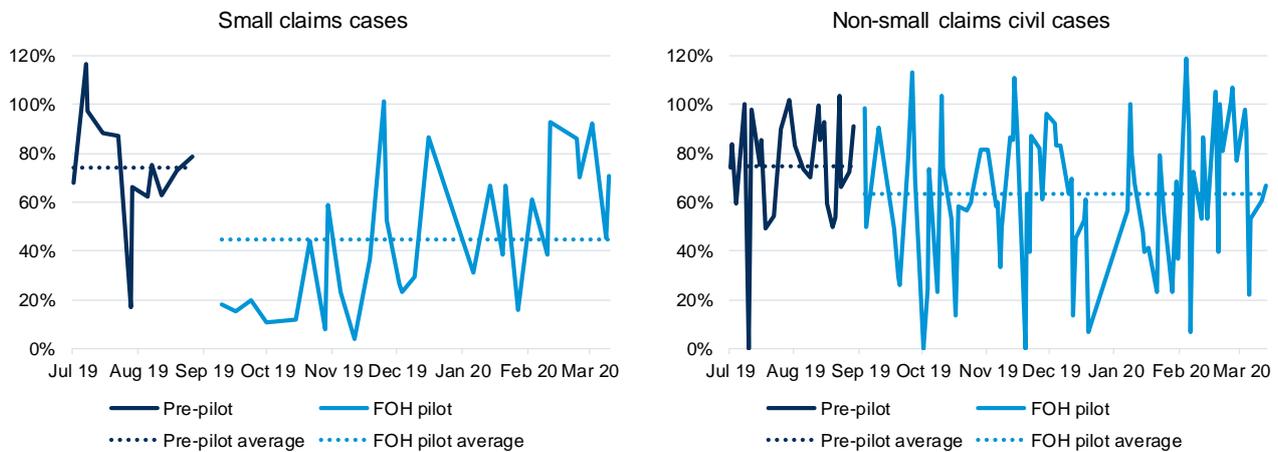
It has not however been possible to distinguish which, if any, of these three potential factors were driving the upward trend seen in both courts for small claims cases for this indicator.

**Figure 9: The percentage of session length spent in hearings for Manchester Civil Justice Centre, by case type**



**Source: Annotated Cause lists**

**Figure 10: The percentage of session length spent in hearings for Brentford County Court, by case type**



**Source: Annotated Cause lists**

Given that the time spent in hearings was lower in the FOH pilot for all of the case types across both courts – and that this was the case regardless of whether the number of cases heard per hour was higher or lower – the evidence suggests that cases were taking less time to be heard in the FOH pilot. This raised the question of whether shorter cases were being listed during the FOH pilot, or whether cases were being heard more quickly.

To answer this question, data on estimated case lengths was investigated for small claims cases in Manchester. This is because small claims cases were the case type which were most consistently similar in the FOH pilot and pre-pilot periods. Manchester was chosen because at the time, the Brentford data had not been through the disaggregation process and as such contained many different case types. The results of this investigation found that there was very little variation in the time estimates provided on Cause lists for small claims cases in Manchester. As such, it was not possible to quantitatively determine whether the length of cases differed due to shorter cases being listed in the FOH pilot period, or whether similar cases were just being heard more quickly in the FOH pilot period.

Qualitative interviews with court staff in Manchester however confirmed that cases expected to be settled in under two hours were prioritised for listing during the FOH pilot. This was done to mitigate the risk of cases overrunning during FOH, as there was not a separate court available to accommodate any additional cases affected by this late running. This was not the case at Brentford however, with listing staff stating that they did not list shorter cases during the pilot than they otherwise would have done during business as usual. This tentatively suggests that cases may have been heard more quickly during the FOH pilot for Brentford, although it is hard to say for certain.

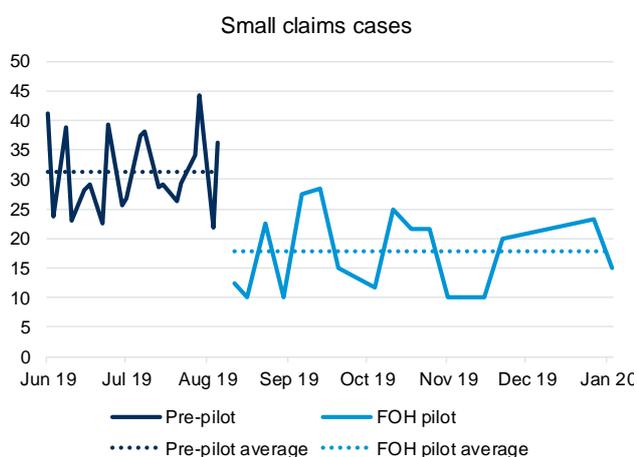
### Number of minutes delayed before starting per session

Looking at the fourth indicator, as shown in Figure 11 for Manchester, the number of minutes delayed before starting per session was found to be lower in the FOH pilot (18 minutes) versus the pre-pilot (31 minutes) for small claims cases – with this difference statistically significant at the 1% level. This is however in contrast to non-small claims civil cases, where no statistically significant difference was found between the FOH pilot and the pre-pilot period. It is worth noting that whilst the indicator uses the word delay, this simply refers to the time that has elapsed between the session start time and when the first case in that session was heard. It does not therefore pass judgement on the reason for any extra time taken, which might have been for a particular reason.<sup>33</sup>

Turning to Brentford, the result is reversed compared to Manchester. No statistical difference was found for small claims cases, however fewer delays were seen for non-small claims civil cases in the FOH pilot (8 minutes) versus the pre-pilot period (17 minutes), with the difference also significant at the 1% level. As Figure 12 shows however, there is a greater degree of variation during the FOH pilot for non-small claims cases than in the pre-pilot period.

In short, it appears that during the FOH pilots for both courts there was either no change in the number of minutes delayed before starting per session versus the pre-pilot, or a reduction.

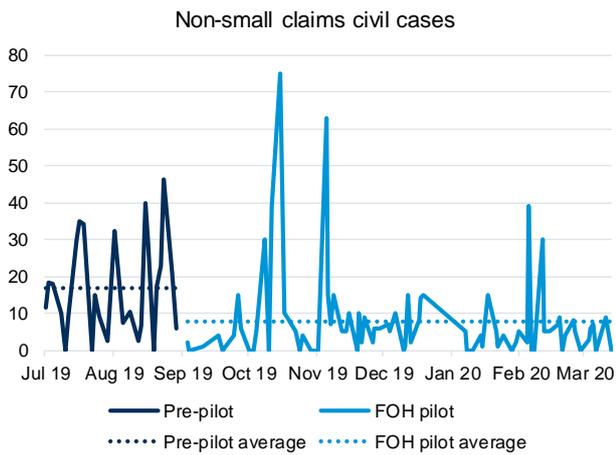
**Figure 11: Number of minutes delayed before starting per session for Manchester Civil Justice Centre by case type**



**Source: Annotated Cause lists**

<sup>33</sup> Reasons for delays to starting were not consistently recorded on the Cause list, so have not been included in this analysis

**Figure 12: Number of minutes delayed before starting per session for Brentford County Court by case type**

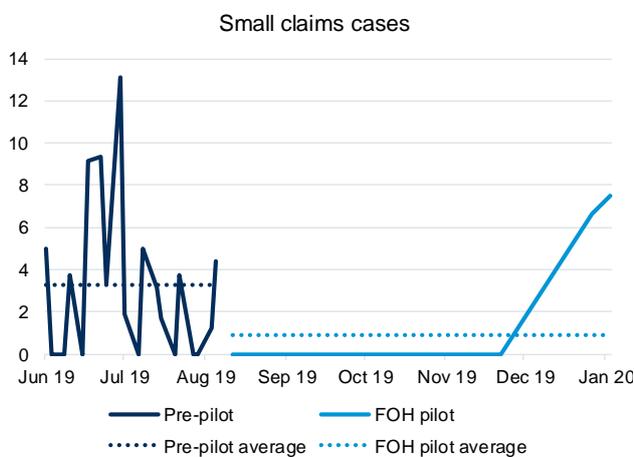


*Source: Annotated Cause lists*

### Number of minutes overrunning per session

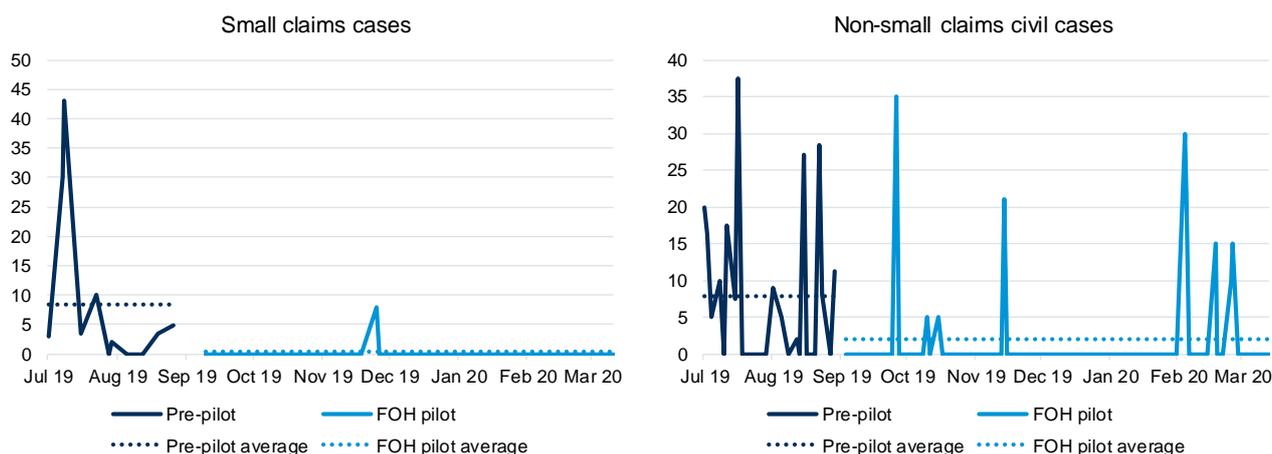
For the fifth and final indicator, as shown in Figure 13 for Manchester, similar results are found: the number of minutes overrunning per session is lower in the FOH pilot (1 minute) versus the pre-pilot (3 minutes) for small claims cases. Whilst the difference is significant at the 5% level, the practical difference in overruns of 1 minutes versus 3 is not material. One hypothesis for the jump in overruns in December and January could be linked to the trend increase in the percentage of session length spent in hearings, although given the few observations where this occurs it is hard to say for sure. For non-small claims, no statistical difference in overruns in the FOH pilot was found versus the pre-pilot period.

**Figure 13: Number of minutes overrunning per session for Manchester Civil Justice Centre by case type**



*Source: Annotated Cause lists*

**Figure 14: Number of minutes overrunning per session for Brentford County Court by case type**



**Source: Annotated Cause lists**

Looking at the results for Brentford in Figure 14, both case types were found to have shorter overruns in the FOH pilot versus the pre-pilot period. The practical magnitude of the differences are however slightly larger than for Manchester. For small claims cases, the average overrun per session in the pre-pilot period was 8 minutes versus 0 during the FOH pilot. Similar results were found for non-small claims cases – with an 8-minute average overrun per session pre-pilot versus 2 minutes per session in the FOH pilot. Both of these differences are statistically significant at the 10% (making it an indicative finding) and 5% levels respectively. Figure 14 shows that the frequency of overruns was less during the FOH pilot than in the pilot period.

Taking the results of the last three indicators together, the fact there are in general fewer delays and overruns corroborates with the finding that less time was spent in hearings – and that at least in Manchester, there appears to have been more conservative listing during the FOH pilot.

### Robustness checks

Given there are many factors besides the FOH pilots that could have impacted the results, four robustness checks were undertaken. A high-level summary of the results of these checks are as follows:

1. **Disaggregation by session time:** identified that across both courts the percentage of session length spent in hearings indicator tended to fall throughout the day. This suggests that running FOH sessions earlier during the day (i.e. before the business as usual 10AM sessions) might achieve similar levels of efficiency as in non-FOH business as usual sessions for this particular indicator. This could be because it is possible to list more and rely on other court rooms to pick up any overruns that might occur.
2. **Second counterfactual:** small claims cases outside of the FOH pilot but which were heard during the FOH pilot period for the Manchester court were analysed as a second counterfactual. The results suggested that the differences observed between the pre-pilot and FOH pilot averages in the analysis above were likely due to the FOH pilot, and not other confounding factors.
3. **Manchester non-small claims disaggregation:** a further disaggregation of these case types suggested that block-listed rents cases in the non-small claims civil sample for Manchester were driving some of the variability seen in the results presented above. This means the results for this case type should be interpreted as containing the dual impact on court room efficiency of not just the implementation of FOH, but also the impact that FOH

had on the case mix. This was because there were no block listed rents cases in the pre-pilot period sample.

4. **Jackknife resampling:** this statistical robustness check investigated whether particular observations may be driving whether a difference in averages was deemed statistically significant or not for indicators three, four and five. For the majority of results, the check found no evidence of particular observations changing results from statistically significant to insignificant. A minority of results were however found to be highly sensitive to certain observations, although they do not impact the conclusions this chapter reached.

A detailed explanation of the results of these four robustness checks can be found in the Annex of the Technical Appendix.

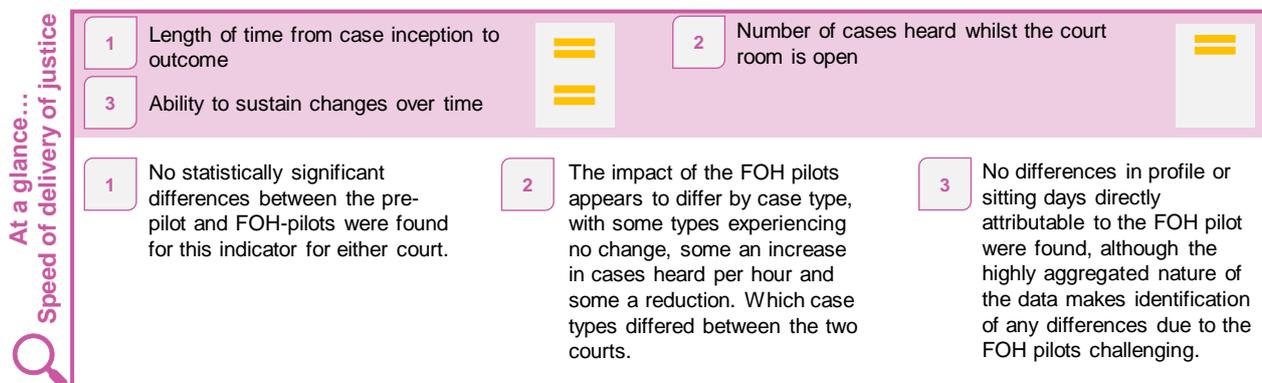
## Limitations

The analysis presented is subject to certain limitations which should be considered when drawing conclusions. Whilst the four robustness checks outlined above have been performed to mitigate limitations where possible, six still remain:

1. The sample sizes used are particularly small, especially for Manchester non-small claim civil and family cases, and the variance between pre-pilot and FOH pilots' data also differs in some cases. This limits the ability of the statistical tests to pick up any differences that might exist between the pre-pilot and FOH pilots. Given that sample sizes in the pre-pilot and FOH pilots are below 30 observations, a generally accepted threshold above which statistical tests are more accurate, caution much be taken when reading these results.
2. Whilst care has been taken to disaggregate the analysis by case type, and a second counterfactual has been included as an indirect robustness check of this, it was not possible with the data available and small sample sizes to control for other factors beside the FOH pilots that might have impacted the five indicators above (e.g. estimated case length). This means the results likely include local factors specific to the Manchester and Brentford courts, which mean the results may not be generalisable to other courts more widely.
3. The FOH pilots only looked at certain types of cases: small claims cases, a subset of non-small claims civil cases and a narrow range of family cases (not including children's work). As such, the results may not be generalisable to other case types (e.g. criminal cases, or a wider range of civil and family cases).
4. The FOH pilots only ran for a relatively short period of time. As such, the analysis may not have identified any potential longer-term effects of introducing FOH. Further, the analysis might have been initially affected as the pilots 'settled in' as staff got used to the new procedures, which may have reduced its efficacy at the beginning on the pilots.
5. The hand annotated Cause lists did not consistently record if the court room was used for box work, whether any delays that occurred or cases that were not heard were due to the FOH pilots. As such, it has not been possible to comment on these aspects of the FOH pilots in this analysis.
6. In the design of the pilots, there was an option for public users to opt-out – an option that did not exist during the pre-pilot period. Because of this, it is not possible to say whether the characteristics of cases that went ahead during the FOH pilots are representative of the cases that took place in the pre-pilot period. This is because certain cases types may have chosen to opt-out during the FOH pilots.

# 6. Speed of delivery of justice

## Summary of findings on speed of delivery of justice



A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

### 6.1. Introduction

This chapter presents findings on the speed of delivery of justice during Flexible Operating Hours (FOH) sessions and how this compared to pre-pilot sessions. The evidence presented in this chapter is based on the analysis of HM Courts and Tribunals Service (HMCTS) operational and performance data and hand annotated Cause lists.

The effect of the FOH pilots on the speed of delivery of justice is measured by looking at the average length of time taken to receive an outcome. Factors which could contribute to this i.e. the number of cases heard per hour and the number of profile and sitting days are also explored.

A positive impact of FOH on the speed of justice would be an increase in the speed of processing cases. A reduction in the speed of processing cases would be a negative impact.

### 6.2. Impact of the FOH pilots on the speed of delivery of justice

#### Length of time from case inception to outcome

This indicator drew on HMCTS case-level operational and performance data and involved calculating the number of days between when a case was issued and when a judgment was made.<sup>34</sup> This analysis could only be performed for the small claims case type, across both courts, as this was the only case type included within the pilots that had a definite judgment recorded in the data. It was also not possible to control for any other characteristics of cases, meaning that

<sup>34</sup> These are the number of days in total, not just working days. Dividing this day figure by seven thus gives the number of weeks between when a case was issued and when a judgment was made.

differences observed may include the impact of other factors, in addition to the impact the pilots might have had.

For the purposes of this analysis, the pre-pilot data was defined as all small claims cases that resulted in a judgment that occurred in the year up to the pilots beginning (i.e. from the beginning of September 2018 to the end of August 2019). The FOH pilot cases were identified in the data by matching the case IDs that appeared on the hand annotated Cause lists.

In total for Manchester, there were 771 pre-pilot small claims cases that resulted in a judgment in the year prior to the FOH pilot. Of the 71 small claim cases that appeared on the hand annotated Cause lists in the Manchester court during the FOH pilots, 35 (49%) were recorded as resulting in a judgment. After dropping 2 outliers from the pre-pilot sample, the number of days that elapsed between when a case was issued and when a judgment was made during the pre-pilot period was 284 days (41 weeks), with this falling to 256 days (37 weeks) during the pilot.<sup>35</sup> This difference of 28 days (4 weeks) was not however statistically significant at the 10% level.

For Brentford, there were 165 pre-pilot small claims cases that resulted in a judgment in the year prior to the FOH pilot. Of the 66 small claim cases that appeared on the hand annotated cause lists in the Brentford court during the FOH pilot, 9 (14%) resulted in a judgment. The average number of days that elapsed between when a case was issued and when a judgment was made during the pre-pilot period was 276 days (39 weeks), with this rising to 321 days (46 weeks) during the pilot. This difference of 45 days (6 weeks) was not however statistically significant at the 10% level. This is likely due to the small number of observations in the FOH pilot period.

As such, for small claims cases on this indicator, the pilots do not appear to have had an impact on the speed of delivery of justice. Given that data for the other cases types in the FOH pilots were not available, it has not been possible to comment on whether this result was generalisable to the other case types.

### Number of cases heard whilst the court room is open

Turning attention to the speed of justice on a given day, this indicator relates to the number of cases that were heard per hour the court room was open. This is the same indicator that was presented in Chapter 5 in Figure 7 for Manchester and Figure 8 for Brentford. The indicator for this section is therefore based upon the hand annotated Cause lists, with the pre-pilot period relating to the 2 months prior to the FOH pilots starting.<sup>36</sup>

As per the reported results in Chapter 5 for this indicator, it was found that there was no change in the number of cases heard per hour the court room was open between the pre-pilot and pilot period for Manchester small claims and family cases (not including children's work) and for Brentford non-small claims civil cases. There was however a statistically significant increase at the 5% level in the number of cases heard in the FOH pilot period for Manchester non-small claims civil cases (2.3 cases heard per hour versus 1.3 in the pre-pilot period), although this likely reflects the case mix in the FOH pilot period.<sup>37</sup> In contrast though, a statistically significant reduction at the 1% level for Brentford small claims was found (0.6 cases heard per hour in the FOH pilot versus 1.1 in the pre-pilot).

As such, the impact of the FOH pilots on the speed of justice differed by case type. It is worth noting that this difference by case type was not consistent between the courts, as in Manchester there was no statistically significant difference for small claims cases, however there was a fall

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<sup>35</sup> These outliers had the number of days between when the case was issued and when a judgment was made in excess of 1,460 days (4 years)

<sup>36</sup> The caveats listed in Chapter 5 therefore apply here as well, including the use of the number of cases as a unit of measurement.

<sup>37</sup> See robustness check 3 in the Annex of the Technical Appendix for more information on the case mix

found in Brentford for this case type. This asymmetric response by case type may reflect the different ways the pilot was implemented between the Manchester and Brentford courts<sup>38</sup>, and/or the fact that local factors may differ between the two courts.

That said, in Brentford the FOH pilot's sessions being run in addition to business as usual sessions meant that conceptually, across all court rooms in the court it was likely that the speed of justice was faster, as on any given day there was more time available to hear cases. This was however conditional on an increase in available judicial and staff resource.

### Ability to sustain changes over time

This indicator looked at the number of profile and judge sitting days in each court. Profile days are allocated to courts at the beginning of each financial year (April), and represent the monthly 'budget' of how many days of cases can be heard. For each profile day, two sessions of cases can be heard. The number of profile days per month typically exceeds the number of days in that month because several judges can hear cases on each day – with each judge hearing a full day of cases using up one profile day. The difference between profile days and sitting days, is that sitting days are the actual number of days of cases that were heard.

This indicator was chosen to test the hypothesis that in order to accommodate the FOH pilots, courts may 'pull forward' profile days from future periods, thus reducing the amount of judicial resource in later periods. This might therefore lead to a one-off temporary increase in the speed of justice that would not be able to be sustained if the FOH pilots were rolled-out more widely, as it would necessitate an increase in total judicial resource. This information has been captured to try and investigate whether this happened during the FOH pilot, so as to put the results above into context.

To test this hypothesis, profile and sitting day data was collected for both courts for civil and family case types from HMCTS from September 2018 to March 2020. This data covered each entire court and was not specific to the FOH pilots. It also covered all civil and family case types, not just those covered by the FOH pilots. It is worth noting that whilst the FOH pilots may have had an effect on profile and sitting days, many other factors also determine the calculation year after year.

