



HM Courts &  
Tribunals Service

# Consultation with legal professionals on COVID operating hours in the Crown Courts



# COVID Operating Hours in the Crown court - Consultation

## Background

As part of HMCTS' Crime Recovery Plan, one of the four pillars to recovery is to further maximise the use of our existing estate through opening our buildings for longer during COVID-19. The pandemic and its necessary countermeasures are an unprecedented challenge to the courts and tribunals which merits an unprecedented response. COVID Operating Hours (COH) were piloted in seven Crown court centres to test whether we could do more in the limited space we have to support recovery. The pilots are unrelated to previous pilots which have tested extended and flexible operating hours in the civil and family courts. They were purposefully designed to respond to the impacts of COVID-19, and to be a temporary response to increase capacity.

## Purpose

Following the pilots of COVID operating hours (COH) at various Crown court locations around the country, assessment data was collected from each site to assess the impacts of COH and how effectively the pilots met the aim of increasing capacity to reduce backlogs. We are undertaking a short, targeted consultation with the legal professions on the key findings from the assessment of the pilot sites and a proposal to widen the use of COH across more Crown court centres.

This document presents an overview of the assessment findings, together with a proposal for a wider roll out of COH. A consultation period of two weeks follows the roundtable event held on 26 November, during which we are asking legal profession representative bodies to provide written responses to the assessment findings and the proposed next steps for COH in advance a final decision being taken on whether to proceed with COH as part of the Crown court recovery from the impacts of COVID-19.

## Document contents

This document is in three parts. The first part presents the findings from the assessment process including quantitative data and a summary of the qualitative data drawn from surveys and interviews. The second part provides an overview of the proposal to widen the roll out of COH in Crown court centres. The final part sets out the consultation process and some of the key questions we are asking the legal professions to respond to.

# Aims and model of COH pilots

## Aims

As part of [HMCTS' COVID-19 response for criminal courts in England & Wales](#), one of the four pillars to recovery is to further maximise the use of our existing estate through opening our buildings for longer during COVID-19.

## The COH Pilots

A COVID Operating Hours (COH) model for the Crown court was tested initially in Liverpool before being piloted in 6 further sites (Cardiff, Kingston-Upon-Hull, Portsmouth, Reading, Snaresbrook and Stafford). The aim of the pilots was to understand whether COH is a viable option to increase capacity to list and dispose of jury trials in the Crown court to support the recovery of the criminal courts from the impacts of COVID-19.

## The COH Model

This COH model tested the running of two court lists in one courtroom, one in the morning and one in the afternoon. Alongside the 'COH court' at least one 'standard hours' trial court operated. This is referred to as the 'blended approach'.

No one individual was expected to participate in both the morning and afternoon session in one day. For example, morning trials that lasted more than one session would return for the morning session the next day. The COH dual list was used in one courtroom per site and there was always at least one other courtroom running standard hours jury trials.

Six of the seven pilot courts ran COH sessions from 9am-1pm and 2pm-6pm, and one of the pilot courts ran COH sessions from 0930-1300 and 1330-1730.

# How the pilots were implemented

Based on key principles developed for Liverpool, pilot sites were provided with guidance to support implementation that could be adapted to their local circumstances. This covered:

## **Safety**

- Monitoring safety measures to ensure that jury trials were Covid secure were implemented across all sites. These measures included supporting social distancing and appropriate cleaning standard (the same approach as non-pilot sites)

## **Jurors**

- Considering how space in court buildings would be used to allow for sufficient capacity for jury rooms
- Putting plans in place to secure sufficient juror capacity, manage contact with jurors, and manage social distancing and room use throughout the day

## **Stakeholders & Partners**

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

## **Listing**

- Agreeing an approach to listing of cases with judges and setting up an approach to communicating listing to parties in advance (where possible providing two weeks' notice).

