



HM Courts &
Tribunals Service

COVID-19: Overview of HMCTS Recovery for Civil and Family Courts and Tribunals

November 2020





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COVID-19: Overview of HMCTS Recovery for Civil and Family Courts and Tribunals

November 2020

1. Executive Summary

In July we set out our [overarching approach to recovery](#); and here we provide more detail about the progress we are making to restore the capacity in the family and civil courts and our tribunals.

The COVID pandemic, and associated restrictions, brought unprecedented challenges. Now we are safely increasing capacity across all jurisdictions and recovering performance. The significant progress that we have already made is testimony to the commitment of HMCTS staff, the judiciary and partners across government, the legal professions, and third-party organisations who have worked together effectively in unique circumstances.

Our recovery has focused on five pillars:

1. Maximising the capacity of the judiciary to sit as many sitting days as possible.

We have seen record levels of sittings in the family court over the summer period and now expect most of our jurisdictions to be able to sit to the levels we had planned before the pandemic, despite ongoing social distancing restrictions.

2. Re-opening our courtroom capacity where it is safe to do so as quickly as possible and reinforce this capacity with COVID operating hours and Nightingale courts where required.

We now have around 600 courtrooms available to the family and civil courts and nearly 200 hearing rooms available for tribunals.

3. Ensuring remote hearings continue to be effectively supported with increased staff support and guidance for users.

Across the family and civil courts and all our tribunals we have supported the judiciary to hear thousands of hearings remotely, with some of our tribunals managing their workload almost exclusively through audio and video hearings.

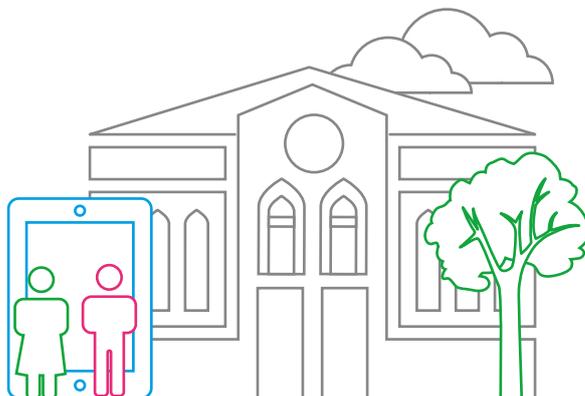
4. Increasing our staff capacity to support delivery as we adapt to new ways of working.

We are recruiting hundreds of staff to provide additional administrative support as we recover our operations.

5. Continuing to reduce the time it takes to process cases.

We continue to build on our online services in areas such as probate and divorce and are working with the judiciary across our jurisdictions to pilot new approaches which saves administrative time and frees up judges to hear more cases.

Across all jurisdictions we face uncertainty about the ongoing impact of social distancing guidance in the coming months, which limits our ability to hear cases at pre-COVID levels. Our plans must allow flexibility to adapt our recovery and build on the many lessons we have learned since March 2020 which has allowed us to significantly expand our operational capacity. The measures we have taken over the last six months will increase our resilience should further tightening of restrictions be required as part of the government's response to the pandemic.



Family Court

- The number of cases completed is now returning to pre-COVID levels.
- June and July 2020 saw record numbers of sitting days and overall family judges have sat more days than planned before the pandemic.
- Disposals in public law cases have averaged over 80% of pre-COVID levels since March 2020 with private law disposals averaging over 70%¹.
- Throughput in probate exceeded pre-COVID levels in the four weeks to 20 September 2020.
- Waiting times for grants of probate have been maintained at pre-COVID levels during April to June 2020, with digital cases reducing waiting time for our users by one week and completing between two to five weeks on average.
- Overall waiting times for divorce applications reduced by eight weeks from April to June 2020, with cases that started online reaching decree nisi within nine weeks on average.

Protecting the most vulnerable, including children and those at risk of domestic violence, has been a key priority. There has been little reduction in demand on the Family Court since the pandemic began, and in some regions, we have seen demand increase. Where suitable, many hearings were heard remotely and we achieved planned levels of judicial sittings, with record number of sittings in June and July 2020. We have also re-opened hundreds of courtrooms enabling far more cases to be heard face-to-face.

We are now seeing the number of cases completed return to pre-COVID levels. In public family law, we have completed 80% of the cases we would have expected to complete in normal circumstances.

In private family law, we have completed over 70% of the cases we would normally expect to complete with the trend improving over the course of the summer. The slightly lower levels for private law reflect the effort we put into supporting the highest priority public law cases. The lower completion rates and sustained demand in private law has meant that more cases are waiting in the system to be resolved, where case volumes have been continually growing for several years. We will continue to maximise sitting day levels and focus on improving completion rates to manage the volume of outstanding cases.

The higher death rate during the pandemic has increased demand for probate services. We increased staff capacity in probate and throughput since the start of August 2020 has been over 5% higher than pre-COVID levels. We expect to reduce the backlog that accumulated earlier in the pandemic this autumn. Our digital reforms to the probate and divorce services have increased resilience and put us in a strong position to make quick progress by enabling both our operational staff and our users to work remotely. We continue to expand our digital reforms with mandatory online probate applications that are made by legal professionals being rolled out this autumn.

We are focused on continuing to maximise the number of cases we complete by making full use of the capacity provided by our fee-paid judges; opening more courtrooms to enable face-to-face hearings; increasing staff support to remote hearings and improving training and guidance; as well as trialling new processes which have the potential to free up judicial time or reduce waiting time for applicants.

¹ All performance figures in this document reflect the data held on the relevant case management systems and hence have some definitional and timing differences from the official statistics. They are subject to the data quality issues associated with large administrative systems, including the late reporting of cases and regular updating of case details, which can lead to the figures for previous periods being revised. In particular, the high disposal rates seen in the private law series in September are likely to be driven by a data validation exercise to remove old cases from the system and may overstate weekly performance.