As discussed in Chapter 5, the Manchester court shifted their business as usual non-FOH sessions to FOH times for the FOH pilot and as such did not receive an increase in profile days for the FOH pilot. In Brentford however, along with other courts in the region, received an increase in their allocation of profile days and decided to use some of that allocation to cover all of the FOH sessions.<sup>39</sup> This meant that Brentford ran the FOH sessions in addition to its usual non-FOH sessions.

Looking first at the Manchester court, Figure 15 shows that for civil cases, there was a large increase in the number of profile days when the pilot began. There was not however a corresponding increase in the number of days sat (leading to a large gap between the number of days sat and profile days), although the trend since September 2018 does seem to be slightly upwards. Given the size of the pilot (39 days across 6 months) relative to the size of the Manchester court as a whole (several hundred sitting days per month across 52 court rooms) is very small, it is unlikely that the changes observed in the aggregate figures are being driven by the pilot. Further, the fact the number of days sat is broadly similar to the pre-pilot period corroborates with the fact that no change in the length of time to receive an outcome was found during the FOH pilot.

For family cases however, the amount of profile and sitting days appears to be broadly stable, with no change in behaviour apparent. In a similar vein to the civil analysis, the size of the Manchester

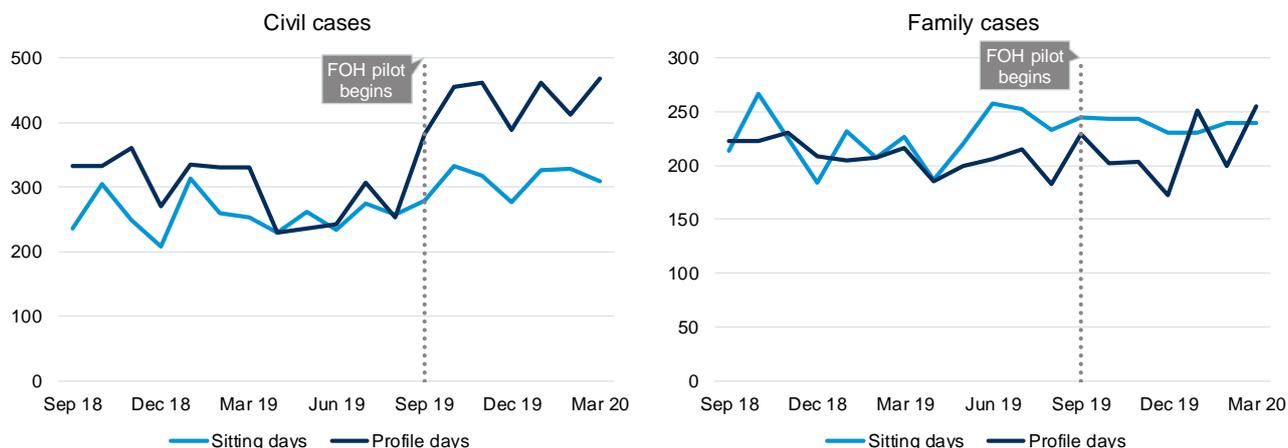
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<sup>38</sup> See Chapter 5 for a detailed explanation of the differences

<sup>39</sup> Brentford was not given this additional allocation specifically for FOH

pilot and the fact no clear change in behaviour has been observed suggests that sitting days were also unlikely to have been affected by the pilot.

**Figure 15: Comparison of profile and sitting days for Manchester Civil Justice Centre, by case type**



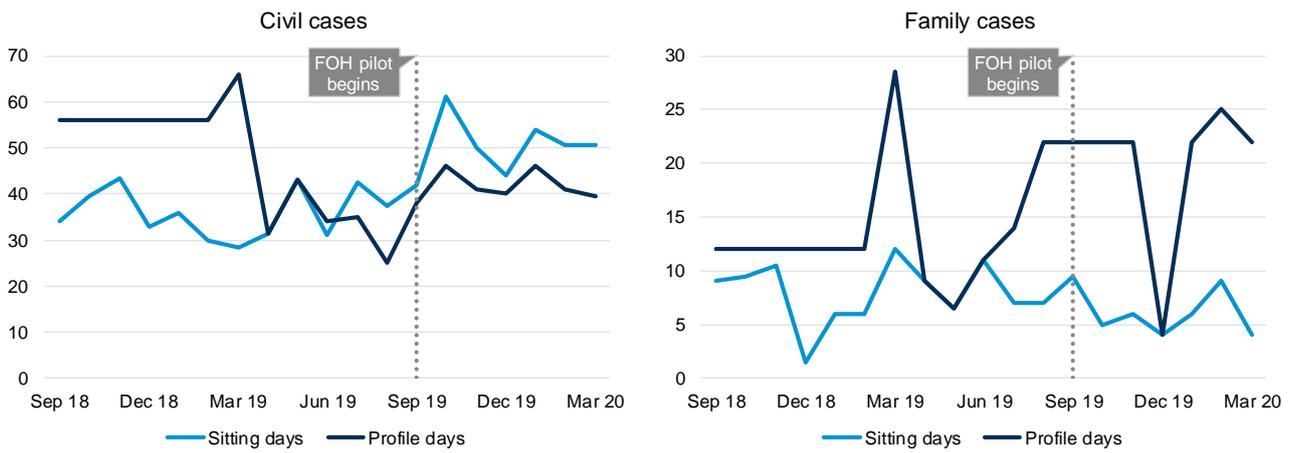
**Source: HMCTS data**

Turning to Brentford, Figure 16 shows that for civil cases, there was an initial drop after March 2019 after which the number of profile days trended upwards – with this trend likely due to the increase in profile days allocated, as discussed previously. Interestingly, the Brentford court went from generally under sitting versus profile days to over sitting during the FOH pilot for civil cases. Whilst it is plausible that these changes could have been at least partially driven by the additional sessions Brentford ran during the FOH pilot, which were exclusively civil cases, it is hard to say for certain. Further, the fact the trend appears to pre-date the pilot suggests it may have continued regardless of the FOH pilot.

Whilst family cases were not in scope of the FOH pilot in Brentford, these have also been included in Figure 16 to understand the potential dynamics that exist between the two types of case in the court as a whole. As Figure 16 shows, Brentford under sat versus profile days, with a large difference existing between the number of profile days allocated and number of days sat. It appears that the number of family cases trended downwards, beginning before the pilot in March 2019 and continuing throughout FOH pilot, in contrast to the civil cases which trended upwards over that period. Overall, given there was a surplus across both case types of profile days versus sitting days in the financial year April 2019 to March 2019 of 40 days, this suggests the main constraint in the court may not have been profile days, but sitting days.

The evidence above shows that there was no apparent pulling-forward of judicial resource from later periods across both courts. However, given profile and sitting days are effectively a finite resource across the court system as a whole, using more profile or sitting days for the FOH pilots in Brentford conceptually meant that less of this fixed resource was available for other activities. The fact the evidence presented did not show this however was possibly due to the small scale of the pilots, although it is difficult to say for certain.

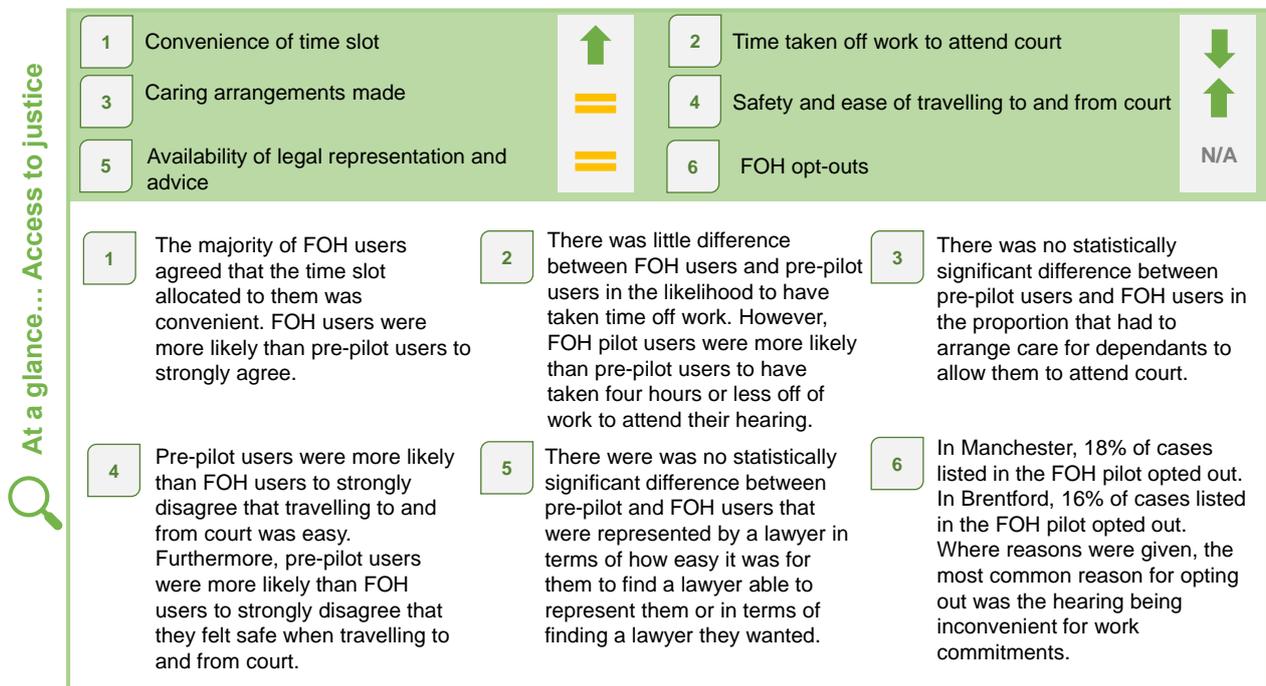
**Figure 16: Comparison of profile and sitting days for Brentford County Court, by case type**



**Source: HMCTS data**

# 7. Access to justice

## Summary of findings on access to justice



A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change. N/A indicates that the results were not applicable, as there was no pre-pilot counterfactual to compare against.

### 7.1. Introduction

In the context of the FOH pilots evaluation, access to justice has been measured using the following indicators: convenience of hearing location; convenience of hearing time; time taken off work to attend a hearing; caring arrangements made to attend a hearing; perceptions of safety and ease of travel to court; distance and time travelled to and from court; and the availability of legal representation and advice, including the need to change advocates to attend an FOH session. The reasons given for public users opting out of hearings listed in FOH sessions is also explored to see if reasons given relate to access.

A positive effect of the FOH pilots on access to justice would be demonstrated by greater flexibility for users, less time off work, and an improved balance of court attendance with personal responsibilities. The evidence presented in this chapter is from quantitative surveys with public users; qualitative interviews with professional court users and court staff; data collected by HMCTS from opt-outs; and quantitative and qualitative interviews with opt-outs.

## 7.2. Convenience of attending court

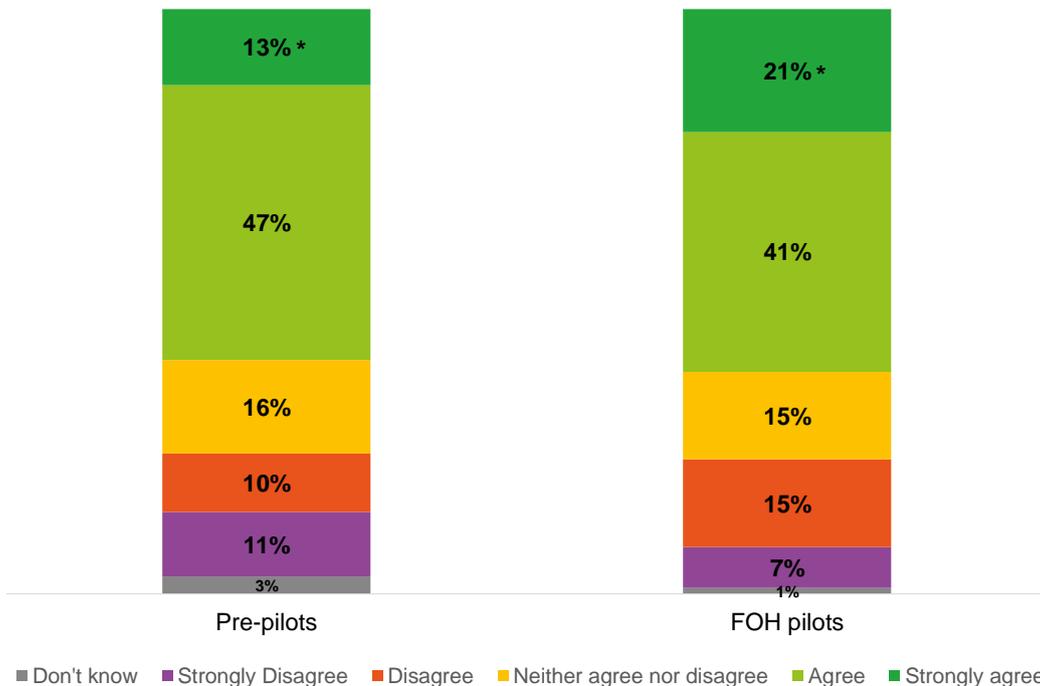
### Perceived convenience of time slot

The majority of public users that attended an FOH session agreed that the time slot allocated to them was convenient (63%). Around a fifth (22%) disagreed that the time slot was convenient for them, while 15% said it was neither convenient nor inconvenient. As shown in Figure 17, FOH users were more likely than pre-pilot users to strongly agree that the time slot allocated to them was convenient (21% compared to 13%).

As discussed later in this chapter, it is possible that the difference between pre-pilot and FOH users in the perceived convenience of their time slot was influenced by them having to travel a shorter distance to get to and from court and for less time on their journey to court.

As a robustness check, a regression was conducted on this result to see if the difference remained after controlling for a series of case characteristics and personal characteristics (more detail is provided in the Technical Appendix). This check found that being in an FOH session led to no statistically significant difference in the perceived convenience of the time slot versus pre-pilot respondents (although the direction of the effect suggested the effect of FOH may have been positive).

Figure 17: Convenience of time slot



**Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

During qualitative interviews, many legal professionals and organisations expressed the view that hearings listed in FOH sessions were more accessible to some public users. Those working nine to five hours were highlighted as the audience that would benefit most. This is because FOH sessions enable these public users to attend court without having to take as much time off work.

*"If someone gave me an option to go to court at 8am for 5 minutes rather than having to take a day off work, I would certainly take it. And I think most of these litigants in person do that, so they don't lose out any time off work or have to take annual leave." (Judiciary, Brentford)*

*"I think it will really help them out. If they are working and have the option of going to court in the evening, if they go in the day, they might feel that they would lose a day's work." (Organisation, Solicitor Firm, Manchester)*

*"Most people work 9-5, so it probably opens up Justice to a huge sector of society where it would have been inconvenient [to take time off work]." (Organisation, Solicitor Firm, Brentford)*

Court staff that took part in qualitative interviews generally had a positive outlook on the effect of the FOH pilots on convenience to public users. As with legal professionals and organisations, many commented that hearings in FOH sessions had the potential to benefit those in employment because they can fit hearings around work commitments.

*"The view that we had was that we're providing a service for someone that had a job to get to or is self-employed or whatever it might be. They can come early and then still get to work." (Court staff, Brentford)*

Although many legal professionals, legal organisations and court staff identified groups of public users that they felt may have benefited from the FOH pilots, many also identified public users that they felt would have had difficulty accessing FOH sessions. Hearings outside of current operating hours were felt to be particularly difficult to access for those with childcare responsibilities, those with non-standard working hours, those that were financially vulnerable and those that did not live near the court they needed to attend. Analysis of the reasons why some public users opted out of FOH sessions, presented later in this chapter, provides partial evidence for this.

*"Imagine someone that is facing repossession proceedings because they can't afford their rent and they get told they have to get all the way from Bolton to Manchester and by the way it's at 6:30[PM] when your kids are home... I do think it will have a significant impact on those people." (Legal professional, Solicitor, 1 FOH session, Manchester)*

Some expressed the view that the FOH pilots had a mixed effect in terms of convenience for public users. They felt that for some, particularly those with a nine to five job, FOH sessions were more convenient, while for others, such as those with children or other caring commitments, they were less convenient. A few suggested that this was unavoidable because a hearing time will never be convenient for every public user.

*"In the main I think [FOH sessions] were easier for people. Some people did turn around and say, 'no I have to get the children to school', but that could happen with any hearing. People will have reasons why they can't do them." (Court staff, Brentford)*

*"Social landlord tenants with childcare just wouldn't be able to get to court for it... they're having to collect children from school so are unable to attend a 5:30[PM] hearing. And I think that's fine. We understand that and we're not saying that is the only time the court will be available to them. But for other litigants it is much better." (Judiciary, Brentford)*

Some felt that the FOH pilots had little or no impact on the ability of public users to attend hearings. Among those with this view, it was generally felt that the issues some public users face in terms of access would be the same for hearings listed in FOH or pre-pilot sessions. For example, a few expressed doubts about the potential benefits to those in employment. This was because they felt that even if a hearing was listed in an FOH session, public users would still be required to take time off work to allow for travel time and because of the likelihood of delays when in court. Furthermore, others held the view that the FOH pilots had little or no impact on the ability of public users to attend hearings because attending court is such an exceptional event for many members of the

public. It was therefore felt that public users would be willing to make the necessary adjustments to allow them attend court.

### 7.3. Adjustments made to attend court

#### Time taken off work to attend court

Just under half (49%) of public users that attended an FOH session took time off work to attend their hearing. Of the remainder, two-fifths (38%) did not need to take time off work and one in eight (12%) were not employed. There was no significant difference between FOH users and pre-pilot users in the likelihood to have taken time off work (47% compared to 51%). However, as shown in Table 5, FOH pilot users were more likely than pre-pilot users to have taken four hours or less off work to attend their hearing (11% compared to 5%).

**Table 5: Time taken off work to attend court**

	Pre-pilots	FOH pilots
No time taken off work	47%	51%
Less than four hours	5%*	11%*
Between four and eight hours	35%	31%
More than eight hours	7%	5%
Don't know	6%	2%
Mean	3.3 hours	2.8 hours
Median	1 hour	0 hours

*Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.*

As a robustness check, a regression was conducted on the findings for the amount of time taken off work to see if the difference remained after controlling for a series of case characteristics and personal characteristics (more detail is provided in the Technical Appendix). This check found that respondents in FOH sessions were more likely to report that they'd taken less time off work than pre-pilot respondents (with this statistically significant at the 10% level, making it an indicative result).

A third (35%) of public users that attended an FOH session, and took time off work to do so, were required to use annual leave or holiday. This is significantly lower than the proportion of pre-pilot public users that were required to use annual leave or holiday, which was 52%. Although most public users that attended an FOH session were not required to use annual leave to attend, for over half (55%) the act of taking time off work cost them money in terms of lost pay or not being able to work overtime.

Table 6 presents the reported financial cost of taking time off work to attend FOH and pre-pilot sessions in terms of lost earnings and overtime. There was no significant difference between FOH

public users and pre-pilot public users in terms of the cost of taking time off work. On average, pre-pilot users reported a cost of £114 compared to an average of £109 among FOH pilot users.

**Table 6: Cost of taking time off work to attend a hearing**

	Pre-pilot	FOH pilots
£0	36%	43%
£1 to £49	4%	3%
£50 to £99	16%	12%
£100 to £149	12%	4%
£150 to £199	7%	9%
£200 to £249	6%	7%
£250 or more	11%	12%
Don't know	8%	10%
Mean	£114	£109
Median	£60	£40

*Source: Public user survey. Pre-pilot users that took time off work (240) and in-pilot users that took time off work (63). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.*

### Caring arrangements made to attend court

Overall, only a minority (15%) of public users that attended an FOH session had to arrange care for dependants to allow them to attend court. This is in line with the proportion of pre-pilot public users that were required to arrange care (20%). Furthermore, there was no difference between FOH users that identified as parents, guardians or carers and their pre-pilot counterparts in the likelihood to arrange care to enable them to attend court (37% compared to 41%).

Amongst both FOH public users and pre-pilot public users, the majority did not incur any financial cost for arranging care for their dependents because someone did it for free (65% and 61% respectively).

These findings could indicate that the concerns many legal professionals and legal organisations and some court staff had about the FOH pilots' effect on public users with caring responsibilities were undue. However, it is also possible that the true effect of the FOH pilots on these public users has been obscured by the opt-out feature. This is because public users with caring responsibilities could have been motivated to opt-out of an FOH session due to difficulties organising other to take on the care. This partly evidenced by the reasons given for opting out by those that took part in the public user opt-out survey and qualitative interviews, which are presented later in this chapter.

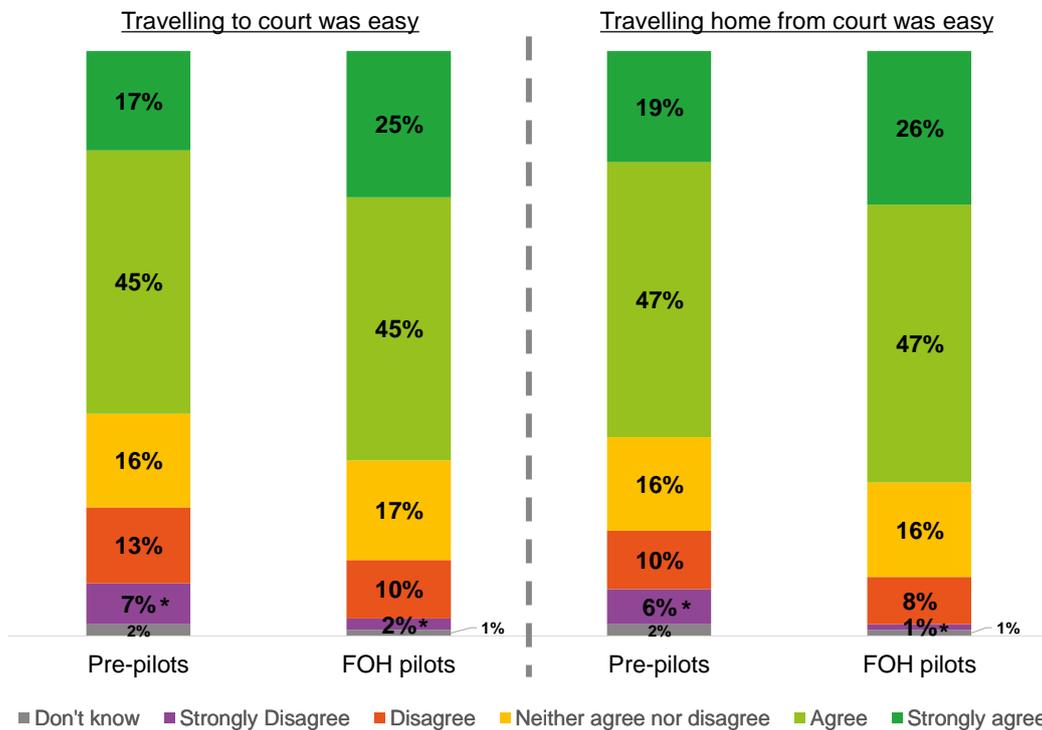
## 7.4. Travelling to and from court

### Perceived ease of travel

The majority of public users that attended an FOH session agreed that travelling to court was easy (70%). One in eight (12%) expressed that their journey to court was difficult, either by disagreeing or strongly disagreeing that travelling to court was easy. Pre-pilot users were more likely than FOH users to disagree or strongly disagree that travelling to court was easy (20% compared to 12%). As shown in Figure 18, This was driven by a higher proportion of pre-pilot users strongly disagreeing (7% pre-pilot compared to 2%).