Civil Court

- Final hearings of tracked claims are expected to return to pre-COVID levels by autumn.
- We have introduced new procedures for possession hearings as we prepare for increased levels of demand now the stay on possession hearings has been lifted.
- We have made extensive use of video and audio technology, and reopened around 600 courtrooms so we can sit more than half of future hearings face-to-face.

In the early stages of the pandemic we supported the judiciary to put measures in place to prioritise and triage cases and ensure they could continue to be heard. These emergency measures, together with bulk claim issuers temporarily halting specified claims, saw a significant reduction in new cases received by the civil courts.

Over the course of the summer we have seen unspecified claims return to normal levels of demand and specified claims have increased to over 70% of pre-COVID levels. Our civil courts made extensive use of remote audio and video hearings, particularly in the first few months of the pandemic, although sitting levels and final hearings were below planned levels. Final hearings for tracked claims are now increasing as we have reopened more courtrooms, with small claims and fast track hearing levels up to around 80% of pre-COVID levels in the four weeks to 20 September 2020.

We expect the level of final hearings for tracked claims to return to pre-COVID levels this autumn. It is possible this will involve the temporary use of extended COVID Operating Hours at some of our courts to provide additional capacity to reduce outstanding tracked claim hearings quicker than would otherwise be possible.

In September 2020 the stay on possession hearings was lifted. We have undertaken extensive preparations with the judiciary to enable a smooth resumption of possession cases, with new procedures established to facilitate this. We expect to see caseload return to at least pre-COVID levels over the autumn and have contingency arrangements prepared to adapt to increased levels of demand.

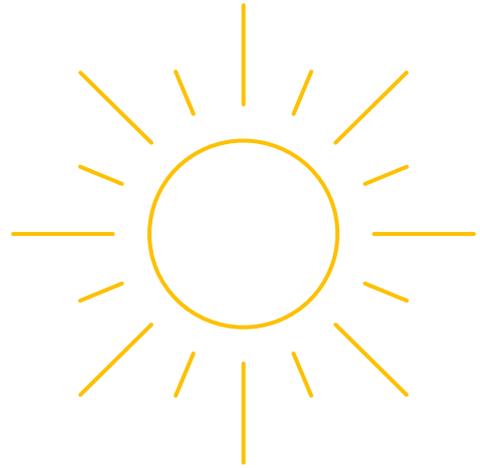
Tribunals

- The majority of First-tier Tribunals have avoided any significant growth in backlogs.
- Some of our jurisdictions, such as the Mental Health and Special Educational Needs and Disability jurisdictions within the Health, Education and Social Care Chamber have sustained pre-COVID levels of throughput almost entirely through audio and video hearings.
- Sitting days in the employment tribunals will increase this autumn enabling us to drive up throughput to pre-COVID levels.
- Legislation is helping us to increase capacity by enabling work to be delegated from judges to tribunal case workers and legal officers.

Tribunals responded quickly to the pandemic, adapting ways of working through new procedure rules, practice directions and guidance in each of the tribunals and making extensive use of remote hearings to sustain high levels of throughput and manage caseloads. While all tribunals have made significant use of video and telephone hearings to progress preliminary and substantive hearings, many tribunals safely recommenced face-to-face oral hearings in July 2020 to supplement remote hearings and ensure that all types of claims and appeals could be quickly heard.

The number of decisions made by public bodies and agencies which can be appealed to the First-tier Tribunals and Upper Tribunals have reduced during the pandemic. Alongside this, the increases in remote hearings we have put in place has ensured that rises in outstanding caseloads have been limited and levels of disposals maintained and, in some tribunals, have increased during the pandemic. For example, the Special Education Needs and Disability jurisdiction disposed of 2,055 appeals between April and June 2020 in contrast to 1,823 disposals pre-pandemic in January to March 2020. The Employment Appeal Tribunal, the Asylum Support jurisdiction within the Social Entitlement Chamber, Upper Tribunal Tax and Chancery and Upper Tribunal Administrative Appeals Chambers all saw reductions in outstanding caseloads over the same period.

A key challenge has been (and will continue to be) in the employment tribunals, where the higher levels of claims before the pandemic, and an initial reduction in capacity, has seen our outstanding caseload grow. Over the summer, the employment tribunals have transformed into the largest user of Cloud Video Platform (CVP) hearings across all tribunals and when taken alongside an increased level of judicial sittings, we saw disposals return to over 80% of pre-COVID levels by August 2020. We have also worked closely with the Department for Business, Energy and Industrial Strategy to introduce legislation that will enable the cross-ticketing of judges into the employment tribunals, subject to a series of consents and safeguards involving the Employment Tribunal Presidents, and the introduction of tribunal legal officers, both of which will further increase capacity. We know that more is required to address the outstanding case backlog and we will provide further updates in due course.



1. Introduction

- 1.1 HM Courts & Tribunals Service (HMCTS) is an agency of the Ministry of Justice (MoJ). It operates on the basis of a partnership between the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals.
- 1.2 On 1 July 2020, we published an [overarching approach to recovery](#), setting out the work being undertaken in the short and medium term in response to coronavirus (COVID-19). We published a further update on [HMCTS' response to COVID-19 in the criminal courts in England and Wales](#) (magistrates' and Crown Courts) on 7 September.
- 1.3 This document provides an update on our response to COVID-19 in the civil and family courts and tribunals.

Initial response to the crisis

- 1.4 The COVID-19 pandemic brought unprecedented challenges for our civil and family courts and tribunals. Initially, social distancing requirements meant many of our court and tribunal buildings were closed to the public. Large numbers of staff had to self-isolate or perform caring responsibilities at home. Many of our staff were not equipped for remote working and many of our processes were still paper-based making it difficult to progress cases remotely.
- 1.5 Yet while other jurisdictions internationally closed altogether or functioned on a very limited basis, we have, throughout the crisis, sustained operations to enable the highest priority cases to be heard and we have already taken significant steps to recover capacity.

Supporting judicial priorities

- 1.6 In all jurisdictions we have supported judicial decisions about prioritisation of cases and case-types to make sure the most urgent cases could be heard.
- 1.7 We have worked closely with the judiciary to implement practice directions, guidance and the emergency Coronavirus Act (2020) legislation which underpinned our emergency response and ensured the most vulnerable were protected.

Making courtrooms available

- 1.8 From the outset we managed to keep open 157 of the 370 court and tribunal buildings for essential face-to-face hearings, with a further 124 kept open for judges, staff and representatives of agencies to support video and telephone hearings and progress cases without hearings ('staffed courts').
- 1.9 As we have adapted to the guidance on social distancing, our operational teams have worked tirelessly to increase our court/hearing room capacity in our buildings while protecting the safety of all users. As of October 2020, we have around 600 courtrooms available for the civil and family courts and nearly 200 tribunal hearing rooms available.

Maximising use of audio and video hearings

- 1.10 We have rapidly expanded our use of audio and video technology, enabling judges to conduct far higher numbers of remote hearings than we have ever done before. We have worked with the judiciary to deliver thousands of remote hearings, enabling cases to be heard that otherwise would have been delayed. We should rightly be proud of this flexibility and speed of response.
- 1.11 Initially video hearings were achieved through a range of providers, but we are now in the process of standardising our video hearing technology using CVP.² CVP was universally rolled out across the tribunals by the end of April 2020 and has now been successfully rolled out to all civil and family courts. We continue to invest in increasing the reliability of remote hearings and standardising our approach.

Enabling HMCTS staff

- 1.12 When the national lockdown was announced in March 2020, all our frontline staff and contractors were deemed essential workers. We worked quickly to ensure all of them, particularly those in vulnerable categories, had access to the right information and support. We procured and distributed thousands of laptops to enable many staff to work from home where their role allowed. Rota working was also implemented across sites so that staff could socially distance while at work in our courts or business centres. With new ways of working required, we also identified the need for more temporary staff to support remote hearings and provide additional administrative support where appropriate.

² CVP can be accessed by any device that has a camera and a microphone – such as a mobile phone or tablet. Anyone can join easily, and securely, through a web browser, and sessions can be locked to make sure only appropriate parties join. Training rooms can also be set up so that sessions may be rehearsed before they go live.

2. Pillars of recovery

2.1 As we build on our initial response, there are five key pillars of recovery on which our approach in the civil and family courts and tribunals are based, and we are integrating our planning across all of them.

1. Maximising the capacity of the judiciary to sit as many sitting days as possible.

We have enabled the vast majority of planned sittings by salaried judges to take place since the start of the pandemic, but fee-paid judicial sittings were initially more challenging with lower than planned levels particularly affecting the civil court and the employment tribunal. This reflects practical constraints that fee-paid judges faced working remotely, such as lack of equipment to hear cases from home. Over the summer period, we worked closely with the judiciary to increase fee-paid judicial sittings, particularly by enabling far more of them to be conducted from our sites.

Recognising that listing is a judicial function, we currently assess that our overall courtroom and remote hearing capacity should be sufficient to enable the judiciary in most of our jurisdictions to be able to sit to the levels originally planned before the pandemic. We are also working closely with the judiciary to increase sitting levels wherever possible by drawing on the capacity offered by our fee-paid judges, with record sitting levels achieved in family over the summer period.

2. Re-opening our courtroom capacity where it is safe to do so as quickly as possible and reinforce this capacity with COVID Operating Hours and Nightingale courts where required.

We are now using far more of our estate for face-to-face hearings than at the outset of the pandemic. Our operations and property teams have re-opened hundreds of courtrooms and hearing rooms over the summer, with around 600 courtrooms now available to the family and civil courts and nearly 200 hearing rooms available for tribunals. We continue to open more courtrooms and hearing rooms where it is safe to do so. Where local jurisdictional requirements necessitate it, we will augment capacity through use of COVID Operating Hours or Nightingale courts. There are currently no plans to introduce COVID Operating Hours in the family courts. This will be kept under review.

3. Ensuring remote hearings continue to be effectively supported with increased staff support and guidance for users.

Across the family and civil courts and all our tribunals we have supported the judiciary to hear thousands of hearings remotely, with some of our tribunals managing their workload almost exclusively through audio and video hearings. As more courtrooms and hearing rooms

have become available, so more cases can be heard in person. Nevertheless, social distancing restrictions continue to limit overall courtroom capacity, so we must continue to ensure remote hearings can be delivered in all cases where the judiciary deem it appropriate. We are improving our ability to facilitate remote hearings through the roll out of CVP and the provision of around 300 additional support staff for remote hearings before the end of the year.

4. Increasing our staff capacity to support delivery as we adapt to new ways of working.

Inevitably the COVID-19 pandemic has required us to change some of the ways we work and increased the overall administrative support required. We are recruiting hundreds of staff to meet this requirement, including those required to deliver more effective support to remote hearings, along with a range of other roles including marshals, ushers and digital security officers.

5. Continuing to reduce the time it takes to process cases.

A key constraint on recovery in all jurisdictions has been the impact of social distancing on availability of our courts and tribunal buildings, as well as the measures required within our buildings which may potentially slow the progress of cases. Delivering hearings entirely remotely is also a new way of working and our experience to date is that it takes longer for hearings to be completed when everyone is accessing them remotely. As a result, case completions (or disposals) since the start of the pandemic have in many areas been lower than pre-COVID levels.

Wherever possible we are taking the opportunity to build on our online services in areas such as probate and divorce and are working with the judiciary across our jurisdictions to pilot new approaches which release judges to hear more cases or save administrative time.