Similar to the views on the journey to court, the majority of public users that attended an FOH session agreed that travelling home from court was easy (73%). Around one in six (16%) expressed that their journey home from court was difficult, either by disagreeing or strongly disagreeing that travelling home from court was easy. As shown in Figure 18, pre-pilot public users were more likely than FOH users to strongly disagree that travelling home from court was easy (6% compared to 1%).

Figure 18: Ease of travel to and from court



Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.

### Distance and time travelled

As presented in Table 7, public users that attended an FOH session travelled an average of 10 miles to get to court. This compares to an average journey to court of 19 miles for those that attended court for a pre-pilot session. A similar pattern was present in terms of the journey home from court: those that attended an FOH session travelled an average of 11 miles compared to an average of 19 miles amongst those that attended court for a pre-pilot session. It should be noted that there is a smaller difference between FOH and pre-pilot users in terms of the median distance

travelled to and from court, with pre-pilot users travelling 1 mile further on average. This has been caused by a broader range of distances being travelled by pre-pilot users.

**Table 7: Distance travelled to get to and from court**

	Journey to court		Journey from court	
	Pre-pilot	FOH pilots	Pre-pilot	FOH pilots
Four miles or less	30%	34%	29%	31%
Five to nine miles	26%	25%	24%	26%
10 to 19 miles	19%	24%	19%	22%
20 to 49 miles	9%	7%	9%	7%
50 miles or more	6%	2%	6%	2%
Don't know	10%	8%	12%	11%
Mean	19 miles	10 miles	19 miles	11 miles
Median	7 miles	6 miles	7 miles	6 miles

*Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.*

More than four-fifths (86%) of public users that attended an FOH session travelled for an hour or less to get to court. This compares to 77% of those that attended a pre-pilot session. Furthermore, those that attended a pre-pilot session were more likely to have travelled for more than an hour to get to court than those that attended an FOH session (17% compared to 9%).

Although FOH users were likely to have travelled for less time than pre-pilot users to get to court, there was no difference between the two in terms of the time it took to travel home from court. A quarter (75%) of both pre-pilot and FOH users travelled for an hour or less and fewer than one in five travelled for more than an hour (pre-pilot:18% FOH: 15%).

It is possible that the differences between pre-pilot and FOH pilot users in terms of the distance travelled to get to and from court and in terms of the time it took to travel to court are the outcome of the opt-out mechanism. Public users that had to travel for further and longer to get to and from court may have been more inclined to opt-out of an FOH session.

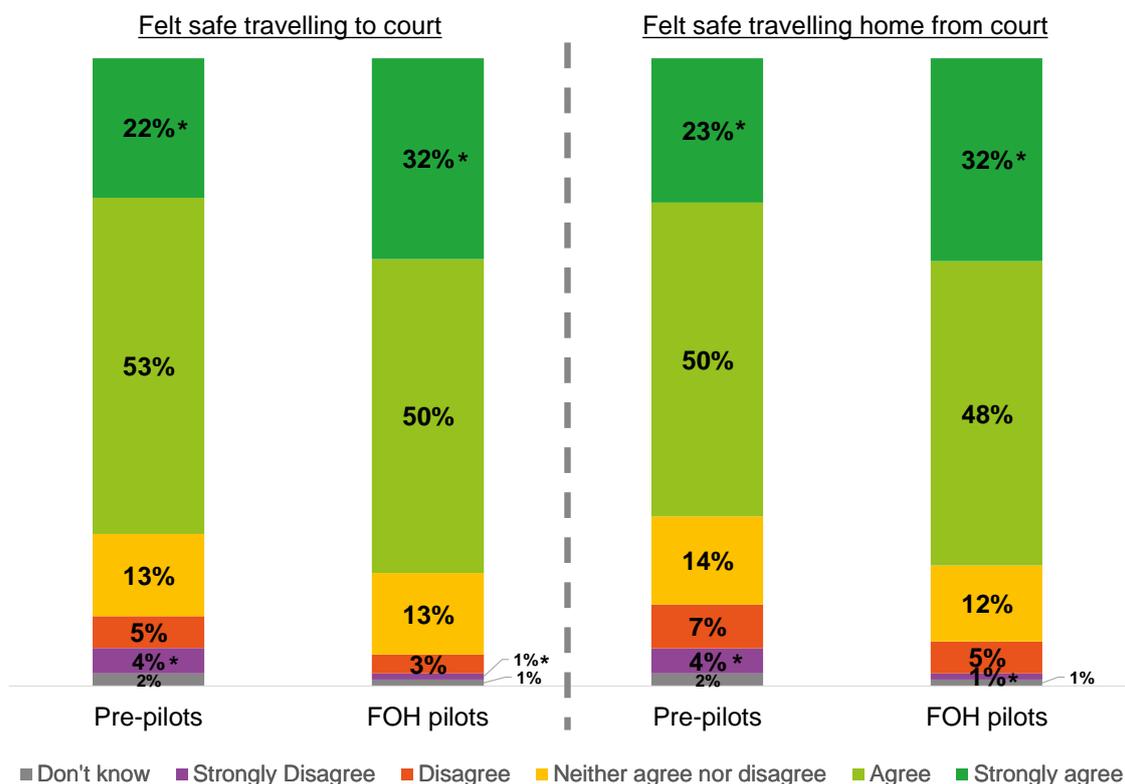
### Perceptions of safety travelling to and from court

With the FOH sessions starting early and finishing late, it was possible that public users accessing FOH sessions might have more concerns around safety when arriving at court or leaving court.

The majority of public user that attended an FOH session agreed that they felt safe when travelling to court (82%) and home from court (81%). As shown in Figure 19, FOH users were more likely to strongly agree that they felt safe when travelling to court and home from court (32% compared to

22% respectively). FOH users that attended hearings before 10:30am were particularly more likely to strongly agree that they felt safe when travelling to court (39%) and home from court (39%).

**Figure 19: Perceptions of safety travelling to and from court**



**Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

## 7.5. Availability of legal representation and advice

### Availability of legal representation and advice

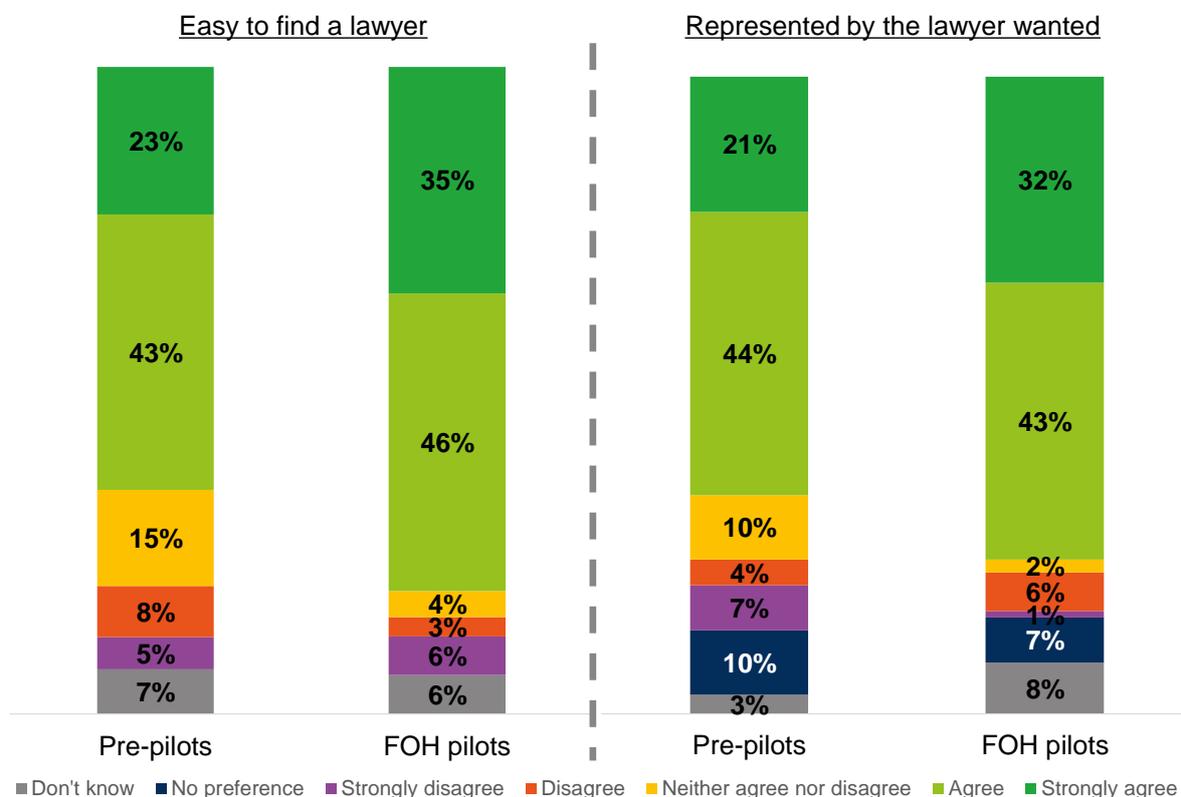
The FOH pilots only looked at certain types of cases: small claims cases, a subset of non-small claims civil cases and a narrow range of family cases (not including children’s work).<sup>40</sup> By their nature these types of cases are more likely to have public users representing themselves. However, it was recognised that there was the possibility that the FOH pilots could affect the ability of public users to access legal representation and advice. For example, if professional users were more likely to be unable to attend an FOH session then it could have become more difficult for public users to find someone to represent them and/or have to change their legal representative when they were given a hearing in an FOH session.

Public users that attended an FOH session and had a lawyer represent them generally found it easy to identify a lawyer and were able to get the lawyer they wanted. As presented in Figure 20, more than four-fifths (81%) agreed that it was easy to find a lawyer to represent them and three-quarters (76%) agreed that they were able to get the lawyer they wanted. Only a very small

<sup>40</sup> Additional details on the specific type of case in each category is provided in the Annex of the Technical Appendix

minority of FOH users that were represented by a lawyer had to change their lawyer because they were not available for the hearing time they were given (7%). A slightly higher proportion of pre-pilot users that were represented by a lawyer were required to change their lawyer to be able to attend their hearing. However, they were not significantly more likely than FOH users to have been required to do so (15% compared to 7%).

**Figure 20: Experience of accessing legal representation**



**Source: Public user survey. Pre-pilot users represented by a lawyer (188) and in-pilot users represented by a lawyer (39). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

During qualitative interviews, most legal professionals and organisations did not express concern about the ability of public users to access legal representation and legal advice during FOH sessions. Although it was widely felt that FOH sessions did not suit some legal professionals and organisations (as covered in Chapter 10), very few suggested that this would result in issues with access to legal representation and advice. This is because it was felt that other legal professionals would take the place of those that could not attend.

## 7.6. FOH pilots opt-outs

As part of the FOH pilots, public users could opt-out of FOH sessions. This mechanism was introduced because, as a new initiative, the impact of the FOH pilots on public users was unknown. The opt-out mechanism mitigated the risk of serious disadvantage to public users. Looking at the volume of opt-outs and the reasons given for opting-out has potential for providing some evidence of the extent to which FOH increased or reduced access to justice.

## The scale of and profile of opt-outs

The analysis based upon the hand annotated Cause lists does not in general include those public users who opted-out of a FOH session.<sup>41</sup> This is because the opting-out party's case was generally removed from the Cause list for that day and replaced with another case if possible.

There were however some instances of public users who opted out, whose case was left upon the hand annotated Cause list and could not be replaced in time. This was likely because the user opted out in Manchester within 24 hours of the hearing taking place – and for Brentford, opting out after 3PM the day before the hearing. This is because after these cut off points, the Cause lists are finalised and published. As such, these cases will have appeared as not heard on the hand annotated Cause lists.

The number of cases that opted out and appeared on the hand annotated Cause list was 11 out of 72<sup>42</sup> opt-outs in total for Manchester (15%) and 10 out of 73 opt-outs in total for Brentford (14%). These figures are important to note, as these will have potentially impacted the number of cases heard per hour while the court room was open in the FOH pilot (see Chapters 5 and 6), and also the percentage of cases listed that were not heard (see Chapter 8). The opt-out mechanism could have affected these two indicators in two opposing ways:

1. The opt-out feature means that the likelihood of a case going ahead might be greater, as users who cannot appear at a particular hearing have the option to opt-out to a more convenient time. This means those cases that remain on the Cause list (with the opted out cases generally being replaced with another case) might be those who find for example the hearing time convenient and will therefore be more likely to attend (as otherwise they would have opted out). As this option to opt-out was not available to pre-pilot public users, any difference observed may be due to this aspect of the pilots' design, rather than the impact of FOH itself.
2. In contrast, the fact that 10 to 11 cases that opted out in each court still ended up on the Cause lists meant that the number of cases that didn't go ahead may have been slightly inflated by this aspect of the pilots' design, rather than the impact of FOH itself.

Given that the cases heard per hour the court room is open indicator appears to depend largely on the case type (see Chapter 5 and 6), and does not move across all case types in one clear direction, it appears that neither of these two considerations have had a material effect on those results – however it not possible to say for certain, as the incidence of these two effects may affect different case types differently.

Regarding the percentage of cases that were not heard however, this differed between the two courts (see Chapter 8). In Brentford, no statistically significant difference was found – however in Manchester across all three case types, the FOH pilot was found to have a lower percentage of cases that were not heard. This either reflects the fact that running sessions during FOH hours meant cases were more likely to go ahead (e.g. due to it being more convenient for public users), or it could be due to the opt-out mechanism as explained in 1 above. This analysis alone cannot separate which of these two hypotheses might be driving this difference. Furthermore, results from the public user survey and findings from qualitative interviews with court staff and members of the judiciary are also inconclusive about which hypothesis is driving this difference.

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<sup>41</sup> Information on the adjustments made to the final sample can be found in the Annex of the Technical Appendix.

<sup>42</sup> This figure removes instances where several public users opted out of the same case (as this analysis is performed on a per case basis), and is the reason this figure differs for both courts to the total number of public users who opted out, which will be larger

In sum, considering the opt-out mechanism, the total number of cases that were listed in the pilots was 400 for Manchester and 460 for Brentford. In total 18% of cases opted out in Manchester and 16% in Brentford.<sup>43</sup>

### Reasons for opting out

As part of the opt-out feature of the FOH pilots, the local implementation teams at Brentford and Manchester collected information on the reasons why public users opted out.

Many public user opt-outs gave no reason for doing so (45%). This is perhaps unsurprising as public users were not required to justify their decision to opt-out. However, it may also indicate that some public users exploited the opt-out feature of the pilots; opting out from choice rather than need. Amongst those that did give a reason for opting out, the most common were work commitments (15%); childcare commitments (8%); difficulties getting legal representation (5%); medical reasons (4%); having difficulties with transport (4%); and being on holiday at the time of the hearing (4%).

In addition to the information collected by the local implementation teams at Brentford and Manchester, insight into the reasons why public users opted out was also collected from an online survey completed by 24 people who had opted-out. The most common reason given by these public users was that the hearing time was not convenient for their working hours (42%). Other prominent reasons included the time not being convenient for childcare responsibilities (25%) and the journey to/from court being difficult (25%).

Qualitative interviews were conducted with five public users that opted out of FOH sessions to explore their reasons for opting out in detail and to understand what, if anything, would need to change to enable them to attend an FOH sessions.

Three of the public users that took part in qualitative interviews opted out because of caring responsibilities. In one instance, a public user was unable to attend their FOH session because they needed to take their father, who has dementia, to a medical appointment. In another instance, a public user was unable to attend an FOH session because of childcare commitments. This individual explained that because the hearing was listed outside of school hours and because there was no one available to provide childcare, she would not be able to attend.

*"It is impossible to get to the court for 9am. It's a two-hour drive to court and I can't leave my children. I don't have family members and the school isn't open that early." (Opt-out, Manchester)*

One public user opted out of an FOH session because of difficulties with travel to and from court. This individual was unable to drive and so relied upon a family member for transport. However, due to medical circumstances, this family member was unavailable to provide transport at the time of the FOH session. One public user opted out because they felt that the time allotted for their hearing was insufficient. This individual explained that they had eight different applications and felt that this would take at least two hours, more than the FOH session would allow.

*"For my hearing I thought I needed at least two hours and my understanding was that it wasn't possible [in FOH]. If we started at 8AM we would need to be finished before 9AM for example. That's the reason why I asked for another one." (Opt-out, Brentford)*

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<sup>43</sup> This figure includes the total number of cases listed on the hand annotated Cause lists that were able to be processed, plus those cases that were not able to be processed, plus (for Manchester only) the 10 Manchester family cases (not including children's work) that were excluded from the analysis, plus those cases who opted out, then deducting the cases that appeared on both the Cause lists and the opt-out list

Although these users had opted out of the FOH pilots, most were not opposed to the idea of having an FOH session. In fact, most expressed the view that a hearing in the early morning or late afternoon could be more convenient for them in terms of taking less time off work and managing their caring responsibilities. It was also said by a few that FOH sessions could be beneficial in terms of privacy.

*"It's always good to get cases resolved faster and for people take off less time or no time at all off work to attend court... the fact that most places start work at 9 means that if your hearing finishes at 9 you're only going to be a bit late to work. You don't have to take the whole day off or, like in my case, half." (Opt-out, Brentford)*

*"I work different shifts and sometimes it's difficult to get time off and I think I would prefer to go earlier... it's a bit embarrassing because I keep needing to ask for time off work and they're asking me why. I don't really want to tell anyone that personal information about myself." (Opt-out, Brentford)*

In light of the reasons why these public users opted out and the fact that most were not opposed to the concept of FOH, it is unsurprising that many said nothing needed to change to encourage them to attend an FOH session. FOH hearing times were inconvenient for these public users because of external circumstances, such as prearranged appointments and the difficulties with travel. These circumstances would likely be a factor in the ability of these public users to attend hearings in normal operating hours too, and so these individuals would have been likely to have requested an adjournment.

A few users mentioned elements that would need to change to allow them to attend FOH sessions. These were typically not directly related to the FOH pilots. The most common was making it easier to travel to and from court. For example, having courts open closer to where they live and ensuring public transport is available. Only one comment was directly related to the FOH pilots: the individual that opted out because he felt the length of the hearing would not be sufficient suggested that he would have attended had he been reassured his case could be resolved in the time allotted.

*"Due to its nature and complexity, it could have been heard in a morning [FOH] session, my hearing. I just didn't feel like there was enough time." (Opt-out, Brentford)*

### **The views of court staff and the judiciary**

Some court staff and members of the judiciary commented that the opt-out feature of the FOH pilots caused inconvenience for other parties involved in hearings, typically claimants. This is because many opt-outs were made with short notice and it was not always possible to notify the other parties involved in the hearing in time. Therefore, there were instances where they came to court for hearings that had been vacated. It was also felt by some court staff and members of the judiciary that the opt-out feature was exploited by some public users, typically litigants, in an attempt to delay their hearing.

*"One of the days is a Monday which meant parties could effectively opt-out on a Sunday and we wouldn't read that until Monday morning and the hearing might be at 2pm that afternoon. That happened two or three times that it was vacated on the day." (Court staff, Manchester)*

During discussions with court staff it was implied that some public users opted out of FOH sessions because they had been advised or requested to do so by their legal representative. It was suggested that legal representatives had done so because they were either opposed to FOH or because they saw it as an opportunity to delay the hearing and buy their client more time. This practice was evidenced in a few interviews with legal professionals.

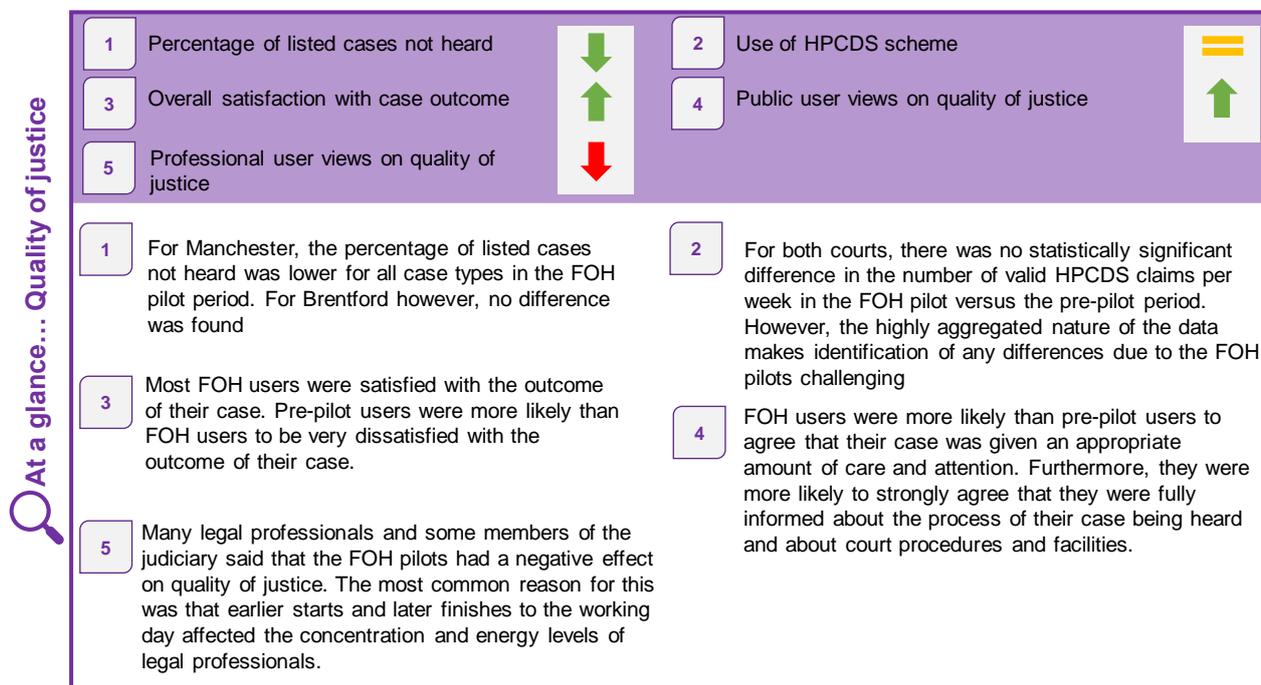
*"If it's one of my cases, I have a kid and I don't live in Manchester. If the FOH went on until 7pm I wouldn't be able to get to Piccadilly station until 7:24pm which means I wouldn't get*

*home until 9pm. That is not doable from a childcare perspective." (Organisation, Solicitor firm, Manchester)*

Many court staff and members of the judiciary suggested that if the FOH pilots were to be trialled again, the opt-out feature should be changed to bring it in line with the adjournment process for normal operating hours. For example, introducing time constraints, a fee and the need for justification. It was felt that these changes would resolve issues experienced around increased administrative workload and inconvenience caused to public users. This topic is covered in more detail in Chapter 10.