2.2 We continue to manage the significant interdependencies between jurisdictions and our capacity to operate across them collectively, especially between the civil and family courts. Many of our salaried and fee-paid judges preside over both civil and family court cases, and some also preside over criminal hearings. Courtrooms too represent a potential capacity pinch-point in the family and civil courts and, to a lesser degree, tribunals, using the same courtrooms. Additional capacity is required to support recovery in crime too, and where this displaces civil, family or tribunal capacity we will mitigate the impact where appropriate through Nightingale courts. We are working closely across jurisdictional recovery plans to ensure these dependencies are managed effectively.

3. The challenge of COVID-19 in the civil courts

3.1 The period before the COVID-19 crisis was a challenging one for the civil courts with a sustained increase in caseload over several years putting a strain on judicial, staff and courtroom capacity. We had identified the need to modernise processes and working practices, which remained heavily paper-based, but reform implementation had been limited in the civil courts before the crisis.

Emergency response

3.2 We supported the judiciary to implement measures designed to enable the court to provide a service to protect the most vulnerable in the early stages of the crisis, including a stay on housing possession cases and a pause on enforcement activity, and relaxation of normal court deadlines with parties able to agree a 56-day extension without recourse to the court. We also supported judicial decisions about the prioritisation of cases and case-types to make sure the most urgent cases could be heard. Priority cases have been heard from the outset of the pandemic.

3.3 The emergency measures, together with bulk claim issuers³ temporarily stopping specified claims, saw new cases received by the civil court reduce by more than half in the first few months of the crisis. Unspecified claims returned to pre-COVID levels over the summer and specified claims have now returned to over 70% of pre-COVID norms⁴. Civil courts have used remote hearings extensively, particularly in the first few months of the pandemic. Nevertheless, we saw sitting levels and final hearings below planned levels owing to judicial resource requirements in the family court, reduced staff availability, heavy reliance on paper-based processes, and the unsuitability of some cases for remote hearings. Initially, higher levels of cases were adjourned, often at the request of parties, so they can be heard more effectively in the future through face-to-face hearings. We supported the judiciary to introduce a triaging process to determine whether hearings are suitable to be heard remotely, which in conjunction with increasing availability of courtrooms, has enabled the number of adjournments to be reduced.

3.4 By the end of August 2020, we had supported the judiciary to sit around two-thirds of planned sittings. In particular, final hearings for tracked claims have increased as we have opened more courtrooms with around small claims and fast track hearing levels up to around 80% of pre-COVID levels in the four weeks to 20 September 2020.

3.5 The stay on possession hearings was lifted on 21 September 2020. Prior to that, the Master of the Rolls established a cross-sector working group on possessions under Mr Justice Knowles. The group proposed new rules that were introduced by the Civil Rules Procedure Committee to require reactivation of cases and to enable the courts to better address the need for protection of parties when possession cases resume. Detailed preparations were also undertaken with the Ministry of Housing, Communities and Local Government and relevant stakeholder organisations to ensure that the courts can manage the expected demand in possession.

3.6 In the business & property courts, caseload has remained broadly consistent since March apart from a temporary reduction in the number of Insolvency and Companies Court applications. The courts have processed cases within standard timescales with no deterioration in listing ahead times compared to the pre-COVID period, save for in respect of trials in excess of 10 days in the Commercial & Admiralty Court due to the increase in the number of required trials of this length. Performance in respect of general applications in the Queen's Bench Division remains consistent with pre-COVID levels, and the Administrative Court also continues to list ahead in similar timescales to that being achieved before the pandemic. Following the initial lockdown in March 2020, there were arrears in processing paper applications in the Administrative Court, but these have been addressed and administrative performance is recovering to pre-COVID levels.

Further recovery

3.7 We expect demand in the civil courts to increase compared to the past six months as specified claims return to higher levels and several months of accrued demand in possession leads to increasing claims now the stay has been lifted. We expect to see possession caseload return to at least pre-COVID levels by the spring and have contingency arrangements prepared to adapt to increased levels of demand.

3.8 The capacity of the civil court will come under greater pressure in the coming months. There is already a significant volume of cases waiting to be listed so our focus now is on ensuring we process the current caseload as quickly as possible so we can manage the anticipated increase in demand effectively.

3.9 Restoring full judicial capacity is key to further recovery, and fee-paid judicial capacity is particularly important in the civil courts where it constitutes far more of planned capacity than in the family court. We are working closely with the judiciary to increase sittings to planned levels.

3 e.g. local authorities, credit card companies, utility providers which typically account for c.80% of specified claims.

4 HMCTS publishes [management information on weekly performance during the coronavirus outbreak](#).

- 3.10 Wherever possible we will look to facilitate face-to-face hearings, but our expectation is that remote hearings will continue to play an important role for the foreseeable future, given that social distancing will continue to limit courtroom capacity compared to pre-COVID levels. With far more courtrooms now open, we will provide greater flexibility for the judiciary to choose how to list cases, which was not available early in the crisis, and to ensure more cases which need to be heard in person can be. Possession cases are an example of hearings which we expect to be undertaken face-to-face in local courts wherever possible.
- 3.11 Altogether we expect to be able to support the delivery of up to two-thirds of planned hearings face-to-face in the civil courts, with the remainder heard remotely. Together this should enable the judiciary to sit planned sittings for the remainder of the financial year, although we may need to address some local capacity pinch-points. As a result, we expect to return final hearing levels for tracked claims to pre-COVID levels this autumn.
- 3.12 Possession cases will require more courtroom capacity while social distancing remains. Before the COVID-19 crisis, we would list dozens of possession cases for each sitting day, but social distancing requires more courtrooms to process the same amount of cases. Our current analysis indicates that there should be sufficient county courtrooms available in most locations to enable possession cases to be conducted in person, but we will monitor the number of cases being received closely so we are able to adjust the use of courtroom capacity as required to avoid delays for priority cases.
- 3.13 COVID Operating Hours. It remains possible that re-opening courts, combined with remote hearings, will not be enough to recover our position in all locations. A civil working group, chaired by a designated civil judge, has reviewed options for temporary extensions of operating hours. It found that extended operating hours in the evening or at the weekend might be suitable for small claims and fast track hearings and recommended that designated civil judges should have the option to implement extended COVID Operating Hours where they deem the local situation requires it. As a result, the Lord Chancellor in consultation with the Lord Chief Justice has provided a direction enabling the temporary extension of operating hours until the end of the financial year, which provides the necessary flexibility for designated civil judges to adopt this measure where they deem it is required.
- 3.14 Other measures. Working closely with the judiciary, we are also examining other efficiency measures including increasing the capacity of the small claims mediation service so that all parties who want to attempt mediation are allocated an appointment. We aim to increase capacity to accommodate 90% of parties who want mediation, rather than the current 40%. We are recruiting additional mediators and restructuring ways of working to achieve this.

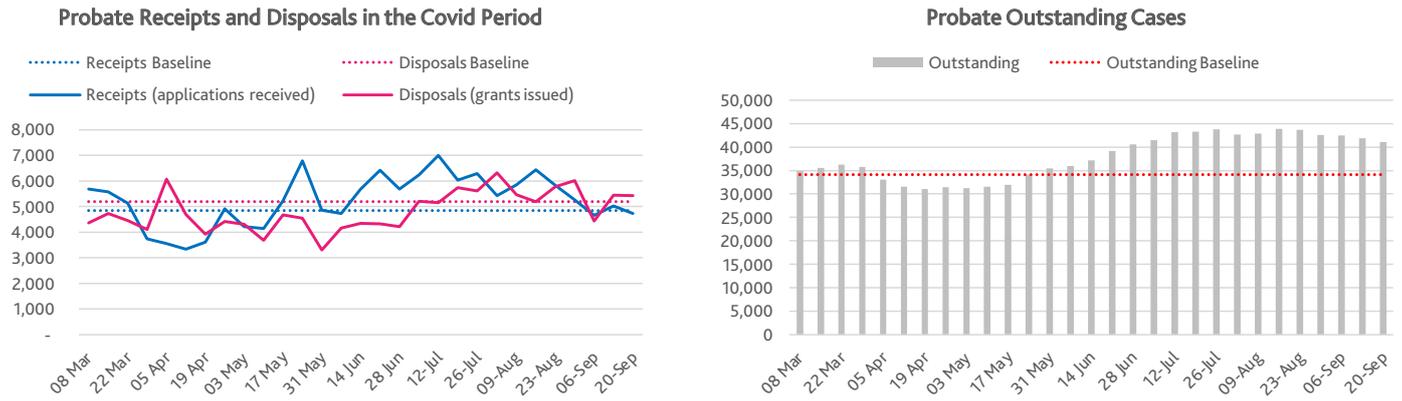
4. The challenge of COVID-19 in the family courts

- 4.1 In recent years there has been a significant year-on-year increase in the number of people seeking to use the family justice system. We have expanded capacity in response, and the introduction of online services in probate, divorce and private law has helped to modernise our services and improve efficiency.

Emergency response

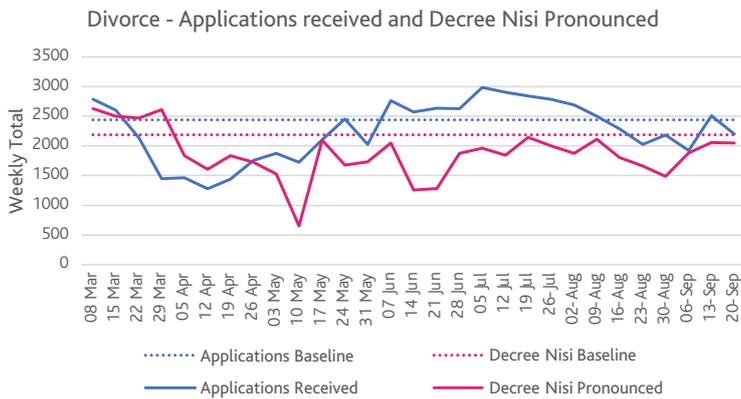
- 4.2 Throughout the crisis, we have supported the judiciary in their prioritisation of cases to ensure the most urgent cases could be heard, and supported the implementation of the [President of the Family Division's guidance on urgent cases and remote hearings](#) which was issued on 19 March 2020.
- 4.3 We have also supported the family judiciary to sit record sitting levels, with July 2020 seeing the highest levels of judicial sittings in a single month. Prior to the summer, the vast majority of sittings were achieved through video and audio hearings, despite staff only having limited experience of supporting their use. We were not able to sustain the same level of throughput from video and audio hearings as we had previously from face-to-face hearings, but we are now taking measures to improve performance through greater standardisation, training and additional administrative support.
- 4.4 The increase in the death rate which has been associated with the COVID-19 pandemic has seen higher than average receipts in our probate service since the start of June 2020. Overall receipts have been 8% higher than the pre-COVID average in the period from the start of March to 20 September 2020. Nevertheless, our service has remained resilient throughout, supported by our new online service and digital case management system which have enabled our staff to work effectively from remote locations. Disposals of cases have averaged 93% of pre-COVID levels in the period to 20 September 2020 and the measures we have taken to increase staffing in probate has seen disposals reach higher than average levels from the start of July 2020. We will continue to maintain enhanced capacity while it is necessary and expect to reduce the backlog that has resulted from the higher caseload this autumn. We are also expanding our digital reforms with mandatory online probate applications that are made by legal professionals being rolled out this autumn.