# 8. Quality of justice

## Summary of findings on quality of justice



A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

### 8.1. Introduction

This chapter presents findings relevant to the quality of justice delivered during Flexible Operating Hours (FOH) sessions and how this compared to pre-pilot sessions. The evidence presented in this chapter is based on the analysis of hand annotated Cause lists, HPCDS data from the LAA, qualitative interviews with legal professional interviews and court staff and the surveys of public users.

Quality of justice was measured by the following indicators: the percentage of listed cases not heard; use of duty solicitors; overall satisfaction with case outcomes; and public and professional user perceptions of quality of justice.

A positive impact of the FOH pilots on quality of justice would be an improvement in any of these indicators. A negative impact would be reduced concentration levels among legal professionals and less time for client consultation.

## Percentage of listed cases that were not heard

The data for this indicator was based upon the hand annotated Cause lists, and as explained in Chapter 5, does not include those cases that opted-out of the FOH sessions.<sup>44</sup> In a similar vein, for the purposes of the analysis in this section, the pre-pilot is defined as the 2 month period prior to the FOH pilots beginning.

Starting with Manchester in Figure 21, for small claims cases the pre-pilot average is higher at 32% of listed cases not being heard, versus 18% in the FOH pilot. This difference is statistically significant at the 5% level. Similar results are found for non-small claims civil cases and for family cases (not including children's work), which also report statistically significant lower averages in the FOH pilot at the 5% and 10% level respectively (with the latter being more of an indicative result). Given all three case types in the FOH pilot at Manchester had a lower percentage of cases that were not heard, this means that cases in the FOH pilot were more likely to be heard on average versus the pre-pilot period. This suggests there has been an improvement in the quality of justice for the included cases in the FOH pilot versus the pre-pilot period.

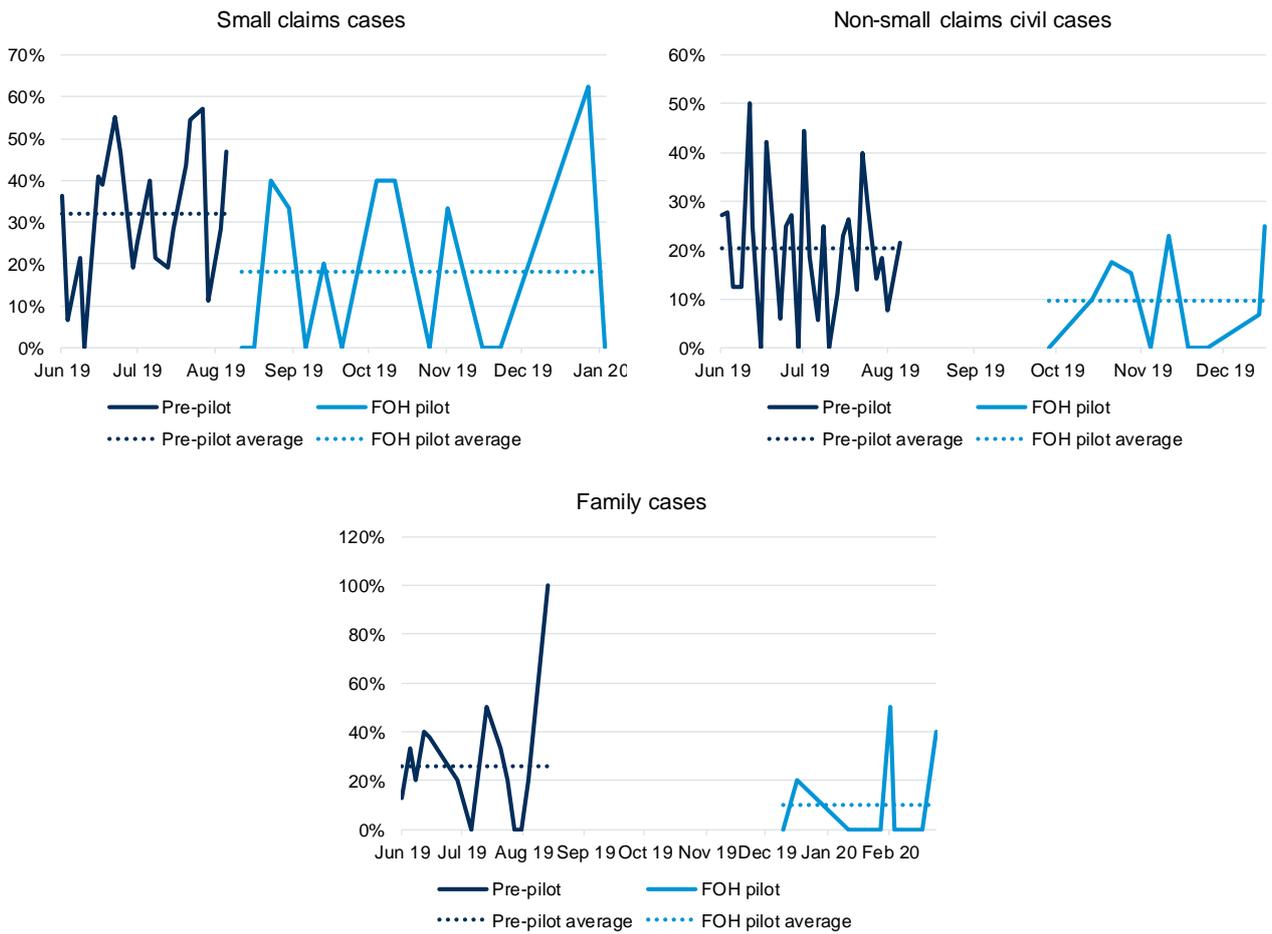
As mentioned in Chapter 7 though, this difference either reflects the fact that running sessions during FOH hours meant cases were more likely to go ahead (e.g. due to it being more convenient for public users), or it could be due to the opt-out mechanism meaning those cases that ended up being listed on the Cause lists were more likely to go ahead with their case. This analysis alone cannot separate which of these two hypotheses might be driving this difference. Furthermore, results from the public user survey and findings from qualitative interviews with court staff and members of the judiciary were also inconclusive about which hypothesis is driving this difference.

Turning to Brentford in Figure 22, across both case types, no statistically significant difference was found between the pre-pilot and FOH pilot periods. It appears therefore that the quality of justice has been unaffected by the FOH pilot for this indicator in the Brentford court.

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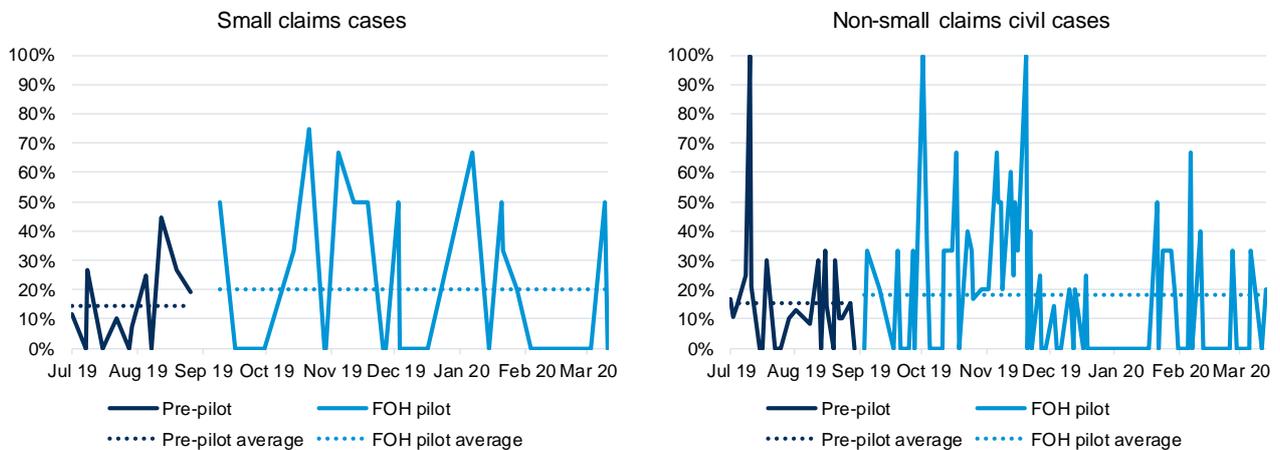
<sup>44</sup> Originally, the aim was to test whether the FOH pilots led to a change in a) the number of ineffective hearings, b) the number of cases listed but then vacated on application, c) the number which were cancelled because someone failed to attend and d) the number which were adjourned. To reduce the pressure of the FOH pilot on each court at the time, it was agreed that this data would not be collected. Instead, higher level data on the percentage of listed cases that were not heard, which includes all four of these categories, was chosen to be analysed as this data was easily available and closely linked to those four categories. The method for calculating this indicator can be found in the Annex of the Technical Appendix

**Figure 21: Percentage of listed cases that were not heard for Manchester Civil Justice Centre by case type**



**Source: Annotated Cause lists**

**Figure 22: Percentage of listed cases that were not heard for Brentford County Court by case type**



**Source: Annotated Cause lists**

## Use of HPCDS scheme

The next indicator relates to the use of the Housing Possession Court Duty Schemes (HPCDS) during the FOH pilots. The HPCDS scheme is funded by the Legal Aid Agency (LAA) and provides “*on-the-day emergency advice and advocacy to anyone facing possession proceedings*”<sup>45</sup>. This indicator was chosen as it related to claims that covered case types that were in scope for the FOH pilot and pre-pilot periods. Given it was not possible to directly link the legal aid claims data to FOH pilot court rooms within a court, the closest way of identifying the cases listed during the FOH pilot was by restricting the analysis to the subset of cases in scope for the FOH pilots.<sup>46</sup>

The data in Figure 23 is based upon claims data collected by the LAA, aggregated to a weekly basis, split into morning and afternoon sessions. As such, the 4:30PM FOH sessions at Brentford have been compared with the 2PM pre-pilot sessions.<sup>47</sup> For Manchester, the 2PM and 4:30PM FOH sessions have been compared with the 2PM pre-pilot sessions.<sup>48</sup> For the purposes of this section, the pre-pilot period relates to the year prior to the FOH pilots beginning (i.e. the beginning of September 2018 to the end of August 2019).

It is worth noting that the figures below are for the number of *valid* HPCDS claims per week, which is the total number of HPCDS claims made after deducting those cases that progressed to legal help (as practitioners cannot claim both schemes). In addition, there is a slight risk that not all of the claims relating to the FOH pilots’ period have been received. The date the data was provided for this analysis was three months after the end of the FOH pilots, however providers can claim up to six months after the point they provide the advice. The LAA confirmed however that most providers claim in the month of or following the HPCDS session, so the amount of missing data is likely to be low.

Starting with the Manchester court on the left-hand side of Figure 23, the average number of valid HPCDS claims made per week in the pre-pilot period was slightly lower at 2.3 claims per week versus 3.3 in the FOH pilots. This difference was not however statistically significant. For Brentford, a similar pattern is found, with the pre-pilot average lower at 4.2 claims per week, as opposed to 4.9 during the FOH pilots – however this difference was also not statistically significant.

Whilst these results suggest there had been no change in the use of the HPCDS scheme and therefore change in the quality of justice in that dimension, it worth noting that the reasons why these differences are not statistically significant may be due to the fact the FOH pilots, in particular in Manchester, may be too small relative to the rest of the court for any differences to be picked up by the statistical tests. The fact the (insignificant) direction of the difference moves in the same direction for both Manchester and Brentford does suggest that the number of claims may have risen, but whether this was due exclusively to the FOH pilots is hard to say.

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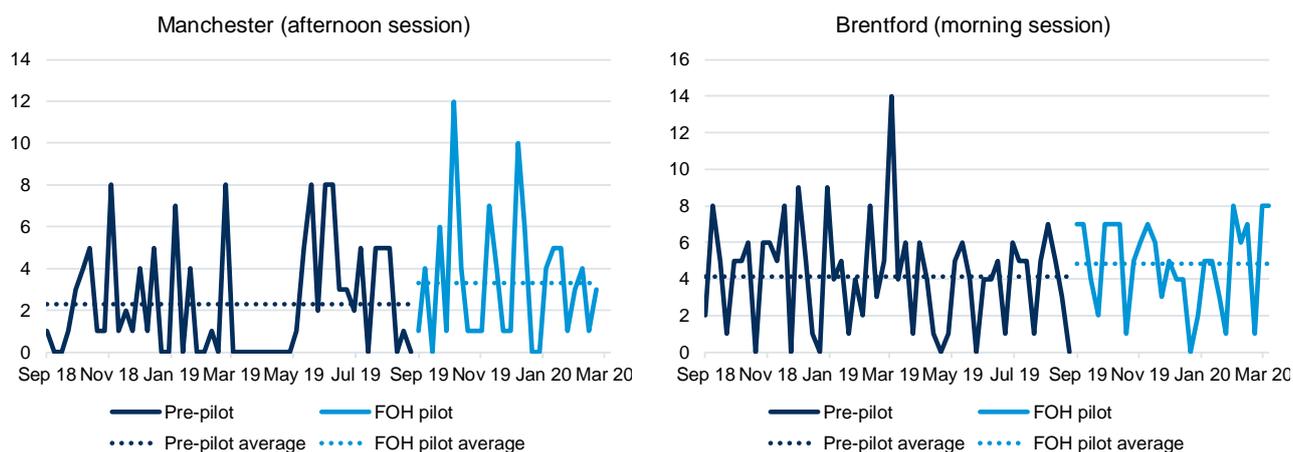
<sup>45</sup> <https://www.gov.uk/government/publications/housing-possession-court-duty-schemes-hpcds>

<sup>46</sup> As such, differences observed between the pre-pilot and FOH pilot periods may reflect other factors besides the running of the FOH pilots. This is because the FOH pilot period data does not just contain data for pilot court rooms - but for the whole court during the pilot period.

<sup>47</sup> The morning session data for Brentford has been excluded, as no claims were made in the pre-pilot period and only 4 claims in the FOH pilots period – making quantitative analysis infeasible.

<sup>48</sup> The morning and all-day sessions data have not been presented for Manchester, as they were not applicable to the Manchester FOH pilots.

**Figure 23: Number of valid HPCDS claims for each court per week, by session timing and court**



**Source: LAA HPCDS claims data**

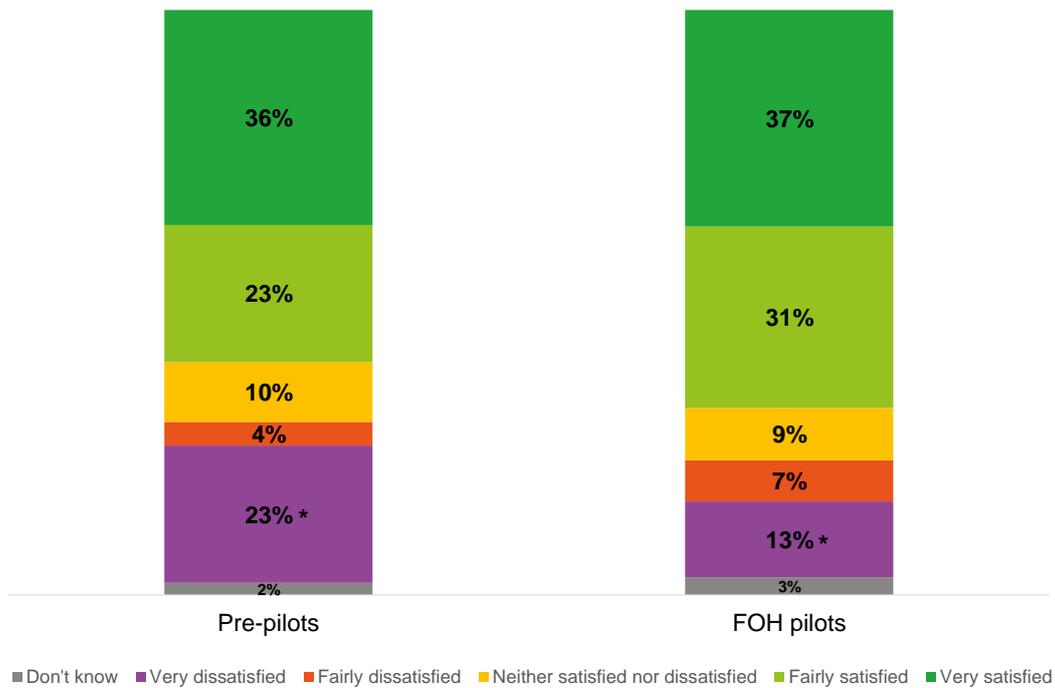
Taking this analysis further, it is worth noting that Figure 23 includes both claims which were made because a client was provided with advice and also claims for ‘nil’ sessions. Nil sessions are those where no client was seen, but the provider was paid a fixed fee for being available at the court. Comparing the FOH pilots and pre-pilot averages, no statistically significant differences were found. As such, the FOH pilots did not appear to lead to a change in the number of sessions where no client was seen, although the limitations regarding the size of the pilots relative to the aggregate data apply here as well.

## 8.2. Public user views on quality of justice

### Overall satisfaction with case outcomes

As presented in Figure 24, most public users that attended FOH sessions were satisfied with the outcome of their case (68%). A fifth (20%) of users were dissatisfied with the outcome and 9% were neither satisfied nor dissatisfied. Compared to FOH users, pre-pilot users were more likely to be very dissatisfied with the outcome of their case (23% compared to 13%).

**Figure 24: Overall satisfaction with case outcomes**



**Source: Public user survey. Pre-pilot users (453) and FOH pilots users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

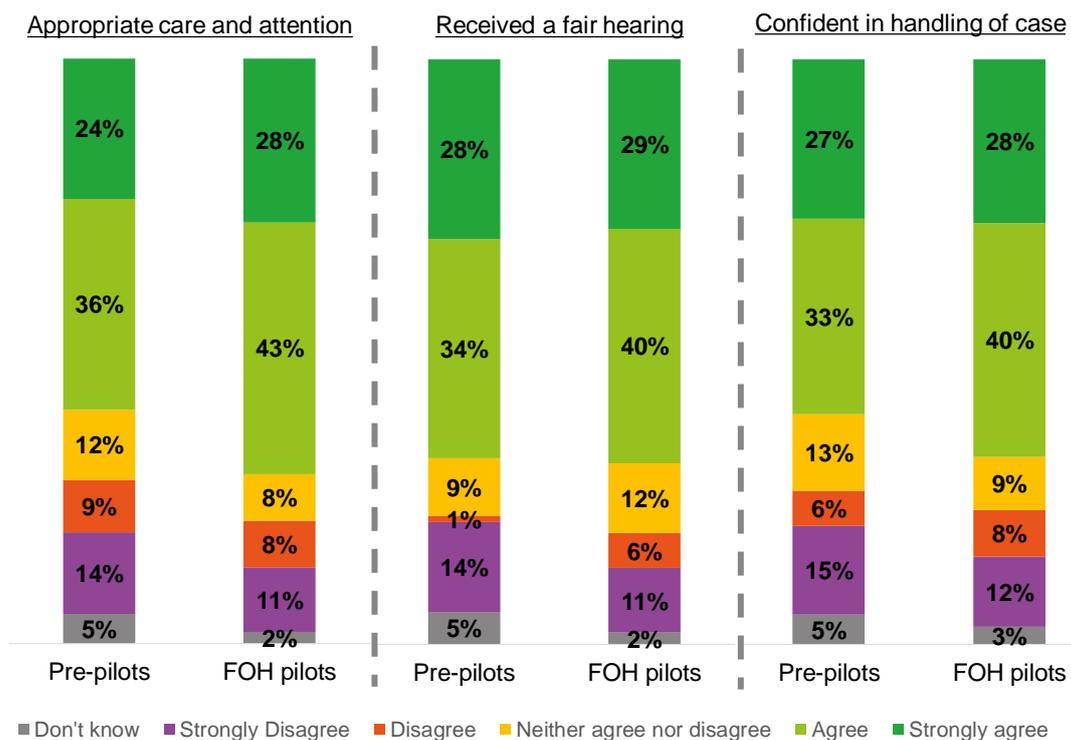
A potential reason for the differences between pre-pilot and FOH users in the extent to which they were satisfied with the outcome of their case could be differences in the outcomes achieved. It was not possible to match case outcomes to all cases, but where it was possible there was an indication that FOH users were more likely to have received a judgment from their hearing (15% compared to 9%) while the cases that pre-pilot users were involved in were more likely to have settled or withdrawn without a judgment (13% compared to 8%). These differences in the case outcomes achieved are likely to reflect the differences in case types heard in pre-pilot and FOH sessions. Furthermore, the shorter delays and shorter overruns during the FOH pilots, as mentioned in Chapter 5, may have had an influence on the overall satisfaction with case outcomes.

### Public user views on quality of justice

Survey findings show that most public users that attended FOH sessions had positive views on the quality of justice they received. As presented in Figure 25, 71% of FOH users agreed that their case was given an appropriate amount of care and attention; 69% agreed that they received a fair hearing; and 68% had confidence in the way the court handled their case.

There was no difference between FOH and pre-pilot users in the proportion that felt they received a fair hearing (69% compared to 62%) or in the proportion that had confidence in the way the court handled their case (68% compared to 60%). However, in terms of their case being given an appropriate amount of care and attention, FOH users were more likely to agree than pre-pilot users (71% compared to 59%).

**Figure 25: Views on whether case was given appropriate care and attention, a fair hearing and whether confident in handling of case**



**Source: Public user survey. Pre-pilot users (453) and FOH pilots users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

As a robustness check, a regression was conducted on the result relating to the case being given appropriate care and attention to see if the difference remained after controlling for a series of case characteristics and personal characteristics (more detail is provided in the Technical Appendix). This check found that being in an FOH session led to no statistically significant difference in the perceptions of whether respondents felt their hearing received appropriate care and attention versus pre-pilot respondents (although the direction of the effect suggested the effect of FOH may have been positive).

Around three-fifths of public users that attended FOH sessions agreed that they were fully informed about the process of their case being heard (61%) and that they were fully informed about court procedures and facilities (60%).

As presented in Figure 26, on both counts FOH users were more likely to strongly agree than pre-pilot users; 20% strongly agreed that they were fully informed about the process of their case being heard compared to 11%, and 19% strongly agreed that they were fully informed about court procedures and facilities compared to 10%. Furthermore, pre-pilot users were more likely to disagree that they were fully informed about the process of their case being heard (29% compared to 20%).