Figure 1 – Probate receipts and disposals in the COVID-19 period



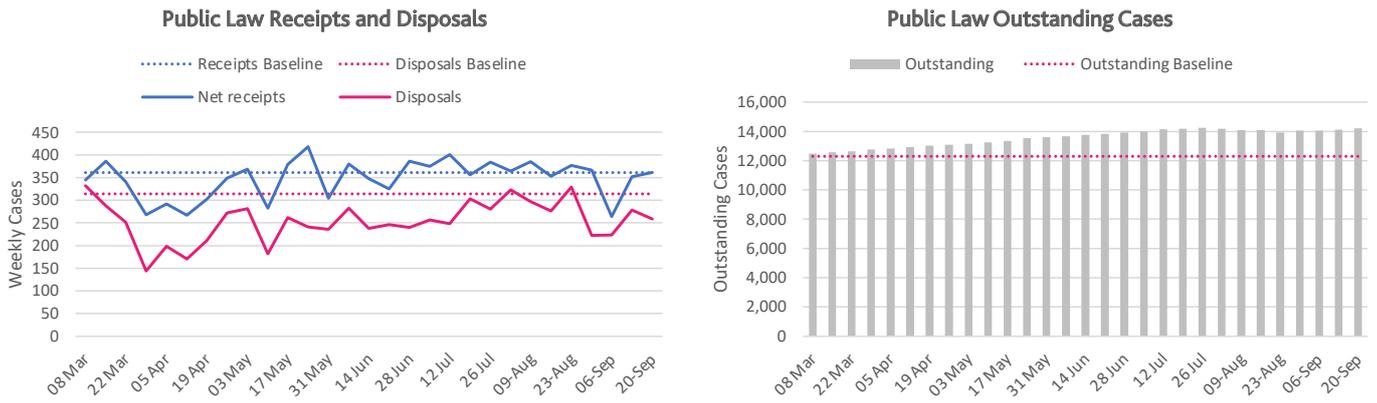
4.5 In divorce, both applications and decree nisi pronouncements initially decreased. Both have now broadly recovered to pre-COVID averages. The digital divorce service, where over 75% of applications are now made, has continued to operate within expected timescales throughout the pandemic as throughput has been sustained despite remote working. Processing of paper-based applications has been more challenging, and action has been taken to increase the capacity of the paper applications system with waiting times now reducing significantly.

Figure 2 – Divorce applications received and decree nisi pronounced during the COVID-19 period



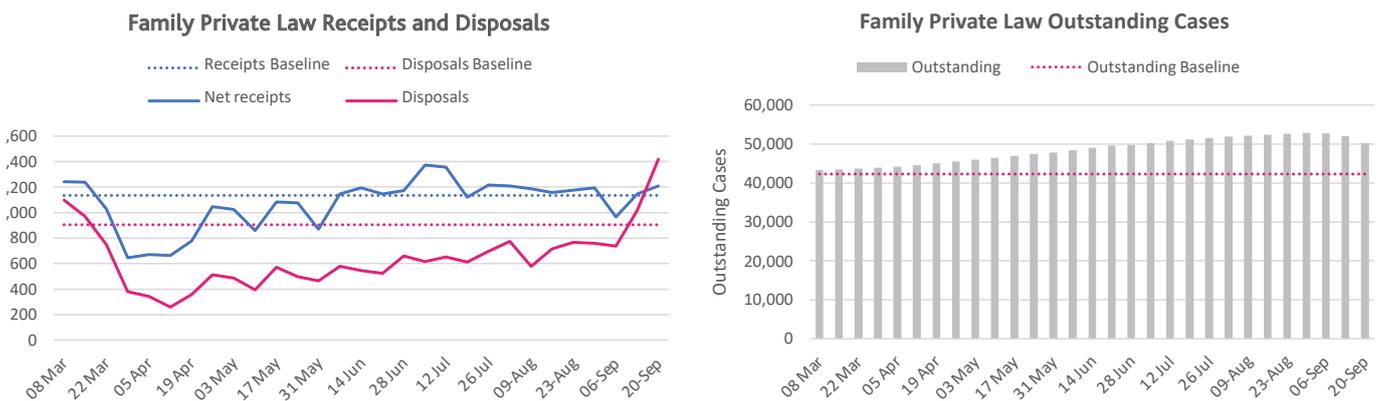
4.6 In public family law, we saw both receipts and disposal initially decrease below pre-COVID baseline levels. Receipts quickly rebounded and have averaged 96% of pre-COVID levels since the start of the pandemic. Disposals have been slower to respond but are gradually returning to normal levels. They have averaged 80% of pre-COVID levels and remain some way below receipts. As a result, the number of outstanding cases has grown by 16% since the start of the pandemic up to 20 September 2020, albeit the increase in disposals and a data review of outstanding cases has slowed down the rate of increase in the backlog.

Figure 3 – Public family law receipts, disposals and outstanding cases in the COVID-19 period



4.7 In private family law, there was initially a more pronounced decrease in both receipts and disposals, but receipts returned to normal quickly, averaging 95% of pre-COVID levels in the period to 20 September 2020. Disposals have been slower to respond. They have averaged over 70% of pre-COVID levels across the period of the pandemic but have gradually improved since April 2020. The backlog now stands at 19% above the level it was pre-COVID, although this larger backlog is in part a reflection of the prioritisation of more urgent public law work. A similar review of outstanding case data has reduced the backlog by around 2,000.

Figure 4 – Private family law receipts, disposals and outstanding cases in the COVID-19 period



Further recovery

- 4.8 Analysis indicates the COVID-19 crisis could see demand increase in both public and private family law temporarily above pre-COVID norms, creating additional pressures on capacity. Our approach therefore is to sustain capacity in family and enhance throughput wherever possible. We recognise the levels of demand in the family justice system put strain on other agencies including local authorities, and Cafcass/Cafcass Cymru and we are working closely with these organisations to align capacity planning assumptions.
- 4.9 We have achieved a remarkable level of judicial sittings given the circumstances, but we expect to see some rebalancing of salaried judicial time back towards the civil courts, so we are focusing on ensuring the family courts are able to secure fee-paid judicial sittings to achieve planned sitting levels and potentially more. We are continuing to work to remove restrictions on sitting days to ensure that maximum judicial resources are available. We are also focusing on increasing the amount of family work by magistrates and district judges (magistrates’ court) where sittings have been around 65% and 55% of planned levels respectively to date this financial year. The improved availability of courtrooms and increases in the number of legal advisors will support this. In addition, we will ensure that there is increased staff support and provision of laptops to support the judiciary, including magistrates, to deliver these higher levels of sittings.
- 4.10 We expect more hearings to be completed face-to-face as more courtrooms become available, in line with expectations set out by the [President of the Family Division in his Road Ahead framework](#). This is important because there are some cases in the family court where the judiciary will need to be able to hear the case in person. The decision about whether a case should be heard remotely or face-to-face is made by the independent judiciary. The increased availability of courtrooms will provide greater flexibility for the judiciary to choose how to list cases.

- 4.11 Our analysis of performance during the pandemic indicates that disposal rates have been lower during the pandemic compared to those seen in the pre-COVID period when the vast majority of cases were heard face-to-face. By opening more courts for face-to-face hearings, we expect to improve throughput. We now have sufficient courtroom capacity to enable up to two-thirds of hearings to be heard face-to-face, albeit decisions about how a case is heard are for the judiciary.
- 4.12 Our expectation is that remote hearings will continue to play an important role in enabling hearings to take place which otherwise would not be possible, owing to the constraints on courtroom capacity. We expect to see a reduction in remote hearings compared to the first three months of the financial year, as it is now possible to reach an appropriate balance between remote and face-to-face hearings in the family court.
- 4.13 There are currently no plans to introduce COVID Operating Hours in the family court, but this will be kept under review.
- 4.14 We are also implementing a range of measures which will release judicial time for additional hearings and improve the disposal rate:
- By rolling out CVP with improved staff support, we expect to enhance the reliability of the service and improve the disposal rate for remote hearings.
 - We have enabled judicial time to be reallocated by mandating digitisation of the Financial Remedy (FR) consent order process since August 2020.
 - We will introduce a digital public law system through the reform programme reducing family public law further case management hearings and public law directions/review hearings. It is expected that this will be rolled out to the majority of regions by December 2020 although provision has been made for this to continue into early 2021 for late adopters.
 - We will continue to support the judiciary in introducing more specialist financial remedy centres which will reduce financial remedy dispute resolution hearings and financial remedy final hearings.
 - The Family Procedural Rule Committee has agreed a further temporary extension of the Practice Direction to 31 March 2021, enabling legal advisers to conduct some limited private law hearings without magistrates to increase the number of cases being heard.
- 4.15 Even if the levels of judicial sittings are sustained for the remainder of this financial year, and if we improve the disposal rates through more efficient remote hearings and increased levels of face-to-face hearings, we are likely to see backlogs continue to grow in both family public and private law. We continue to review potential capacity, demand and productivity measures to address the backlog and will update on further measures in due course. Through the Family Justice Reform Implementation Group, we are pressing ahead with necessary reforms identified before the pandemic.

5. The challenge of COVID-19 in the tribunals

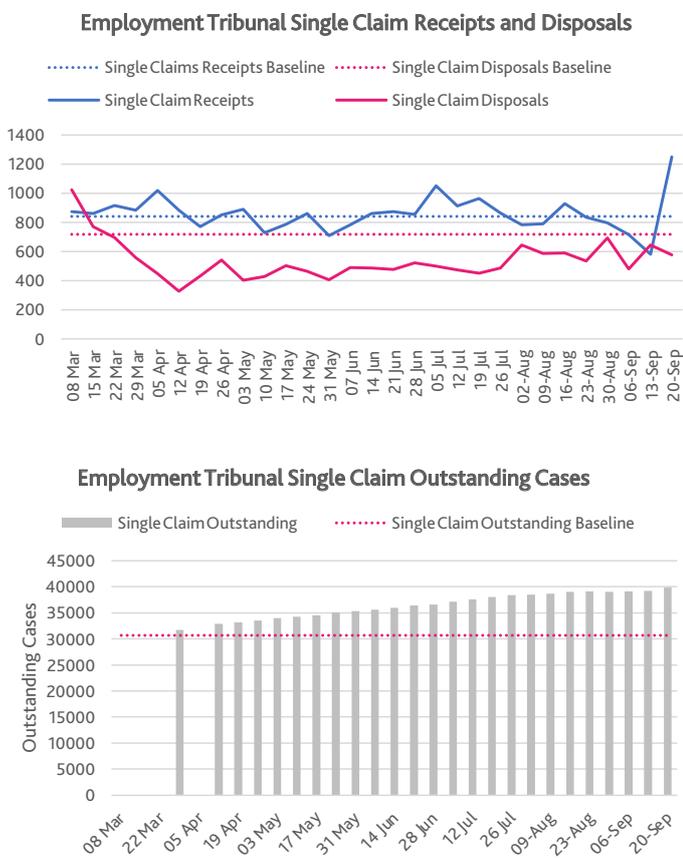
- 5.1 Prior to the COVID-19 pandemic the First-tier Tribunal and the employment tribunals faced contrasting challenges. The two largest chambers in the First-tier, the Social Entitlement Chamber (particularly the Social Security and Child Support (SSCS) jurisdiction) and the Immigration and Asylum Chamber had seen a reduction in backlogs in the previous year whereas the employment tribunals continued to see growing demand, which added to an increasing backlog.