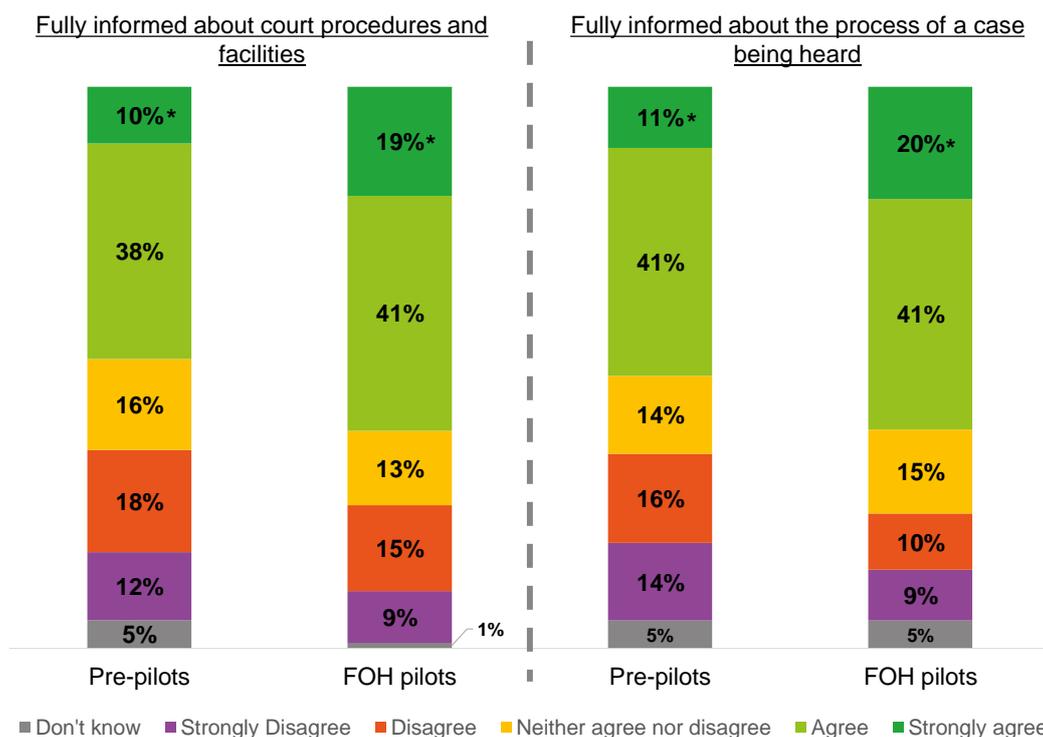
A regression a robustness check was also performed on this finding relating to feeling fully informed. This check found that respondents in FOH sessions were more likely to report that they felt they were fully informed about the process of their case being heard than pre-pilot respondents (with this statistically significant at the 5% level).

During qualitative interviews with court staff and members of the judiciary some said that because fewer court rooms were in use during FOH sessions, and therefore fewer cases were heard and fewer public users were in attendance, court staff and judges had more time available to spend with public users. This could be an explanation for the differences between pre-pilot and FOH users in terms of their views on their case being given an appropriate amount of care and attention and whether they felt fully informed about the process of their case being heard and court procedures and facilities.

*“Compared to a general working day, where if you have a moment you are taking up work to help someone else, judges get to concentrate with no distractions.” (Judiciary, Manchester)*

*“[The FOH pilots] are good for the parties, as they get more time invested in their hearing.” (Court staff, Brentford)*

**Figure 26: Extent to which felt fully informed about court procedures and facilities and fully informed about the process of a case being heard**



**Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 95% level between FOH and pre-pilot users.**

### 8.3. Views of legal professionals and judiciary on quality of justice

During qualitative interviews, legal professionals and members of the judiciary were asked to share their views on the impacts of the FOH pilots on the quality of justice. In most cases they were able to evidence their views with first-hand experiences. However, owing to the fact that the FOH pilots were temporary and many legal professionals and members of the judiciary had only been involved in a small number of FOH sessions in that time, in some cases they hypothesised the effect on the quality of justice.

Some legal professionals and members of the judiciary expressed the view that quality of justice was unaffected by the FOH pilots. This was because in their experience they had sufficient time to prepare for hearings and were able to access relevant information and resources. They therefore saw no difference between the quality of justice delivered in FOH sessions and pre-pilot sessions.

*"With regards to staff being there, the building being open, papers being available, help being available if you need it – there was no difference." (Judiciary, Brentford)*

Although some felt that quality of justice was unchanged, many legal professionals and some members of the judiciary said that the FOH pilots had a negative effect on the quality of justice. The most common reason for this was that earlier starts and later finishes to the working day affected the concentration and energy levels of legal professionals, and therefore their ability to perform their role to the best of their ability. A few legal professionals also commented that the concentration and energy levels of judges were affected by the FOH pilots. However, no judges that participated in qualitative interviews expressed this view.

*"People have already done a full day's work by the time that case is listed, and that includes the Judges and the Solicitors and perhaps the clients, as well. So, I cannot see for the life of me, if a case starts at 6pm, how courts expect it to be dealt with in the same way in which it would have been dealt with in the morning or the afternoon. People are tired, and are not going to be at their best, they want to go home at 6pm in the evening." (Organisation, Solicitor Firm, Brentford)*

*"It would make you weary. In terms of your brain functioning properly and me being able to see all the potential issues and give the advice that I need to give... I don't think everyone would be on the ball as much as they would be earlier in the day." (Legal professional, Barrister, 1 FOH session, Manchester)*

Another common reason why the quality of justice was felt to be negatively affected by the FOH pilots was because legal professionals had difficulty accessing information and direction during FOH sessions. This is because support staff at their office, instructing solicitors and clients were sometimes unavailable outside of their normal working hours (i.e. nine to five).

*"If you are at court and an issue comes up, you can ring the landlord, ring the claimant to get further instructions. That isn't possible [during FOH] because their offices aren't open. Makes litigation expensive and lengthier – you can't progress on that day, so you need to list it later down the line." (Legal professional, Solicitor, 3 FOH sessions, Brentford)*

*"Quite often things will arise that you will want to talk to your instructing solicitor about, to get instructions on the state of play and what has happened, and the instructing solicitor won't be open so we won't be able to get updated instructions. From the advocate's point of view that is not a good place to be because they're going to have to second guess what the instructing solicitors and the clients want us to do." (Organisation, Solicitor Firm, Brentford and Manchester)*

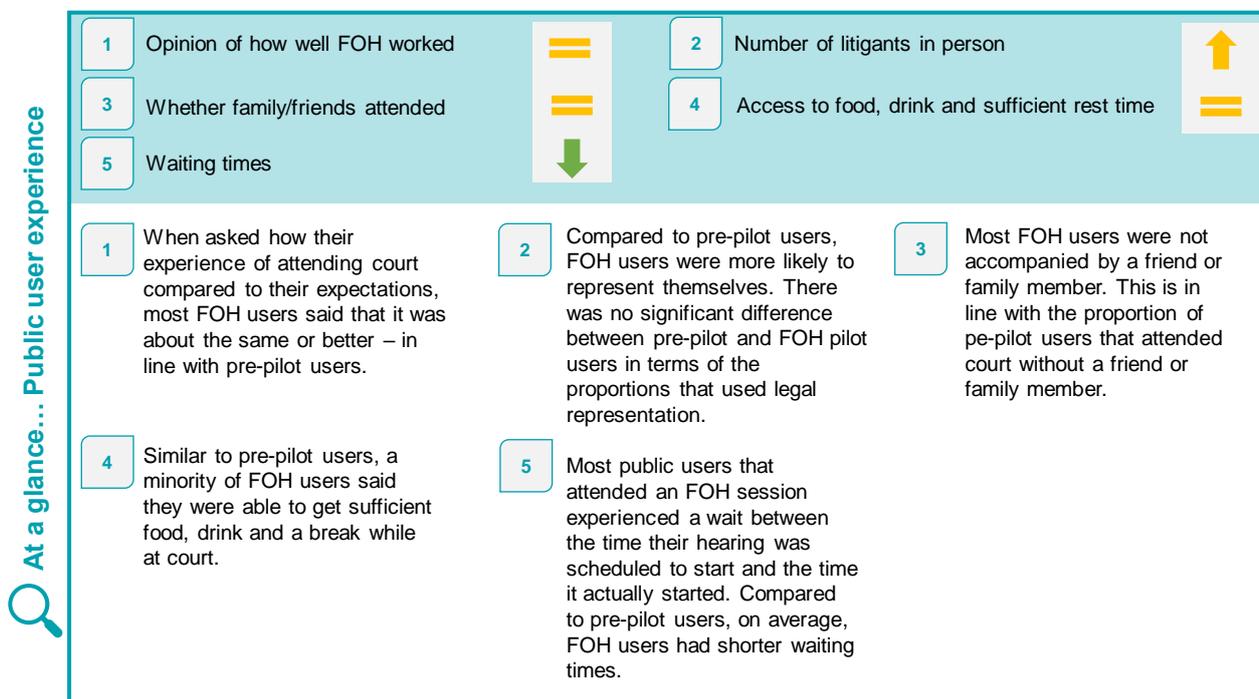
Some legal professionals felt that quality of justice was affected negatively by the FOH pilots because earlier starts and later finishes to the working day made it more challenging for them to prepare for a hearing. In normal circumstances legal professionals would use the early morning and evening to prepare for hearings later that day or the following day. However, during the pilots this was not possible as hearings were listed at these times. Legal professionals therefore felt that they had less time to prepare.

*"I was knackered. It meant that I had worked a ten-hour day, which had a knock-on effect on my ability to do other work". (Organisation, Solicitor Firm, Brentford)*

*“If you are in court for a typical day you go home, and you prepare for your 10am case that evening. But for FOH, you lose that evening prep time because you’re finishing later in the day.” (Legal professional, Barrister, 2 FOH sessions, Manchester)*

# 9. Experiences of public users

## Summary of findings on the experience of public users



A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

### 9.1. Introduction

This chapter presents findings on the experience public users had of attending a Flexible Operating Hours (FOH) session and how this compared to the experience of those that attended a pre-pilot session. The findings presented in this chapter are from surveys with public users.

The experience of public users was measured by the following indicators: how well FOH worked for public users overall; access to refreshments and breaks; the number of litigants in person; whether friends and family attended; and waiting times. A positive impact of the FOH pilots on the experiences of public users would be no change or an improvement in any of the indicators listed.

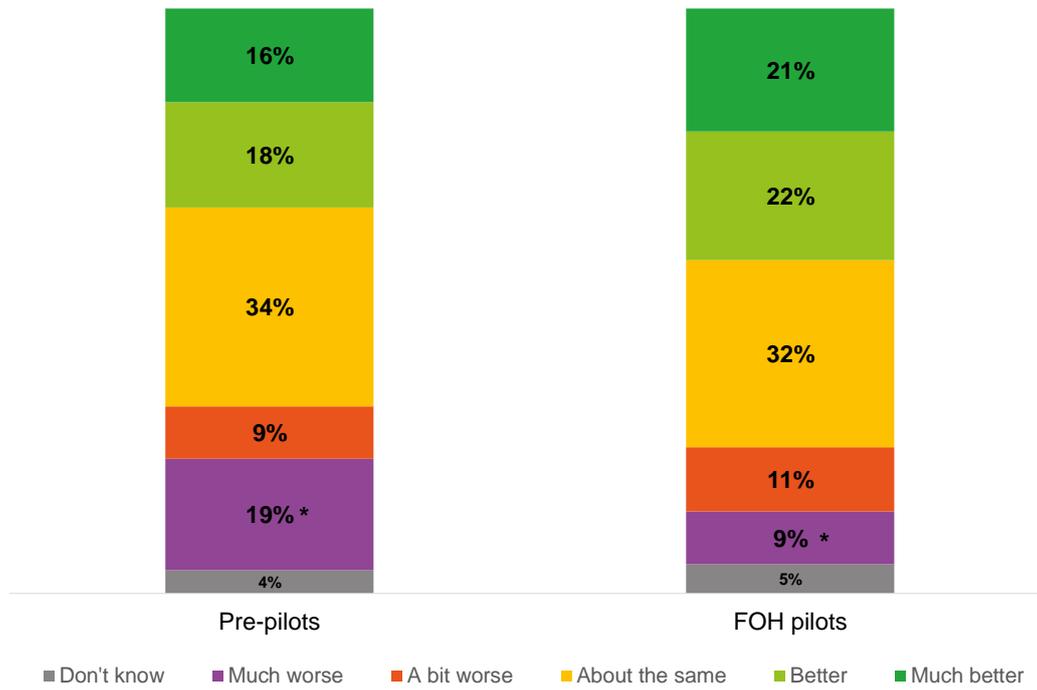
### 9.2. Court experience

#### Overall experience

Most public users that attended an FOH session said that their experience of court was about the same (32%) or better (42%) than their expectations (75% in total). A fifth (19%) of FOH users said that the experience was worse than what they expected, with 9% saying it was much worse. A

similar proportion of pre-pilot users said that their experience of court was about the same (34%) or better (33%) than their expectations (68% in total). However, they were also more likely than FOH users to say that their experience of court was much worse than they expected it to be (19% compared to 9%).

**Figure 27: Overall experience of attending court compared to expectation**



**Source: Public user survey. Pre-pilot users (453) and FOH pilots users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.**

As a robustness check, a regression was conducted on the findings for the overall experience of attending court to see if the difference remained after controlling for a series of case characteristics and personal characteristics (more detail is provided in the Technical Appendix). This check found that respondents in FOH sessions were more likely to report that their overall experience of attending court versus their expectation was higher than pre-pilot respondents (with this statistically significant at the 10% level, making it an indicative result).

### 9.3. Practicalities of attending court

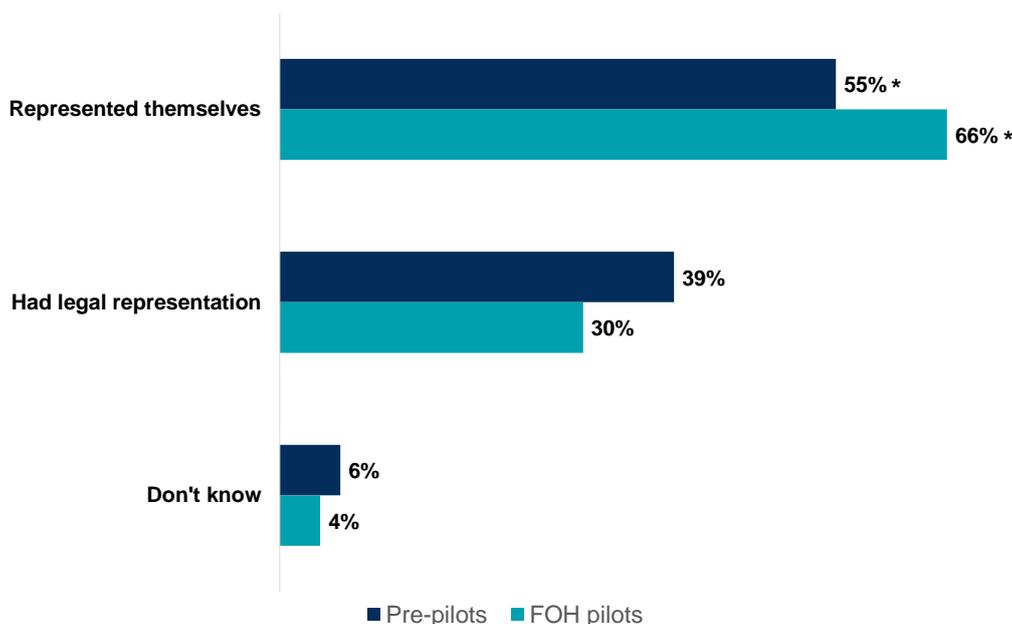
#### Legal representation

As presented in Figure 28, two-thirds (66%) of public users that attended FOH sessions were litigants in person; 49% represented themselves without support from anyone else and 18% represented themselves with support (i.e. from a friend, relative or volunteer). Around a third (30%) of public users that attended an FOH session were represented by a legal professional.

Compared to pre-pilot users, FOH users were more likely to represent themselves (66% compared to 55%). As discussed in Chapter 7, this was an expected outcome of the types of cases that were

selected for the FOH pilots.<sup>49</sup> There was no significant difference between pre-pilot and FOH pilots' users in terms of the proportions that used legal representation. However, as shown in Figure 28, there is indicative evidence of FOH users being less likely to use a legal representative.

**Figure 28: Legal representation during hearing**



*Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.*

### Friends and family

Most public users that attended FOH sessions were not accompanied by a friend or family member (60%). This is in line with the proportion of pre-pilot users that attended court without a friend or family member (55%). Hence the timing of the FOH sessions does not seem to have had a major impact on the ability to obtain support from friends or family.

### Food, refreshments and rest periods

Amongst both pre-pilot and FOH users, a minority said they were able to get enough food and refreshments, and a break while at court.

Around a third (31%) of public users that attended FOH sessions said that they were able to get sufficient food and refreshments while at court. Around two-fifths (41%) said that they did not get sufficient access to food and refreshments, and over a quarter (28%) were unable to comment. These findings are broadly in line with findings from pre-pilot users. However, it should be noted that FOH users were more likely than pre-pilot users to be unable to comment on whether they received sufficient food and refreshments (28% compared to 18%).

Just over a third (36%) of public users that attended FOH sessions were able to get sufficient breaks while at court. Of the remaining FOH users, 36% said that they did not get sufficient breaks

<sup>49</sup> Small claims cases, a subset of non-small claims civil cases and a narrow range of family cases (not including children's work). Additional details on the specific type of case in each category is provided in the Annex of the Technical Appendix

and a quarter (24%) were unable to comment. These findings are in line with findings from pre-pilot users.

## 9.4. Waiting times

### Waiting times

Most public users that attended an FOH session and took part in the public user survey experienced a wait between the time their hearing was scheduled to start and the time it actually started (62%). Only 16% of FOH users said that their hearing started on time, while 1% said that their hearing started earlier than it was scheduled to start. A fifth (21%) of FOH users were unable to recall the time difference between their proposed hearing time and when the hearing actually started.

As presented in Table 8, on average, FOH users had shorter waiting times than pre-pilot users (45 minutes compared to 60 minutes). Table 8 also shows that users that attended an FOH session were more likely than pre-pilot users to have to wait for less than half an hour (20% compared to 10%). These results are broadly in line with those presented in Chapter 5 for the number of minutes delayed before starting and number of minutes overrunning per session, which also show a reduction.

**Table 8: Difference between scheduled hearing start time and actual hearing start time**

	Pre-pilot	FOH pilots
Started earlier than scheduled	<0.5%	1%
Started on time	14%	16%
Started one to 29 minutes later than scheduled	10%*	20%*
Started 30 to 59 minutes later than scheduled	20%	20%
Started one to two hours later than scheduled	22%	17%
Started more than two hours later than scheduled	9%	6%
Don't know	24%	21%
Mean	62 minutes	45 minutes
Median	30 minutes	30 minutes

*Source: Public user survey. Pre-pilot users (453) and in-pilot users (124). Asterisks denote a statistically significant difference at the 5% level between FOH and pre-pilot users.*

For most public users that attended an FOH session there were no pauses made during their hearing (72%). Amongst the FOH users that did experience a pause, this typically lasted for less than 30 minutes (61%). This is in line with the findings for FOH users.

# 10. Working lives of legal professionals

## Summary of findings on the working lives of legal professionals

**At a glance... Working lives of professionals**

1	Working hours	↑	2	Workloads	↑
3	Caring arrangements made	↑	4	Personal agency and self-direction	==
5	Safety and ease of travel to & from court	==	6	Access to meals and refreshments	==
7	Time travelled to and from court	==	8	Availability of legal services	↓

**1** FOH impacted the working lives of different legal professionals, judges and court staff in different ways. Working hours for judges were typically shifted on a FOH hearing day whereas legal professionals' hours were extended, and their workload displaced.

**2** The workloads for judges on FOH hearing days were largely unchanged. In contrast, legal professionals and listing staff experienced increased workloads because of FOH.

**3** Those with young children reported increased contingency planning with colleagues, friends and family, adding to their workload, and making work/life balance even more challenging. Professionals who opted out of the pilot often did so because of their childcare responsibilities and this prevented them from having the time and capacity to accommodate displaced workloads.

**4** Judges did not feel their professional agency was impacted by FOH but some did find late hearings limited their progress with boxwork. Like chambers and firms, other organisations involved in a case did not adjust their operating hours on FOH days because of the small scale and short nature of the pilot. This meant solicitors and barristers could not always progress a case because they could not access instruction.

**5** Legal professionals were less likely to mention concerns about their safety in travelling to and from work, except female professionals attending late FOH hearings in both courts. These professionals felt less safe leaving late hearings because of fewer people around and the courts being darker.

**6** Legal professionals, except one, did not experience issues with access to meals and refreshments during FOH sessions because they either brought their own refreshments to court or in the case of Brentford, legal professionals were already aware the court does not have food or drink facilities on site.

**7** Judiciary, legal professionals and court staff living near their court had no issues with travelling to and from court around FOH hearings. Travel for FOH hearings was more burdensome for individuals who take public transport to the courts and live further from the courts.

**8** Some solicitors at the contracted legal aid organisations for each court opted-out of taking part in FOH because of the challenges with arranging childcare during early and late hearings and the expected knock-on effects to their work/life balance. This meant that most FOH hearings in both courts involving a duty solicitor were attended by one of two solicitors, limiting the days the court could offer. In the few cases in each court where a litigant in person received support from the duty solicitor the hearings ran to time and were run the same as business as usual.

A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

## 10.1. Introduction

The effect of FOH on the working lives of legal professionals, including judiciary, barristers, solicitors and court staff was explored by looking at: legal professionals' working hours, workloads, personal agency and self-direction, their caring arrangements made, their perceptions of safety and ease of travel to and from court, time taken to travel to and from court, their access to meals and refreshments, the availability of legal support services and the reasons for legal professionals opting out of FOH.

This chapter draws on evidence from cost templates completed by legal professionals and in-depth interviews with 78 court staff, judiciary and legal professionals about their personal experiences and perceptions of how FOH may impact other court users.<sup>50</sup> Many solicitors and barristers attended only one to two FOH sessions and a small number of judges sat most FOH sessions so the true impact of FOH on legal professionals' lives if it were to be rolled out or scaled up is hard to establish.

## 10.2. Effect on hours worked, workloads and professional agency

FOH impacted the working lives of judiciary, different legal professionals and court staff in different ways. In principle, the FOH pilots brought flexible working hours.

### Judiciary

Flexible operating hour sessions were advertised in the same way that normal sitting days are, with judges booking the sessions they were available to sit. In Brentford, FOH sessions were largely staffed by fee-paid deputy district judges. In Manchester, both district judges and deputy district judges staffed FOH sessions.<sup>51</sup>

For judges and some solicitors, their personal circumstances allowed them to benefit from the flexibility the FOH pilots brought, or at least FOH did not affect them negatively. For example, they lived near the court, did not have childcare responsibilities or described themselves as willing and able to work long hours.

*"It allows me to earn half a day's sitting as a deputy district judge and then do a full day in the office ... the best of both worlds." (Judiciary, Brentford)*

*"I can use the morning for family matters, to deal with banking, to see friends who have retired." (Judiciary, Manchester)*

Judges worked similar hours during FOH to pre-pilot for small claims and rent possession cases; their workday tended to shift rather than be extended for FOH sessions as these case types were reported to require less preparation. Financial dispute resolution (family) cases were reported to require more preparation time and the judges that heard them in Manchester found it harder to prepare for them if the case started the morning after a late FOH session.

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<sup>50</sup> In addition, there was a wider discourse about the FOH pilots within the legal profession which may have informed some of the views expressed. To account for this, this report gives more weight to reports of what has actually happened to date, than to concerns about what might happen in future. That said, it is not possible to fully unpick in what ways and to what extent views were informed by wider debate within the profession.

<sup>51</sup> See Chapter 6 for more details on the allocation of judge profile days for FOH pilots.

A less common experience for judges was displaced preparation time for non-FOH cases because of late FOH sessions. Balancing late sessions with preparation for sessions the next morning was a logistical consideration for FOH judges, and legal professionals.

Judges identified aspects of FOH that may influence future buy-in to Flexible Operating Hours by other judges. For some, sitting an FOH session was less attractive than a typical session because it was seen as a 'short shift'. For them, the financial reward of half day for FOH sessions would be more motivating to sit FOH sessions.

*"There might be the odd occasion [I would volunteer for an FOH session] but I wouldn't jump at it. You're disrupting a good half day." (Judiciary, Manchester)*

Judges who sat an FOH session did not feel their professional agency was impacted by FOH but some did find that late sessions limited how efficiently their time was used. Ideally judges would spend all FOH session time in hearings. Occasionally to fill time during gaps in hearings judges do box work, and this happened more in FOH. Sometimes when box work was required during FOH judges felt they were limited in how far they could progress box work. During standard operating hours, many judges are sitting at the same time and if needed, a judge can access their peers for their opinion on a case. During FOH sessions, fewer or no other judges were on site. Similarly, during FOH sessions, there were fewer court staff available to support them with administrative tasks.

*"I try to do box work and admin during FOH lulls between cases, but this doesn't fill the time fully and I can't make as much progress with this alternative work out of hours anyway. When I start, I often encounter a need to discuss the matter with someone else, and of course they aren't there out of hours, so the admin work grinds to a halt." (Judiciary, Manchester)*

This was also identified by other judges as a potential challenge for less experienced judges if the FOH pilots were to be rolled out, as they may be unable to get an independent view on a FOH case when needed.

## Legal professionals

To assess the impact of the FOH pilots on the working lives of professional users, a mixture of cost templates<sup>52</sup> and interviews were used.<sup>53</sup> A reoccurring view from solicitors and barristers, and clerks and managers from some legal organisations, was the FOH pilots meant sometimes working extended hours.

*"Some people think it's great, you can double the work [of the court]. That's not how it works, it's much, much longer hours . . . It's pushing the [working] day longer and longer and longer...It would have a significant adverse impact [on my personal life], if it became routine." (Barrister, 1 FOH hearing, Brentford)*

It was uncommon for chambers and firms, or self-employed barristers, to adapt their operating hours to enable barristers and solicitors to shift, rather than extend, their working hours on days they attended FOH sessions because of the short-term and small scale of the pilot. This contributed to barristers and solicitors having displaced workloads.

*"...for FOH, you lose that evening prep time because [you are] finishing later in the day. So, it displaces the work into later in the evening because, for me, I couldn't get up earlier due to childcare and because I was travelling really far to another court." (Barrister, 2-4 FOH sessions, Manchester)*

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<sup>52</sup> The templates sent to professional users are included in the Annex of the Technical Appendix

<sup>53</sup> A chart indicating the number of observations derived from professional user cost templates and from interviews is included in the Annex of the Technical Appendix

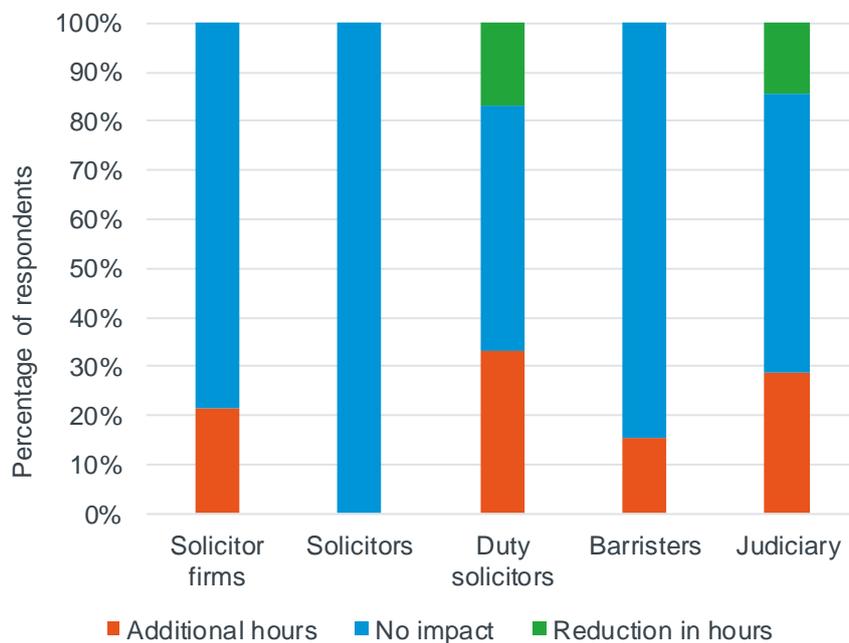
The professional user cost templates and the interviews with legal professionals covered the time and financial impact of the FOH pilots on their lives. The results for time impacts have been aggregated by type of professional user, and responses categorised into ‘additional hours’, ‘no impact’ and ‘reduction in hours’ – which each in turn correspond to a negative, neutral and positive impact of the pilots on the working lives of legal professionals.

Figure 29 shows that in each category which had five or more respondents, it was the case that the majority (i.e. at least 50%) of professional users reported the pilots had no impact on their time. Of those that did report an additional time impact, which ranged from between 0% and 33% of professional users, depending on the category, these either related to:

1. Additional administrative processes implemented to accommodate the FOH pilots. These included rearranging diaries, rotas, accommodating opt-outs and other commitments. These time costs ranged from a “small increase” to “much longer days”.
2. Longer working hours spent attending FOH sessions. These ranged from 1 to 3 extra hours worked per week.

A small proportion of respondents however reported that the pilots led to a reduction in hours spent working. In one case, this led to a reduction in commuting time of 1 to 1.5 hours, as the pilots timings meant rush hour was avoided – while in another, on two occasions a user’s hearing ended earlier than expected (with a 30 minute saving reported each time).

**Figure 29: Time impact of the FOH pilots by professional user**



**Source: Professional user cost templates and interviews with professional users.**

The remaining categories of professional users are not included in Figure 29 to maintain their anonymity. For these users, the majority also reported no time impact on hours worked. Of those that did report time costs, these were due to working longer hours attending FOH sessions – with respondents reporting additional hours of between 3 to 8.5 hours per day, in addition to time spent rearranging childcare (of around 15 minutes). This additional time incurred was either due to cases being spread out throughout the day, or sessions finishing at later times than usual. None of the remaining categories of professional users reported a reduction in hours as a result of the FOH pilots.

This difference between reported time impacts in interviews and cost templates for barristers may be partly explained by the way their personal circumstances interact with the time of day they work. Depending on their work they may have undertaken the same hours but in a different part of the day which then had the knock-on effect on personal circumstances.

Like chambers and firms, other organisations involved in a case did not adjust their operating hours on FOH days because of the small scale and short nature of the FOH pilots. This meant solicitors and barristers interviewed for the evaluation could not always progress a case because they could not access instruction. This is discussed in more detail in the chapter on access to justice.

## Court staff

The courts staffed FOH sessions using the civil service system; staff volunteered to support FOH sessions and could shift their hours to cover FOH hours using flexitime arrangements or could earn overtime by working additional hours.

Ushers in both courts supporting FOH sessions worked extended rather than shifted hours. In Manchester the two ushers who volunteered for the pilot began at their usual time and stayed late to cover the evening FOH session because there were not enough ushers available to cover the work. The small volume of FOH sessions to support meant this did not impact on their ability to cover the sessions or their personal life.

*"Starting at the usual time and finishing later for FOH has meant a longer working day – about 2.5 hours longer than normal, leaving me tired – but there are no particular consequences of this in terms of wellbeing, concentration or performance." (Court staff, Manchester)*

Brentford ushers were positive about their early FOH sessions because it gave them more time to set up for the business as usual sessions after FOH sessions concluded.

*"Because I was already here [for FOH sessions], up and running, I prepared the [other] court room [for the later sessions]. My day started off [with FOH] and it was a smooth transition for me . . . I come in early anyway and my busiest time is that first hour, hour and a half getting courts ready for the public." (Court staff, Brentford)*

Ushers at each court were positive about the compensation they received for working longer hours; both courts have overtime pay arrangements. See the chapter on the cost of justice for more detail of the operating costs for the FOH pilots.

The type and amount of work for listings officers and clerks changed during FOH. Listings officers at both courts had additional administrative work to list FOH cases and manage opt-outs, like including a notice in lists, monitoring the opt-out inbox that was established after the FOH pilots went live and liaising with clerks to relist public users who opted-out of an FOH session. Public users could and did opt-out at short notice and as a result listings officers and clerks faced time pressure to notify other parties involved to avoid parties arriving to a vacated session.

*"There was more work than normal because of the opt-outs. There was no fee [for not attending a hearing] and no excuse needed, so lots of people opted out... we weren't able to do other tasks like listing other sessions in normal hours. We would get emails the day before and then have to drop everything and spend considerable time sorting it out." (Court staff, Brentford)*

Managing the opt-out process was a particular pressure point for Manchester early on in the pilot and once a process was in place opt-outs were more easily managed. Also unique to Manchester's listing officers was the additional logistics of ensuring FOH lists happen on the same floor to avoid additional resources, like ushers and security.

*"[The] logistics of ensuring FOH lists happen on the same, ideally, floor or at least neighbouring floors. Because if not, we need more ushers, security and it is harder for judges to communicate with each other. Ideally, we would have spare rooms and could allocate a room specifically for FOH. Even with a building this size, we have so many different needs and can't dedicate a room." (Court staff, Manchester)*

Brentford outsourced some of their standard administrative work to other courts to redirect resource from the court to manage the amount of FOH administration, as they would do during business as usual if they were to hit a busy period. While these court staff felt more tired compared to business as usual, significant wellbeing concerns were not reported.

### 10.3. Childcare arrangements

Barristers and solicitors with young children and their colleagues shared additional challenges the FOH pilots presented. Those with young children reported increased contingency planning with colleagues, adding to their workload, and making work/life balance even more challenging.

*"MoJ is making huge assumptions about the support network available to solicitors with children or who do not live near the court... Mum had to come to my house at the crack of dawn so I could leave at the crack of dawn to be there [at the court], to get across the city in time because my son's nursery opens at 8am, when the session was...It isn't workable. If I had to be there in the evening there would be similar – added cost to childcare, £12 an hour for babysitter from when nursery ends to cover until I get home, about four hours." (Solicitor, 2-4 FOH sessions, Brentford)*

*"People already struggle to maintain work-life balances and this does nothing to improve that. It's an active assault on work-life balance." (Solicitor, 1 FOH session, Manchester)*

Their colleagues without childcare responsibilities either took on the FOH case from the start or stepped in if delays to FOH sessions meant the legal professional with childcare responsibilities needed to leave the court.

*"[My] female colleagues were forced to return FOH session instructions [to other colleagues] as they had childcare responsibilities." (Barrister, 1 FOH session, Manchester)*

*"There are a number of solicitors [here] that have young children of nursery age and it does have an impact, and if childcare arrangements get in the way, another solicitor would step in." (Solicitor Firm, Brentford)*

Childcare responsibilities prevented legal professionals from having the time and capacity to accommodate displaced workloads and was a common reason reported for opting-out of the FOH pilots. In a unique case, opting-out of the FOH pilots for a barrister, because of caring for three young children with additional needs, led to unintended consequences for their career because of how her chamber chose to allocate FOH cases:

*"Before I was asked about FOH, I could get a case once or twice a month in Manchester. Now because I said outright that I can't be part of the pilot [because of childcare responsibilities], I have not gotten any cases since Sept 2019... What you want as a clerk is someone that goes anywhere at any time. Once you put yourself into the no bracket, it has a knock-on effect. Not just for the pilot, for your career. Because I have said no to the pilot scheme, I now have to say yes to things I wouldn't have said yes to." (Barrister, Opt-out, Manchester)*

This rare experience shows how complex the system FOH is operating in, and that unintended consequences can occur.

The small scale of the FOH pilots and the few FOH sessions attended by barristers and solicitors meant many legal professionals with childcare responsibilities could accommodate the occasional FOH session, usually drawing on the goodwill of their support networks.

Firms and legal professionals raised the likely issues with covering FOH sessions if they were to become commonplace and on a greater scale. For example, establishing new terms and conditions and hiring more professionals available to work different hours.

## 10.4. Perceived safety and ease in travelling to and from court

### Safety in travelling to and from court

Overall, judiciary and legal professionals did not feel any different in how safe they felt during FOH sessions compared with pre-pilot sessions. However, a reoccurring experience shared by some female professionals sitting late FOH sessions in both courts was their concerns about their safety in travelling to and from the court. These professionals felt less safe leaving late sessions because of fewer people around and the courts being darker compared to business as usual, when they are more likely to have left the court when other court users are still around.

*“I had an evening session [in Brentford]. All the lights were off except for the one in the court room which meant I had to use a torch as a phone to go to the toilet and collect my coat after [the] hearing... [There were] few people were around - one usher, one judge and one security guard on desk. I felt unsafe.” (Barrister, 1 FOH session, Brentford)*

*“A female solicitor had mentioned that the other party in their case was a litigant in person and, with the court being so quiet after hours, they had felt threatened by the litigant in person.” (Court staff, Manchester)*

### Ease in travelling to and from court

Judiciary, legal professionals and court staff living near their court had no issues with travelling to and from court around FOH sessions. In a few cases, travel was marginally faster because of travelling outside peak hours and by car.

Travel was more burdensome for individuals who took public transport to the courts and lived further from the courts. For example, trains were reported to run less frequently in the evenings in Manchester to some areas professionals lived and this extended the travel time for these Manchester professionals.

*“My journey home takes an hour longer by public transport than it would in ordinary hours. I get home at about 9.30pm and eat then, but [I] still have to get up at the regular time to start early for a business as usual day, the next day. This feels very disruptive to my working week. I feel I can concentrate less well the next day, and feel low, anxious.” (Judiciary, Manchester)*

Similarly, less frequent Underground or bus services made it harder for legal professionals to get to an early Brentford FOH session.

*“I live in east London. [To get to FOH] I need to leave my house at 6.15am so I wake up at least at 5.30 if I want to look half decent and not terrorise those I represent. Tubes are barely open at that time. It isn't workable.” (Barrister, 2-4 FOH sessions, Brentford)*

## 10.5. Access to meals and refreshments

Legal professionals, except one, did not experience issues with access to meals and refreshments during FOH sessions because they either brought their own refreshments to court or in the case of Brentford, legal professionals were already aware the court does not have food or drink facilities on site. A duty solicitor felt the absence of meals and refreshment on their energy levels and concentration, because the morning FOH session was followed by standard court hours so there was not time to leave the court for refreshments before the end of the day.

Courts considering implementing similar initiatives in future may want to reflect on how best to space FOH and standard sessions to allow legal professionals and judiciary to access meals and refreshments outside the court. They may also consider reminding court users before attending sessions outside standard hours what facilities are available and include their operating hours.

## 10.6. Effect on support services who provide a presence in court

Legal organisations offering the Housing Court Duty Possession Scheme (HPCDS) were involved in FOH in each court. Typically, the scheme is made up of 10 solicitors. The courts were not obliged to make duty solicitors available for the other case types that were heard in a FOH session.

Some legal aid practitioners opted-out of taking part in FOH because of the challenges with arranging childcare during early and late sessions and the expected knock-on effects to their work/life balance. This meant that the relevant FOH sessions in both courts were attended by one of two duty solicitors, and fewer housing possession lists were heard in the FOH sessions than would be the case pre-pilot.

*“[We are] offering one possession date every two weeks in business as usual. We have only offered four days over the whole pilot because of availability of the duty housing solicitors.”  
(Court staff, Manchester)*

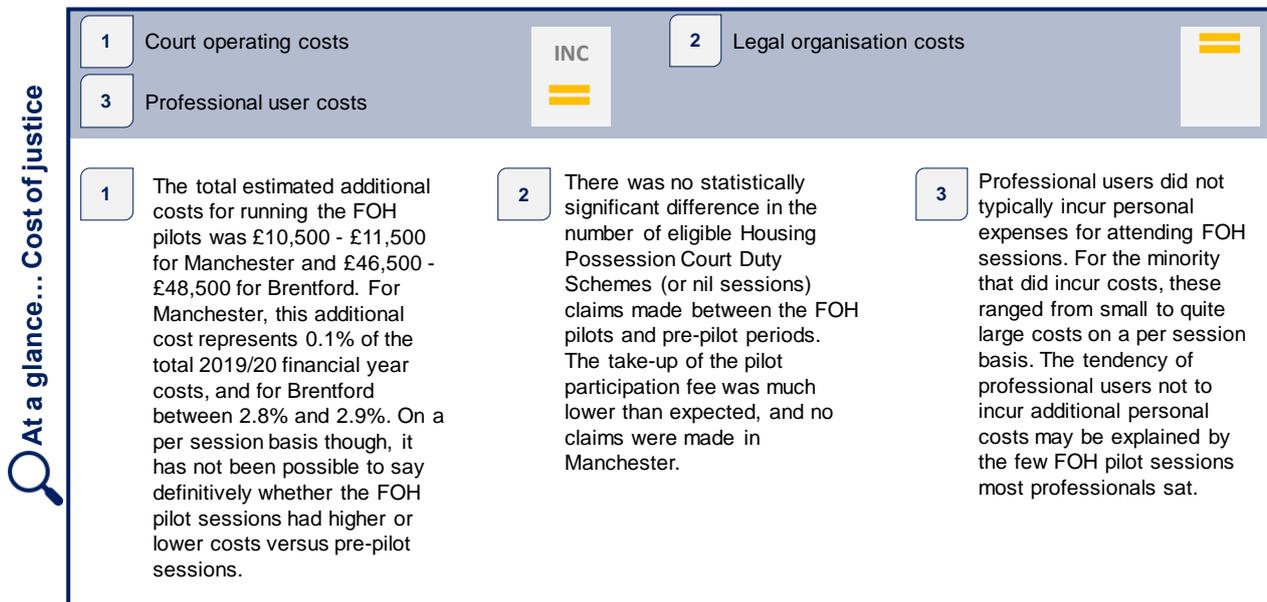
Interviews with duty solicitors picked up some differences in experience compared with what the high-level HPCDS data captured. The duty solicitors that attended FOH sessions reported a relatively light workload compared to standard operating hours.

*“Business as usual mornings is five to seven people between 10am-1pm. Under FOH on three occasions I haven’t seen anybody, but I am seeing the same number of people during the normal hours on that day...I can see cases aren’t being listed as much - maximum number of cases listed at 8am is two cases - but it may be they are opting out before they get to listing.” (Duty Solicitor, 2-4 FOH sessions, Brentford)*

In the few cases in each court that a FOH session went ahead with a duty solicitor and a litigant in person the sessions ran to time and were run the same as business as usual. See Chapter 7 for details on how well supported public users felt during FOH pilot sessions.

# 11. Cost of justice

## Summary of findings on cost of justice



A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change. INC indicates that the results were inconclusive.

### 11.1. Introduction

Cost of justice effects were explored by looking at: changes in firm and personal costs to solicitors, barristers, judges, letting agents, local authorities, the courts and HMCTS, changes in LAA legal aid claims and claims related to duty solicitor scheme and LAA collated data on participation fees.

A positive impact of FOH on cost of justice would be a reduction on a per unit basis in any of the indicators between the pre-pilot and FOH pilots. Negative impacts include higher costs to court operations, support services, organisation operating costs, legal professionals and public or professional personal expenses on a per unit basis. A neutral impact would be no change in costs on a per unit basis.

Evidence is based on the completed cost templates from professional users, operational and performance information from the courts and HMCTS, LAA data and the surveys of public users. Findings are presented by cost type. Operating costs include courts, legal organisations, legal aid claims, duty solicitor claims and participation fees. Personal costs include costs incurred by professionals and public users. Charts and tables are used to illustrate findings.

## 11.2. Operating costs

### Court operating costs

To assess the impact of the FOH pilots on the operating costs of the Manchester and Brentford courts, aggregated court financial data was used and complimented by data from HMCTS and Ofgem. Specific additional costs incurred as a result of the FOH pilots were not recorded in most instances, so the figures below are estimates.<sup>54</sup> Where specific figures were not available, an indicative range is provided. The estimates for judicial staff and non-judicial court staff salaries exclude the costs to the courts of employer National Insurance and employer pension contributions, so they will likely be underestimates.

In agreement with HMCTS, five areas were identified as having most likely been affected by the implementation of the FOH pilots: judicial staff salaries, non-judicial staff salaries, security costs, fuel and utilities costs, and cleaning costs.<sup>55</sup>

No additional judicial staff costs were incurred in Manchester (see Table 9 below). This was because in the Manchester court, no additional sessions were run as part of the FOH pilots – rather the business as usual sessions were shifted to FOH hours.<sup>56</sup> In contrast, Brentford incurred additional costs compared with the pre-pilot because the court ran FOH sessions in addition to its business as usual sessions and so more judge time was used (see Table 10 below).<sup>57</sup>

Non-judicial staff at both courts who worked outside of their usual working hours during the FOH pilots were paid 1.5 times their usual rate as an overtime payment. As such, the estimates provided for each court in Table 9 and Table 10 reflect both the additional hours incurred as a result of running the courts outside of business as usual hours, and the fact that costs during this time were higher owed to overtime payments. The cost at Brentford County Court was almost twice as high for non-judicial staff salaries than for Manchester. This reflects the fact that both of the morning and evening FOH sessions at Brentford were outside of normal operating hours (8AM and 4:30PM), whereas for Manchester only the 4:30PM session was outside of normal operating hours.

Each court had similar estimates for the cost of security during the FOH pilots. The security costs figure for Manchester was based upon the actual invoiced amount of providing additional security at the court for the FOH pilots. The security costs figure for Brentford was estimated from aggregated court financial data and was adjusted to reflect higher costs incurred due to overtime payments paid during FOH hours.

The additional costs for utilities and fuel incurred in each court were relatively minor. The utilities and fuel costs of the FOH pilots have been estimated using aggregated court financial data and average hourly electricity consumption patterns for commercial properties from Ofgem.

No additional costs for cleaning were reported. This was because the way the court rooms were cleaned changed to accommodate the FOH pilots without incurring extra costs. HMCTS explained the court rooms not used for FOH sessions were cleaned as usual and the court rooms used for FOH sessions were cleaned once the session was done.

Overall, the total estimated additional costs for running the FOH pilots was £10,500 - £11,500 for Manchester and £46,500 - £48,500 for Brentford (Table 9 and Table 10). For Manchester, this

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<sup>54</sup> The methods used to estimate the costs presented in Table 9 and Table 10 are provided in the Annex of the Technical Appendix

<sup>55</sup> The PPF and HPCDS payments are not included here, as these are funded by the HMCTS and the LAA respectively – not the courts themselves

<sup>56</sup> No FOH-specific overtime payments were made to judicial staff participating in the FOH pilots

<sup>57</sup> It has been assumed that all FOH sessions were held by fee-paid Deputy District Judges (DDJs) in Brentford, whilst in reality this may have not been the case.

additional cost represents 0.1% of the total 2019/20 financial year costs, and for Brentford between 2.8% and 2.9%. The reason the figure is higher for Brentford is because the pilot was much larger in relative terms to the size of the court than in Manchester (as it had 5 court rooms versus 52). The higher total estimated costs for Brentford compared with Manchester mainly reflects the fact that FOH sessions were held in addition to business as usual, and that both FOH sessions were held outside of business as usual hours.