Emergency response

- 5.2 The tribunals judiciary responded quickly to the COVID-19 crisis. The Senior President of Tribunals quickly established practice directions covering the ability of the tribunals to operate with a reduced number of panel members and to enable determination on the papers where appropriate, and guidance was issued on the conduct of remote hearings with a further practice direction enabling cases to be held privately in certain circumstances where it is necessary to secure the proper administration of justice. The Tribunal Procedure Committee subsequently introduced temporary rules to reflect this. Extensive guidance was also issued in each jurisdiction.
- 5.3 The First-tier Tribunals (FtT) and Upper Tribunals have been able to manage their workload and avoid significant backlogs, which is particularly important in the two largest chambers by volume of cases, the Social Entitlement and Immigration and Asylum chambers.
- 5.4 The FtT also includes a number of smaller chambers: the Health and Social Care Chamber (HESC); the Tax Chamber; the General Regulatory Chamber GRC; the War Pensions and Armed Forces Compensation Chamber (WPAFCC) and the Property Chamber. To some extent, disposals have fallen in all these chambers (*save the Mental Health and Special Educational Needs and Disability* jurisdictions in HESC). The reductions seen during the pandemic broadly mirror the reduction in receipts to the tribunals. The reduction in receipts is driven by the reduction in decisions made by government first tier agencies. As a result, outstanding caseload has not grown in any significance. Both receipts and disposals are continuing to grow as activity in the tribunal and first tier agencies begins to increase.
- 5.5 The majority of the tribunal jurisdictions have adopted to new ways of working and are using telephone hearings, CVP for remote video hearings and are also making determinations on the consideration of documents alone. This has served to increase hearings and disposals. Some of these changes will be retained and will provide resilience going forward. Face-to-face hearings are also being gradually re-introduced where appropriate but proper regard is also given to balancing the safety and health of all users, and the benefits of remote determinations. The upper tribunal has also seen reductions in receipts as First-tier Tribunal activity reduced.

5.6 Employment tribunals and the Employment Appeal Tribunal. In the employment tribunals we face a more challenging position. Since mid-June 2020 receipts have been above pre-COVID levels in both employment tribunals (England and Wales and Scotland). Across both tribunals, disposals have averaged around 75% of pre-COVID levels between March and 20 September 2020, with almost all completed through remote hearings. We are now seeing disposal rates increase towards pre-COVID levels but there remains a significant gap between weekly receipts and disposals, and we expect demand to grow as recession impacts. Because of this the backlog in single claim cases has grown by 30% since the start of March 2020, with some cases now being listed for over a year in advance.

Figure 5 – Employment tribunals receipts, disposals and backlog in the COVID-19 period



Further recovery

5.7 Our focus is on sustaining performance in the First-tier and Upper Tribunals while reaching our full capacity in employment tribunals as quickly as possible. Across our tribunals, we will increase face-to-face hearings as more hearing rooms become available and we will continue to build on the availability of CVP to increase the level of work that can be completed remotely.

5.8 Employment tribunals. Our analysis indicates the COVID-19 crisis will see demand increase with additional claims expected in relation to the ending of the Job Retention Scheme and the impact of the wider economic recession.

5.9 At the start of June 2020, the Presidents of the employment tribunals set out a [Road Map for recovery of operational capacity](#). This builds on the availability of CVP to increase use of video hearings and using telephone hearings where that makes sense. It also envisages increasing face-to-face hearings as additional hearing rooms become available. Assuming we can sustain similar levels of remote hearings to those we have delivered in the first three months of the year, we expect the increase in hearing room capacity to enable planned sitting levels to be achieved as of October.

5.10 We are also introducing a new employment case management system to replace the Ethos system from November 2020 which will support staff in processing casework more efficiently.

5.11 Like the civil and family jurisdictions, our current assessment for the employment tribunals is that by expanding hearing room capacity and maintaining high levels of remote hearings, it should not be necessary to introduce extended operating hours to achieve the planned level of sittings. However, the cross-cutting tribunals working group, chaired by a regional employment tribunal judge, has suggested this position is kept under review.

5.12 We are also taking measures to enhance judicial sitting capacity and how disputes can be more effectively managed before reaching the employment tribunals:

- MoJ has worked closely with the Department of Business, Energy and Industrial Strategy and the judiciary to enable cross-ticketing from other jurisdictions into the employment tribunals and to introduce legal officers to release employment judge capacity to focus on more hearings. A Statutory Instrument to enable these measures went into effect on 8 October 2020. These measures are expected to increase judicial availability for hearings from 2021 although they will only be utilised in appropriate circumstances with the agreement of the Presidents.
- We are working with MoJ and ACAS to explore whether more can be done to resolve cases before they require a hearing.
- Recruitment competitions are underway for both salaried and fee-paid judges which will significantly bolster the capacity to undertake judicial sittings from next year.

6. Completing our recovery and looking to the future

- 6.1 As outlined in the overview of our response to COVID-19, recovery is not the end of the journey. We will also make sure that we learn lessons from what has happened in our response to the COVID-19 pandemic to build in additional resilience to our operating model.
- 6.2 The COVID-19 pandemic has reinforced the importance of reform and modernisation of the court system, as those services which have already been modernised proved more resilient to the challenges.
- 6.3 We are also looking to the future - the unprecedented nature of this public health emergency has required us to adopt new ways of working without the preparation that would normally take place, and under conditions that have not previously been tested. We need to continue to ensure that technology recently introduced or expanded works effectively for all participants in court proceedings. It is clear that some changes will be time-limited and will stop with the end of the pandemic, while others may be useful in the longer term.

6.4 We will:

- listen to feedback from judges, magistrates, non-legal members, staff, users and the legal professions to improve the way we work in the short term, and gather data and other evidence to support continuous improvement
- with the judiciary, review the measures we put in place to respond to COVID-19, to identify which should be adopted and/or adapted in the longer term. Final decisions will be made by the Lord Chancellor, Lord Chief Justice and Senior President of Tribunals in line with their statutory responsibilities for the effective governance, financing and operation of HMCTS.

We need to build on the lessons learnt during the pandemic and use them to inform the next phases of modernisation, building on the existing principles and plans, and making best use of the incredible work done to keep the courts and tribunals operating to ensure our future resilience and to deliver access to justice in the public interest.



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