It is worth noting however that these are not to be interpreted as the total costs that would be incurred if the FOH pilots were to be rolled out more widely. They are instead indicative of some of the additional costs that each court may have incurred as a result of participating in the FOH pilots.

Despite the small increase in total costs of running the pilot, our presentation of the overall effect on court costs of the FOH pilots is recorded as inconclusive as, given the data available, it is not possible to say definitively whether an overall increase or decrease in costs on a per session basis has been found during FOH compared to the pre-pilot period. For Manchester, FOH sessions were held instead of business as usual sessions, and appear to have slightly higher costs, suggesting that on a per session basis the FOH sessions may have been marginally more expensive to run than business as usual sessions. For Brentford, the sessions were in addition to business as usual. There may have been a reduction on a per session basis in fixed costs (e.g. such as rent), however these may or may not have been balanced by the slightly higher variable costs incurred by running these sessions during the FOH pilots.

**Table 9: Manchester Civil Justice Centre estimated cost breakdown by type**

Cost category	Estimated additional costs incurred due to the FOH pilot
Judicial staff salaries	£0
Non-judicial staff salaries	£5,500 to £6,000
Security costs	£5,000
Fuel and utilities costs	£0 to £500
Cleaning costs	£0
<b>Total</b>	<b>£10,500 to £11,500</b>

*Source: Court financial data and HMCTS data*

**Table 10: Brentford County Court estimated cost breakdown by type**

Cost category	Estimated additional costs incurred due to the FOH pilot
Judicial staff salaries	£30,500 to £31,000
Non-judicial staff salaries	£11,000 to £11,500
Security costs	£5,000 to £5,500
Fuel and utilities costs	£0 to £500
Cleaning costs	£0
<b>Total</b>	<b>£46,500 to £48,500</b>

*Source: Court financial data and HMCTS data*

### Legal organisation costs

The evaluation explored whether any additional costs were borne by the LAA or HMCTS respectively owing to changes in the number of Housing Possession Court Duty Schemes (HPCDS) claims or pilot participation fee (PPF) payments made during the FOH pilots. There

appeared to have been small to negligible costs incurred by HMCTS and the LAA in relation to the HPCDS scheme and the PPF during the FOH pilots.

As discussed in Chapter 8, the HPCDS scheme provides on-the-day emergency advice and advocacy to anyone facing possession proceedings. It provides a flat fee of £85.86 including VAT per client advised during eligible sessions at the Manchester court, and £90.72 including VAT per client at the Brentford court. A payment equal to advising one client was paid for 'nil' sessions.<sup>58</sup> There was no statistically significant difference in the number of eligible claims made (or nil sessions) between the FOH pilots and pre-pilot periods. This is likely due to the small scale of the FOH pilots relative to the courts as a whole. As such, there does not appear to have been a detectable increase in costs borne by the LAA owing to the running of the FOH pilots.

The PPF was a payment administered by the LAA and funded by HMCTS "for publicly funded practitioners taking part in Flexible Operating Hours pilots, with a fee of £100 for attendance at a housing duty solicitor slot and £50 for attending a single hearing."<sup>59</sup> This fee was paid to those practitioners who attended FOH sessions.<sup>60</sup> As this scheme was only run as part of the FOH pilots, the pre-pilot counterfactual value of payments for this indicator is zero.

The total value of PPF payments authorised throughout the duration of the pilot was £1,700.<sup>61</sup> This was made up for 17 separate payments of £100, made to providers at the Brentford court. The LAA confirmed that there were negligible costs associated with processing these payments. No payments were made to providers at the Manchester court, and no payments of £50 for attending a single hearing were made in either court.

The take-up of the PPF was much lower than expected, and no claims were made in Manchester. One possible explanation was that no legal aid eligible cases were heard during the 4:30PM session at the Manchester court (and only a minimal number held during the 8AM and 4:30PM sessions at the Brentford court). As data on which particular cases listed were eligible for legal aid does not exist, it has not been possible to test this hypothesis.

The low take-up may also be due to low levels of awareness among legal professionals, in particular, barristers, and an initial misunderstanding that ushers had to fill in the form, rather than legal professionals.

*"The ushers were completing the form and I had to explain to them that the lawyers had to do it... I think most of them didn't really know about it." (Court staff, Manchester)*

### 11.3. Professional user costs

Financial costs for professionals attending FOH sessions were unchanged compared with the pre-pilot.

#### Professional users

Professional users did not typically incur costs for attending FOH sessions. For the minority that did, these ranged from small to quite large costs on a per session basis. The tendency of professional users not to incur additional costs may be explained by the few sessions most

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<sup>58</sup> See Chapter 8 for more details on nil sessions

<sup>59</sup> <https://www.gov.uk/government/news/funding-available-for-professionals-testing-extended-court-hours>

<sup>60</sup> Initially in the FOH pilots' prospectus, this fee was only eligible for those practitioners who attended court outside the hours of 9AM and 5.30PM, however this was later clarified to include all cases that are listed within a FOH session (except for the 2PM Manchester FOH session)

<sup>61</sup> In addition to this figure, there was one outstanding payment of £100 still awaiting authorisation

individual barristers and solicitors attended. Indeed, these professionals expected to incur costs if FOH became standard, like childcare, subsistence costs and travel costs.

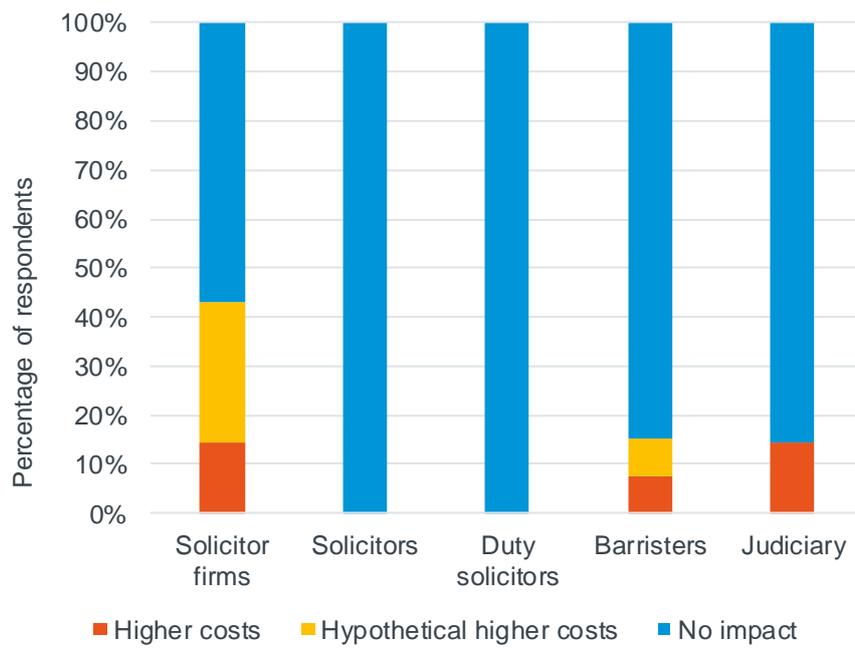
As explained previously, cost templates were sent to professional users which asked several questions relating to the time and financial impact of the FOH pilots on their lives. In addition, several interviews took place with professional users which discussed similar topics. The results for financial impacts have been aggregated by type of professional user, and responses categorised into 'higher costs', 'hypothetical higher costs' and 'no impact' – with the first two corresponding to a negative impact of the pilot on the costs of working professionals, and the last corresponding to a neutral impact. No instances of lower costs being incurred due to the FOH pilots were reported.

Across the five categories of professional users, Figure 30 shows that the vast majority of each reported that the pilot led to no additional financial costs being incurred owing to the FOH pilots. Of those that did report a financial impact, these fell into two categories:

1. Actual costs that were incurred as a result of the FOH pilots. Whilst only a minority of respondents reported such costs, their magnitude varied quite significantly. Some reported relatively minor sustenance costs associated with working during the later sessions (e.g. £5-£10 for a meal). Others however reported quite large travel costs owing to having to take taxis out of hours (e.g. £180 in total for each FOH session) or travelling during peak hours (e.g. a 5%-10% increase in travel costs). One organisation reported a 15% increase in costs to accommodate the FOH pilots. This was to pay for staff overtime, contract changes, and updated computer systems.
2. Hypothetical higher costs, which were costs that they expected they would incur if the FOH pilots were rolled out more widely but did not as part of the FOH pilots. Of the minority of respondents who reported these, these were similar in nature to the realised costs reported above. For example, it was anticipated overtime claims may increase (at 1.5x normal rates and possibly more), and that counsel charges may increase to reflect the inconvenience of working during FOH hours. For late or early sessions, it was also mentioned that travel costs may increase as staff would not be expected to travel late (or that for the early morning sessions, it would be too early to catch trains), so taxis would have to be used – possibly in conjunction with or replaced by an additional stay in a hotel overnight.

Of the remaining categories of professional users not included in Figure 30, similar results were found – with the majority reporting no financial costs incurred. Of those which did report costs, these were all for actual costs incurred. These related to an increase in allowances (of £135 over three months) for the varied hours associated with the FOH pilots, and in one instance costs associated with increased childcare, parking and sustenance costing in total £35-45 for one session attended.

**Figure 30: Cost impact of the FOH pilots by professional user**



**Source: Professional user cost templates and interviews with professional users.**

# 12. Equality and diversity

## Summary of findings on equality and diversity

**At a glance... Public user experience**

1	Public users	2	Opt-outs
3	Legal professionals		
1	There was little difference across each of the protected characteristics in the profile of pre-pilot and FOH pilot public users. FOH pilot court users were more likely to be male and married, which may be a reflection of the types of cases included in the pilot. Beyond this, there was little demographic difference recorded. Legal professionals did express concern that the FOH pilot would have a greater impact on vulnerable clients with caring responsibilities, however this was not captured in the experience of public users.	2	The opt-out survey indicated no statistically significant difference in the profile of those opting out of an FOH hearing compared to those who attended an FOH hearing. There was an indication that women and users with disabilities were more likely to opt out, but these were not statistically significant.
		3	Legal professionals expressed concern that the FOH pilot impacted more negatively on women and junior barristers. Female professionals were considered more likely to be carers, and therefore more likely to need to make alternative care arrangements for an FOH hearing than their male counterparts. Junior barristers were seen as less able to be selective with their work, therefore resulting in a caseload skewed towards FOH cases and any associated adverse impacts.

A yellow equals sign indicates no change between pre-pilot and FOH pilots; a green down or up arrow indicates a FOH benefit; a red down or up arrow indicates FOH dis-benefit and a yellow down or up arrow indicates a neutral change.

### 12.1. Introduction

This chapter examines the equality and diversity impact of the Flexible Operating Hours pilot as far as it is possible to do so within the timeframe of the evaluation. It is worth noting that some of the concerns that have been expressed about the equality and diversity impact of FOH relate to relatively long-term impacts that were not possible to test within the evaluation. For example, the attractiveness of legal professions to some groups (e.g. those with caring responsibilities and junior barristers).

The effects of the FOH pilots on equality and diversity were explored using four indicators: the profile of public users that participated in pre-pilot and FOH pilot sessions; the views of legal professionals on the effect the FOH pilots had on them and public users; the profile of public users that opted-out of the FOH pilots, and their reasons for doing so.

These indicators do not cover all protected characteristics.<sup>62</sup> This evaluation is not an Equality Impact Assessment and it was not feasible to pick up changes relating to the full range of protected characteristics because the sample sizes involved were not large enough.

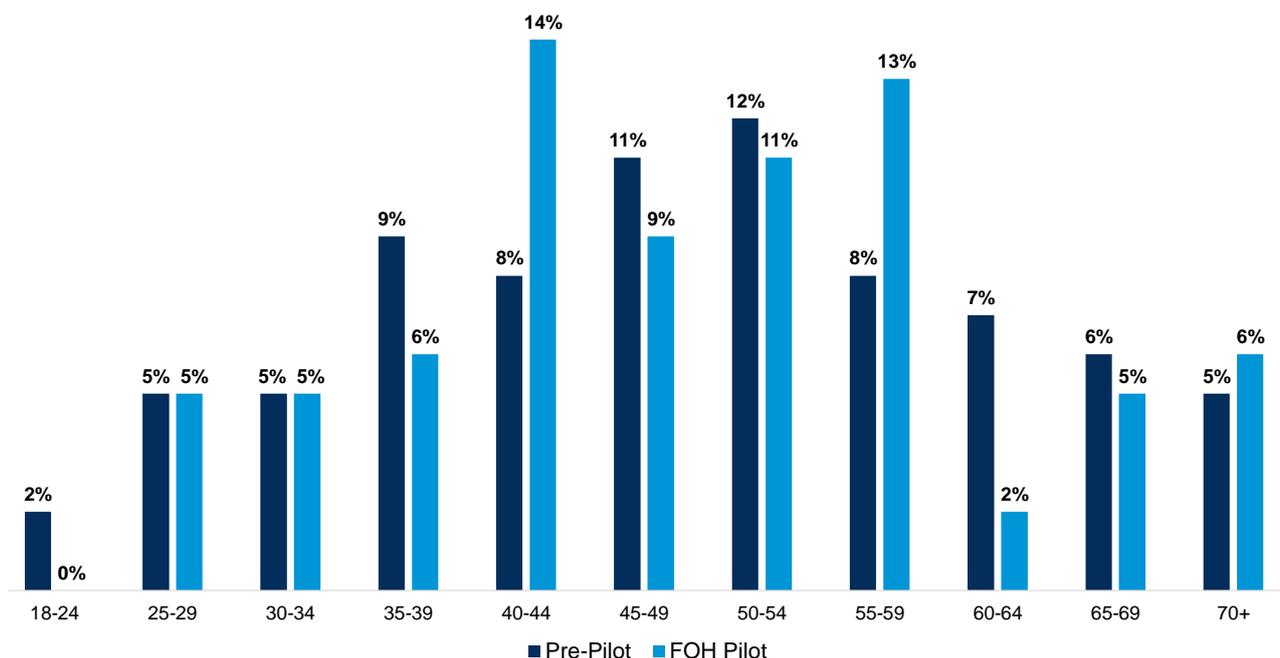
For the purposes of the evaluation, a negative impact would be evidence of a disproportionate impact of FOH on particular groups of individuals. Evidence is based on the surveys of public court users and interviews with legal professionals. Findings are presented by audience. Charts and quotes are used throughout to illustrate findings.

## 12.2. Public users

### Profile of pre-pilot and FOH pilots court users

The age profile of those attending court during the FOH pilots was broadly consistent with those attending a pre-pilot session (see Figure 31). The only significant difference between FOH pilots and pre-pilot court users was that those aged 60-64 accounted for a smaller proportion of users during the FOH pilots than pre-pilot (2% compared with 7%), which could be linked to the profile of cases heard during the FOH pilots.

Figure 31: Age profile of pre-pilot and FOH pilots court users



Source: Public user survey. Pre-pilot users (453) and FOH pilots users (124).

The profile of public users who sat a FOH session differed from pre-pilot users in gender and marital status but not on most other protected characteristics. Court users who attended an FOH session were most likely to be male and married or in a civil partnership. FOH court users were

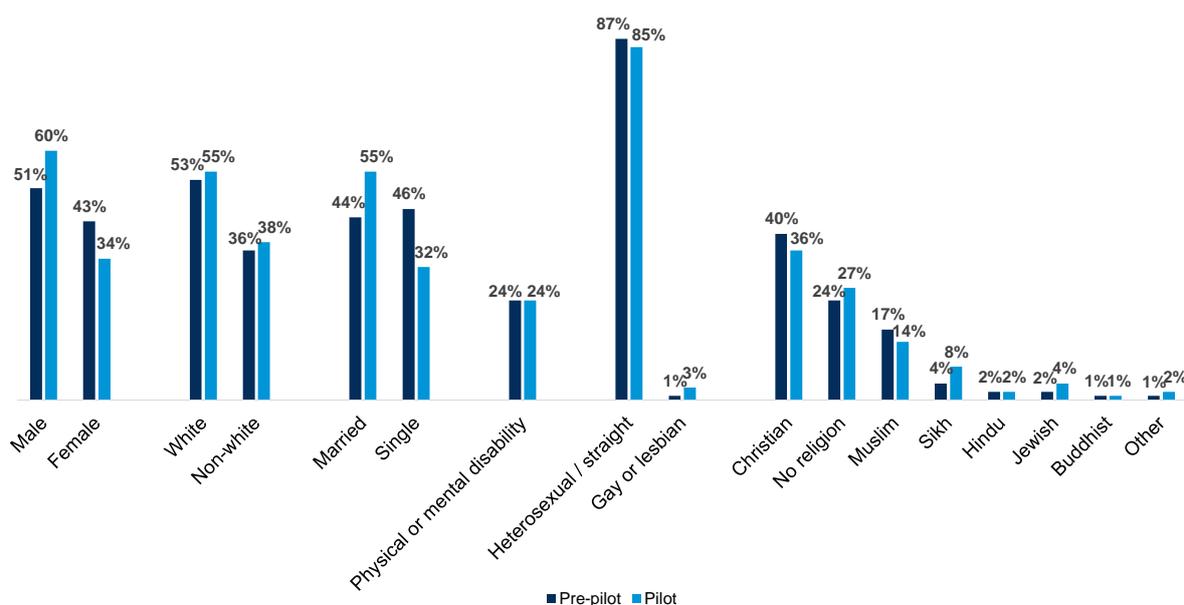
<sup>62</sup> ONS standardised diversity and inclusion questions were asked during the public user survey and public user opt-out survey, in line with HMCTS' commitment to diversity and inclusion best practice. However, this evaluation is not an Equality Impact Assessment and it was not feasible to pick up changes relating to the full range of protected characteristics because the sample sizes involved were not large enough.

almost twice as likely to be male than female (60% compared with 34%), while pre-pilot users had a more even gender mix (51% male, 43% female).<sup>63</sup>

Over half (55%) of FOH users were married or in a civil partnership, compared with 32% that were not. The over-representation of these groups could also be related to the nature of public users in the types of cases heard during the pilot or a reflection of the groups of people choosing to opt-out (explored in the opt-outs section below).

Other demographic indicators showed no significant difference in the profile of FOH pilot users when compared with pre-pilot users.

**Figure 32: Gender, ethnicity, marital, disability, sexuality and religious profile of pre-pilot and FOH pilots court users**



**Source: Public user survey. Pre-pilot users (453) and FOH pilots users (124)**

Over half (55%) of FOH pilots court users identified as from a white ethnic background, while 38% came from a non-white background. This was in line with the ethnic profile of pre-pilot court users (53% white and 36% non-white).

Just under one in four (24%) FOH pilots court users reported a physical or mental health condition or illness lasting, or expected to last, 12 months or more; the same proportion as among pre-pilot court users.

No religious group was represented in significantly higher numbers during the FOH pilots. FOH pilots court users were most commonly Christian (36%) or of no religion (27%), reflecting the religious profile of pre-pilot court users (40% and 24% respectively).

There was no significant under or over representation of LGBT groups in FOH pilots sessions. Court users in both groups identified as heterosexual or gay or lesbian in similar proportions (85% heterosexual compared with 3% gay or lesbian during the FOH pilots compared with 87% and 1%

<sup>63</sup> Where demographic figures do not total 100% this is down to the exclusion of 'prefer not to say' responses.

pre-pilot). Over nine in ten (93%) of both pre-pilot and FOH pilots court users indicated they were of the same gender as the sex they were registered at birth.

## Opt-outs

This section looks at those court users who were offered an FOH session but chose to opt-out. A separate survey was administered for these public users, collecting demographic information and their reasons for opting out (see Chapter 7 for full analysis of the reasons public users gave for opting out), to provide insight into who was opting-out, and how this group compared to those attending FOH sessions, and why they chose to opt-out.

Alongside this opt-out survey, the court sites collected their own data from those opting-out and five public users who opted-out took part in a qualitative interview to provide more detailed insight on their motivations for opting-out and suggestions for what may have enabled them to attend an FOH session. Findings from analysis of these two data sources are presented in Chapter 7.

The opt-out survey<sup>64</sup> indicated that public users who opted-out differed from those who attended an FOH session, providing some evidence of an equality and diversity impact. Women and individuals with a physical or mental health condition were more likely to opt-out of an FOH session. Half (50%) of opt-outs were female (compared with 38% male) and one in four (25%) of public users who opt-outed of an FOH hearing had a physical or mental health condition lasting 12 months or more (compared with 20% of pilot users). While these numbers suggest the FOH pilots may be more convenient for male users and less accessible for users with a physical or mental health condition, none of these differences are statistically significant and must be treated with caution.

Chapter 7 discussed how the motivations for public users opting-out were varied and reasons given were not always related to the FOH pilots. Public users allocated an FOH session could opt-out of that time without giving a reason, for some instances as late as 24 hours prior to the hearing. This process differed from non-FOH hearings, in which users must apply to a judge further in advance, with a clear reason and the change of date would be subject to judicial approval. Therefore, the process for opting out of the FOH pilots was easier and individuals could do so regardless of their motivation.

## Legal professional views on the impact on their clients

Concerns FOH may adversely impact some clients if the pilots were rolled out and scaled up was expressed among the legal professionals interviewed. Negative impacts on clients during the FOH pilots were uncommon; legal professional's concerns tended to be hypothetical, if the pilots were to continue in their current form.

The clients of solicitors working on housing cases tend to face repossession proceedings and were described by solicitors as more likely to be financially insecure. These solicitors felt their clients with caring responsibilities may struggle to afford childcare for early or late pilot sessions. As such, FOH pilot sessions were expected to be less appropriate or feasible for their clients.

*"Imagine someone that is facing repossession proceedings because they can't afford their rent and they get told they have to get all the way from Bolton to Manchester and by the way it's at 6:30 when your kids are home and we're not going to pay for any childcare. I do think it will have a significant impact on those people." (Solicitor, 1 FOH session, Manchester)*

*"Those people are generally on benefits, they quite often have mental health problems, they have care needs which are harder to meet outside of normal hours, they have support*

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<sup>64</sup> This survey has a low sample size of 24 responses.

*workers who might not be able to support them at that time. There is all manner of reasons why it is not that suitable for a number of our clients." (Solicitor, 2 FOH sessions, Manchester)*

A less common experience from a solicitor was the emotional and physical strain of a late FOH session on their client with a chronic health condition. A settlement was running late and the client was becoming increasingly agitated and uncomfortable. While waiting with the client, the solicitor felt, while a delay is not uncommon, the late time of day was putting undue pressure on the wellbeing of their client.

*"It will impact more severely on clients that suffer from some disability, and maybe the elderly might find it hard-going to be at court for 8am." (Solicitor, 2 FOH sessions, Brentford)*

## 12.3. Professionals

### Caring responsibilities and female legal professionals

Chapter 10 discussed how legal professionals with caring responsibilities were more likely to need to make care arrangements to attend an FOH session and therefore more likely for FOH to impact on their workload and, in the longer term, potentially their career. A perception shared amongst legal professionals with and without caring responsibilities was that female professionals may be more adversely affected by FOH pilots because they more typically have caring responsibilities.

*"I think it is going to affect female employees who are mothers more than it will affect male employees, for instance." (Solicitors firm, Brentford)*

*"It's going to have more of a detrimental impact on women." (Solicitors firm, Manchester)*

Specifically, female legal professionals might be more likely to turn down work because of difficulties with arranging care and this may have longer term effects on the diversity of the profession.

*"I did wonder about what [effect on] diversity it would have at the Bar, as [typically] it is women that have those types of responsibilities. They may feel under pressure to turn down that work or have to pay someone to cover." (Barristers' chambers, Manchester)*

### Junior barristers

Barristers, both senior and junior, expressed the view that junior barristers were generally less able to be selective with their work than senior colleagues, who had forged enough of a reputation to turn down work they considered to be less attractive. Junior barristers felt unable to turn down cases for fear of appearing unwilling to work hard and because of a financial need to take on all work available.

*"The reality is as a junior practitioner if your solicitor has instructed you to go somewhere, you're never going to query the dates. I was never going to turn around and question it." (Barrister, 1 FOH session, Brentford)*

A concern was expressed that junior barristers would be more likely to take on FOH sessions alongside their usual caseloads. This may lead to increased workloads and a more challenging work/life balance.

*"The juniors will be the ones having to do the late nights and the early mornings." (Barristers chambers, Manchester)*

A junior barrister interviewed for the evaluation explained they already usually work from 7:00 AM until 7:00 PM and adding cases listed in early or late FOH sessions to their caseload would cause them to work longer hours they feel is not sustainable.

*“It's not just like adding an hour or two on the court day means you are bringing barristers in-line with everyone else who works until 6PM or 7PM ... That's not what's happening. It's making the [working] day longer and longer and longer... It would have a significant adverse impact [on my personal life], if it became routine.” (Barrister, 1 FOH session, Brentford)*

# 13. Conclusions

The evidence for all the metrics of interest, across all domains of impact, is summarised in the balanced score card overleaf. This presents the findings visually, to reach a balanced view as to the overall impact of the FOH pilots. The score card brought together evidence from all of the evidence sources for each of the eight domains of impact to arrive at an overall score. This score was calculated by assessing whether each indicator in each domain of impact suggested an FOH benefit, FOH dis-benefit or no change between the pre-pilot and FOH pilots (as per the chapter dashboards). The mix of FOH benefits, dis-benefits or no changes found across each indicator then determined what the overall calculated score for each domain of impact was. Each score had two parts:

1. A sign, indicating whether the FOH pilots had a positive, negative or no/neutral impact on that domain of impact; and
2. A level, indicating the strength of that impact, if one was found.

Each domain of impact was treated as equivalent, as there was no *a priori* reason to prioritise any one domain of impact over another.

Please note that each arrow in the chapter dashboards in the balanced score card might not necessarily relate to one indicator, but can also be a summary of several related indicators. In addition, it is worth noting that whilst indicators are grouped by domain of impact, this does not mean they do not impact other domains. It is likely that several of the indicators are interrelated, and therefore overlap across domains of impact, meaning they have influenced the balanced score card in more than one place.

As the balanced score card shows, indicatively positive impacts of the FOH pilots were found for the access to justice and experiences of public users domains of impact, indicatively negative impacts found for working lives of legal professionals and equality and diversity, with no/neutral impacts found for the remaining four domains of impact. No strongly positive or negative results were found.



## Flexible Operating Hours Pilots: Balanced Score Card

<b>Chapter 5: Efficiency of use of court rooms</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall neutral impact of the FOH pilot, as indicators moved in both directions.
<b>Chapter dashboard indicators</b>		
1 Number of cases listed per hour the court room was open 3 Percentage of session length spent in hearings 5 Number of minutes overrunning per session	  	2 Number of cases heard per hour the court room was open 4 Number of minutes delayed before starting per session  
<b>Chapter 6: Speed of delivery of justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ No impact of the FOH pilot detected across all of the indicators in this domain.
<b>Chapter dashboard indicators</b>		
1 Length of time from case inception to outcome 3 Ability to sustain changes over time	 	2 Number of cases heard whilst the court room is open 
<b>Chapter 7: Access to justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall indicatively positive impact of the FOH pilot, as indicators were either positive or showed no change.
<b>Chapter dashboard indicators</b>		
1 Convenience of time slot 3 Caring arrangements made 5 Availability of legal representation and advice	  	2 Time taken off work to attend court 4 Safety and ease of travelling to and from court 6 FOH opt-outs   N/A
<b>Chapter 8: Quality of justice</b>	<b>Score</b> 	<b>Summary of findings</b> ⇒ Overall neutral impact of the FOH pilot, as indicators moved in both directions.
<b>Chapter dashboard indicators</b>		
1 Percentage of listed cases not heard 3 Overall satisfaction with case outcome 5 Professional user views on quality of justice	  	2 Use of HPCDS scheme 4 Public user views on quality of justice  

## Chapter 9: Experiences of public users

### Score



### Summary of findings

⇒ Overall indicatively positive impact of the FOH pilot, as indicators were either positive or showed no change

### Chapter dashboard indicators

1	Opinion of how well FOH worked	==	2	Number of litigants in person	↑
3	Whether family/friends attended	==	4	Access to food, drink and sufficient rest time	==
5	Waiting times	↓			

## Chapter 10: Working lives of legal professionals

### Score



### Summary of findings

⇒ Overall indicatively negative impact of the FOH pilot, as indicators were either negative or showed no change.

### Chapter dashboard indicators

1	Working hours	↑	2	Workloads	↑
3	Caring arrangements made	↑	4	Personal agency and self-direction	==
5	Safety and ease of travel to & from court	==	6	Access to meals and refreshments	==
7	Time travelled to and from court	==	8	Availability of legal services	↓

## Chapter 11: Cost of justice

### Score



### Summary of findings

⇒ No impact of the FOH pilot detected across all of the indicators in this domain.

### Chapter dashboard indicators

1	Court operating costs	INC	2	Legal organisation costs	==
3	Professional user costs	==			

## Chapter 12: Equality and diversity

### Score



### Summary of findings

⇒ Overall indicatively negative impact of the FOH pilot, as indicators were either negative or showed no change.

### Chapter dashboard indicators

1	Public users	==	2	Opt-outs	==
3	Legal professionals	↓			

## Key to the balanced score cards scores



Strongly positive

The balanced score card is a high level visual summary of the results of the pilots, across each of the eight domains of impact. The scoring process examines the dashboard indicators presented at the start of each chapter, and assigns a score as follows:

⇒ Strongly positive: all indicators are green, showing only positive benefits of the FOH pilots.



Indicatively positive

⇒ Indicatively positive: some indicators are green and some are yellow, showing a mixture of positive benefits of the FOH pilots and no change in the FOH pilots.



No/neutral impact

⇒ No/neutral impact: indicators are either all yellow (no impact), or exist in combination with both red and green indicators, showing a mixture of no change, positive benefits and dis-benefits of the FOH pilots (neutral).



Indicatively negative

⇒ Indicatively negative: some indicators are red and some are yellow, showing a mixture of dis-benefits of the FOH pilots and no change in the FOH pilots.



Strongly negative

⇒ Strongly negative: all indicators are red, showing only dis-benefits of the FOH pilots.

## Key to the chapter dashboard indicators



No change in a metric between pre-pilot and FOH pilots



Decrease in a metric, which can be interpreted as an FOH benefit



Decrease in a metric, which can be interpreted as an FOH dis-benefit

INC

Results for this metric are inconclusive



Increase in a metric, which can be interpreted as neither an FOH benefit nor dis-benefit



Increase in a metric, which can be interpreted as an FOH benefit



Increase in a metric, which can be interpreted as an FOH dis-benefit

N/A

Results for this metric are not applicable, as there is no pre-pilot counterfactual to compare against

As noted in Chapter 3, the evaluation aimed to assess the impact of the FOH pilots across eight domains, informed by a logic model. The logic model traces the expected progression from FOH pilots' activities through to outputs (the immediate results of the pilots' activities) and shorter- and longer-term outcomes. Within the scope of the pilot period, it is possible to comment on the FOH pilots' impact on the outputs and short-term outcomes. This is set out in the table below:

Outputs (i.e. the immediate results of things done)	Summary of evaluation evidence
<p><b>Efficiency:</b> FOH court rooms are in use for a greater number of hours per day</p>	<p><b>The evidence was mixed and suggested a broadly neutral effect on efficiency of court room use.</b> This meant that FOH sessions were at least as efficient as pre-pilot sessions in both courts, although the composition of that efficiency did change. Pilot effects on numbers of cases listed and heard differed by case type; less time was spent hearing cases in FOH sessions, but delays and overruns were also reduced. This overall neutral effect suggests that, in Brentford, where the FOH pilot sessions were run in addition to business as usual sessions, FOH meant that, across the court as a whole, the total amount of efficient time will have increased. This was, however, conditional on an increase in available judicial and staff resource, as additional sessions were run. Whilst it is possible that running FOH sessions in the Manchester court in addition to business as usual sessions could have also led to an increase in total efficient time in the same way as Brentford, given this particular model of operation was not tested it has not been possible to assess whether this would have been the case.</p>
<p><b>Access:</b> Some citizens will be able to take part in court proceedings without having to take time off work, others will have to take less time off work</p>	<p><b>The evidence was indicatively positive</b>, with no effect on likelihood of having to take time off work, but a positive effect on the amount of time off being taken by those attending.</p>
<p><b>Working lives of professional users:</b> Some staff / professional users will work different hours which suit them better</p>	<p><b>The evidence suggested an indicatively negative effect</b>, with indications of negative impacts on working hours of legal professionals; workloads of legal professionals and listing staff; childcare arrangements; and the availability of duty solicitors to enable courts to hear housing possession proceedings.</p>
Short-term outcomes	Summary of evaluation evidence
<p><b>Efficiency:</b> FOH court rooms are in productive use for more hours per day</p>	<p><b>As above – i.e. a broadly neutral effect</b>, meaning that FOH sessions were at least as efficient as pre-pilot sessions in both courts, although the composition of that efficiency did change.</p>
<p><b>Speed:</b> Some types of cases (processed within pilot court rooms) may be processed more quickly</p>	<p>Considering the average number of days between a case being issued and a judgment made, <b>the evidence suggested no impact on speed of delivery of justice.</b> There was no clear evidence that the FOH pilots were reducing the amount of judicial resource available in later periods of the financial year, although this may be due to the small scale of the pilots.</p>

<p><b>Access:</b> Public users find it more convenient to attend court and are able to better balance other responsibilities with attendance at court</p>	<p><b>The evidence was indicatively positive.</b> There were some positive effects on perceived convenience of hearing times and perceived ease of travel to and from court. There was a neutral effect on attendees' caring responsibilities.</p>
<p><b>Negative impacts to be avoided</b></p>	<p><b>Summary of evaluation evidence</b></p>
<p><b>Quality of justice</b> – encompassing:</p> <ul style="list-style-type: none"> <li>• Case outcomes</li> <li>• Progression of cases</li> <li>• Concentration/engagement of professionals</li> <li>• Perceptions of public users</li> </ul>	<p><b>The evidence was mixed.</b> There were positive effects on public user satisfaction with case outcome and perceptions of quality of justice, but negative effects on perceived quality of justice among legal professionals and some members of the judiciary, due to concerns about energy and concentration levels of legal professionals (although members of the judiciary did not feel that their own energy and concentration had been affected). The FOH pilots had a neutral effect on other indicators.</p>
<p><b>Working lives of professional users</b> – encompassing:</p> <ul style="list-style-type: none"> <li>• Changes to process</li> <li>• Hours worked</li> <li>• Work-life balance</li> <li>• Stress / pressure</li> <li>• Individual costs</li> </ul>	<p><b>As above – i.e. an indicatively negative effect,</b> with indications of negative impacts on working hours of legal professionals; workloads of legal professionals and listing staff; childcare arrangements; and the availability of duty solicitors to enable courts to hear housing possession proceedings. Professional users did not typically incur costs for attending FOH sessions but may do so if FOH becomes standard.</p>
<p><b>Experience of public users</b> – encompassing:</p> <ul style="list-style-type: none"> <li>• Waiting times</li> <li>• Support</li> <li>• Extent to which feel listened to</li> </ul>	<p><b>There was indicatively positive evidence,</b> of reduced average waiting times; and a neutral effect on other indicators.</p>
<p><b>Equality and Diversity</b> – the profile of staff, professionals and public court users unable to participate in FOH pilots will give an indication of impact</p>	<p><b>There was indicatively negative evidence.</b> There were indications of negative equality and diversity effects on legal professionals, namely women and junior/younger barristers. While the FOH pilots appeared to have had a neutral effect on other indicators; caring responsibilities, especially childcare responsibilities, featured prominently in reasons for public users opting-out of FOH sessions; and legal professionals, organisations and court staff thought FOH sessions might be difficult to access for public users with childcare responsibilities, those who are financially vulnerable or who do not live near the court.</p>
<p><b>Costs</b> – these will be explored across HMCTS, LAA, and individual firms/chambers</p>	<p><b>The overall effect on court costs of the FOH pilots is recorded as neutral.</b> Whilst running the FOH pilots did lead to an increase in total court costs, which was expected (in particular for Brentford), it has not been possible with the data available to definitively say whether on a per session basis the FOH pilots' sessions had higher or lower costs versus pre-pilot sessions. As such, the effect on court costs of the FOH pilots is recorded as inconclusive. The FOH pilots had a neutral effect on the other cost indicators.</p>

# 14. Implications

The implications of the evaluation in relation to the key research questions are as follows. These are in the context of the specific nature of the FOH pilots, and the case types included within them.

**1. Whether longer operating hours mean that a greater proportion of court time is devoted to productive uses (to include hearings and box work), with less time where the court is not in use:** The FOH pilots appeared to have had a broadly neutral effect on efficiency of court room use, i.e. the FOH sessions were at least as efficient as the pre-pilot sessions. Given that FOH sessions do not appear any more or less efficient, on balance, than pre-pilot sessions, FOH could feasibly lead to increased productive court time, if FOH sessions are undertaken in addition to business as usual. This requires additional judicial and staff resource to be put into the flexible hearing times.<sup>65</sup>

**2. Whether operating courtrooms at different times of the day offers more open and accessible justice to citizens:** The FOH pilots appeared to have had an indicatively positive effect on accessibility of justice to citizens, with some evidence of reductions in time taken off work and improvements to perceived convenience of hearing times and travel to and from court. That said, some legal professionals, legal organisations and court staff raised (largely hypothetical) concerns about FOH sessions being difficult to access for some public users, namely those with childcare responsibilities, those who are financially vulnerable or who do not live near the court. This implies that participation in FOH sessions might need to continue to be a matter of choice for these groups of public users if FOH were pursued in future. Further testing may be required to assess which groups of public users might require a continuing ability to opt-out.

**3. Whether and how FOH impacts professional and public court users, and the agencies working in the justice system:** The FOH pilots appeared to have had mixed effects. Accessibility aside, the FOH pilots had some positive effects on public court users, namely on public user satisfaction with case outcome, their perceptions of quality of justice, and reduced average waiting times. Legal professionals and some members of the judiciary were, however, concerned that the longer working hours demanded by the FOH pilots had affected legal professionals' energy and concentration levels (members of the judiciary did not agree that their own energy and concentration levels had been affected, however). Legal professionals' reported experiences of the FOH pilots' effects on their working lives also tended towards the negative, and there were indications of negative equality and diversity effects on women and junior barristers.

**Overall assessment:** Overall, if additional judicial and staff resource is put into flexible hearing times, then this will enable more cases to be heard within existing court rooms; and this is likely to be a more convenient option for some members of the public and individual legal professionals. However, there are indications that the FOH pilot sessions create additional childcare issues for some court staff, professionals and members of the public; and legal professionals were of the opinion that this risks placing disproportionate burden among women<sup>66</sup> and junior barristers within the legal profession. This suggests that, if pursued more widely in future, participation in FOH

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<sup>65</sup> Given Brentford ran FOH pilot's sessions in addition to the business as usual sessions, it was possible to assess across all court rooms within the court, whether the total amount of efficient time changed. As Brentford's FOH sessions were found to be at least as efficient as pre-pilot sessions, this meant that the total amount of efficient court time increased at Brentford. Whilst it is possible that running FOH sessions in the Manchester court in addition to business as usual sessions could have also led to an increase in total efficient time in the same way as Brentford, given this particular model of operation was not tested it has not been possible to assess whether this would have been the case.

<sup>66</sup> Female professionals were considered more likely to be carers.

might need to continue to be a matter of choice for some members of the public and legal professionals.

The findings point towards the following recommendations. Again, these are in the context of the specific nature of the FOH pilots, and the case types included within them:

***Recommendations regarding the efficacy of the FOH models tested:***

1. The efficiency of use of court room analysis shows that neither the Manchester nor Brentford model are more or less efficient than one another. On a per session basis, FOH sessions in both courts were found to be at least as efficient as non-FOH sessions (albeit the composition of that efficiency changed). Therefore, if the aim is to increase flexibility for public users for the particular case types piloted, then the Manchester model of shifting some business as usual sessions to FOH timings is likely the most appropriate and is therefore recommended. If the aim is to both increase flexibility for public users and to increase the volume of cases heard in court rooms for the particular case types piloted, then the Brentford model is likely the most appropriate and is therefore recommended. It must be noted however that the Brentford model would require increased judicial and staff resource, given that additional sessions would be being run.
2. Disaggregation by session time of the efficiency of court room results identified that across both courts the percentage of session length spent in hearings tended to fall throughout the day. This suggests that running FOH sessions earlier in the day (i.e. before the business as usual 10AM sessions) might achieve similar levels of efficiency as in non-FOH business as usual sessions for this particular indicator. This could be because it is possible to list more ambitiously at these times and rely on other court rooms to pick up any overruns that might occur. It is therefore recommended that 8AM FOH sessions in the Manchester (or other) court(s) be trialled, to fully understand whether this result was unique to Brentford or not.
3. It was suggested via interviews with court staff that, due to not having additional court rooms running concurrently during FOH times, listing remained cautious during the FOH pilots. This was largely driven by a fear of not being able to cover all listed cases if hearings were to run longer than anticipated. It is therefore recommended that courts considering FOH have a plan to manage overflow of hearings if FOH pilots' listing is to be on par with business as usual listing. This could possibly be achieved by either running FOH sessions earlier in the day as per recommendation 2. above, and/or running more sessions concurrently during FOH hours – although it cannot be known for certain without this being tested.
4. If FOH were to be trialled again, it is recommended that at least 30 days of data per case type in each pilot court, in both the pre-pilot and pilot periods, be recorded. This is to reduce the issue of small sample sizes in the non-survey quantitative results. This could be achieved by either increasing the number of days the FOH pilots run for (i.e. increasing the intensity over a fixed period) and/or the length of time the pilot runs for. The benefit of extending the length of time the pilot runs for is that it is also likely to identify more of any potential longer-term effects of the pilot and also reduce the scope for any 'settling in' effects related to cautious listing to be accounted for.

***Recommendations for the implementation of FOH within the courts:***

5. Despite the publication of a pilot prospectus and the formation of local implementation teams to liaise with central HMCTS operations and services around pilot set-up, the experiences of court staff, judiciary and legal professionals not initially involved in the FOH pilots suggested a need for more and clearer communications about the FOH pilots to these groups, and at an earlier stage. These should address what the FOH pilots' intended purpose was (and was not); why it was expected to be beneficial to different audiences; and the practicalities involved – namely, when the FOH pilots were to start and finish, what

the operating hours would be at each court, how the FOH pilots would impact on the day-to-day responsibilities of staff, whether court staff will work longer or shifted hours, whether they will receive time off in lieu or overtime, and what support and services will be available during FOH hours.

6. Mapping the staffing resources required for delivering Flexible Operating Hours, planning in contingency resource and being prepared to adapt to changing pilot needs will be important for any other courts considering such hours. This should be accompanied by a process mapping exercise to sense-check what other services or audiences need to be part of the implementation discussions. For example, speaking with security providers early to explore practicalities of securing the building outside typical operating hours, reviewing the fire evacuation plan, and liaising with other building staff, like cleaners and administrative staff, about the days the building will be open earlier and later.
7. Consideration should be given to how best to assess which court staff are able to work alternative hours. This could be through an initial staff poll then an opt-in or an opt-out approach. If the terms of participation in FOH sessions changes after staff have initially agreed to participate, then it will be important to communicate this and seek staff consent to participate again.
8. To enable legal professionals to feel safe when travelling to and from court, courts need to work with their security teams to avoid the process of beginning closing down the building before late sessions are concluded, and to consider how well lit the court entrance and carpark is. Another potential way to help legal professionals feel safe when travelling to and from court would be to not run late sessions. Legal professionals were more likely to have concerns about their welfare when travelling to and from late sessions than early sessions.
9. Courts considering implementing FOH in future may want to reflect on how best to space FOH and standard sessions to allow legal professionals and judiciary to access meals and refreshments outside the court. They may also consider reminding these court users before attending sessions outside standard hours, what facilities are available and state the operating hours for these.

***Recommendations for liaising with members of the public using the courts in FOH sessions:***

10. Court website details should be updated with the court opening times for FOH days so that public users know their listing for an early or late hearing is not an error and the court is operating at that time.
11. Careful consideration should be given to whether and how public court users are able to opt-out in future. Some legal professionals, legal organisations and court staff raised concerns about FOH sessions potentially being difficult to access for public users with childcare responsibilities, those who are financially vulnerable or who do not live near the court – suggesting a need to test further whether the opt-out feature would need to be maintained in some form, for some court users. On the other hand, court staff and members of the judiciary were of the view that a more rigorous opt-out process should be adopted, that is more in line with the adjournment process for normal operating hours. For example, introducing time constraints, and the need for justification. It would also be advisable to establish a dedicated inbox for receiving opt-outs, and a systematic process for reviewing and rescheduling each opt-out. This will require further investigation.
12. As with legal professionals, courts considering implementing FOH in future may also wish to remind public court users what facilities are available and state the operating hours for these, before they attend sessions outside standard hours.

***Recommendations for wider consultation and engagement around the implementation of FOH:***

13. In its current form, the FOH pilots were not well received by some legal professionals, who are concerned about the personal and professional implications of FOH. The wider context FOH operates in influences its success and so HMCTS will need to consider how to constructively engage with the wider legal profession, to make FOH work. This is likely to require further consultation and engagement with solicitors' firms and barristers' chambers, and self-employed legal professionals, to encourage them to adapt their expectations of working hours, and their processes for allocating cases to individual legal professionals, to FOH sessions where possible (particularly to ensure that legal professionals work time-shifted hours, rather than extended hours).
14. It will also be important to systematically map the other parties that legal professionals will need to engage with in order for a case to progress smoothly; and engage with these parties to explore what conditions would enable them to be available within the extended hours that the FOH sessions run. Otherwise it is likely that legal professionals will continue to have difficulty accessing information and direction during FOH sessions, thus slowing down the progress of the case.