# **Section 1**

## **COVID Operating Hours: Assessment Findings**

# How the COVID Operating Hours Pilots were Assessed

The assessment of the COH pilot courts used a multi-method research approach to examine the effectiveness of COH as a model to increase the capacity of Crown courts, and to explore the experiences of court users and the judiciary. The approach is based on the approach developed for the Liverpool pilot which was agreed with the COH Crime Working Group chaired by HHJ Menary QC. The assessment process included:

- A bespoke management information data collection exercise for COH and standard hours court rooms, collecting data from approximately 600 court sessions to process and analyse;
- Qualitative depth interviews undertaken with 116 respondents (including written feedback from 4 witnesses);
- A legal professionals survey to capture the experiences and perceptions of hearings during COH with 52 respondents

The management information data was collected during the pilot from listings officers and court clerks. The Assessment Findings assume data was recorded accurately. Survey findings represent the views of respondents only and should therefore not be generalised to all legal professionals.

# The court pilots we assessed

The table below summarises each of the pilot courts we assessed, the number of standard hours trial courtrooms and COH courtrooms involved in the pilots, the pilot locations, and the first and last sitting date for each pilot.

**Table 1: No. of courtrooms and sitting dates across Pilot Court sites**

Pilot Courts	Cardiff	Hull	Liverpool	Portsmouth	Reading	Snaresbrook	Stafford
No. of standard hours (SH) courtrooms (16 rooms)	2	2	3	2	3	3	1
No. of COH courtrooms (7 rooms)	1	1	1	1	1	1	1
First sitting date in pilot	28 Sep	14 Sep	17 Aug	21 Sep	21 Sep	14 Sep	14 Sep
Last sitting date in pilot	23 Oct	23 Oct	07 Sep	30 Oct	30 Oct	22 Oct	23 Oct
Dates refer to first and last in each pilot site							

# The additional capacity and throughput from the COH pilots

The table below provides an overview of the average trial disposals, including effective and cracked trials, for each week of the pilots in both the courts running standard operating hours, and those running COH.

Average disposals (effective and cracked trials) per room per week	
Operating Hours	Average trial disposals per room per week
Standard hours rooms	0.9
COH rooms	3.5

## Assessment Findings

- The COH sessions appear to be an effective way of disposing of particular categories of cases when blended together with courts operating standard operating hours.
- COH courtrooms disposed of an average of **3.5** trials per courtroom per week, with **0.9** trials disposed of in standard hours courtrooms per week (defined as effective and cracked trials), reflecting the different nature of trials listed in the two types of room with a similar proportion of trial outcomes in each of the sessions.
- The additional capacity from COH can be illustrated by estimating the average disposals of a standard hours court hearing similar cases. Disposals in a standard hours court would be around 5/7 of that in a COH court (due to the longer day in a COH court\*) and could dispose of **approximately 2.5 trials** per room per week, compared to the average of 3.5 trials per room per week in COH. As a result, for every 10 courtrooms running COH, an additional 40 trials could be disposed of over a 4-week period.

\*This assumes that a standard hours room sits for five hours a day excluding lunch breaks, whereas a COH court sits for seven hours excluding 2 30 minute breaks



# Court disposals and outcomes during the pilots

The table below summarises the total number of case disposals and trial outcomes during the pilot period, including the courtrooms running standard operating hours, and the COH courtrooms, further broken down by the AM and PM sessions.

Table 3: Trial Outcomes				
Court Type	Effective trials	Cracked trials	Ineffective trials	Total cases (=100%)
Standard hours (16 rooms)	71%	17%	12%	83
COH (7 rooms)	67%	23%	10%	141
<i>of which:</i>				
COH AM sessions	64%	23%	14%	74
COH PM sessions	72%	22%	6%	67
Total	69%	21%	11%	224

## Assessment Findings

- The proportion of effective, cracked and ineffective trials in the two types of court were broadly similar.
- The proportion of disposed trials (i.e. effective and cracked) were also similar.

# Overruns in the pilot courts

The table below summarises the incidences when courts finished later than their listed end-time in the pilot courts: in both the standard hours courtrooms, the COH courtrooms, and each of the AM and PM sessions for the COH courtrooms.

Table x: Overruns in the Pilots Courts						
	Standard hours	COH (all)		COH AM sessions	COH PM sessions	Total
No overrun	71%	83%		76%	89%	78%
30 minutes or under	24%	15%		19%	11%	19%
Over 30 minutes	5%	3%		5%	0%	4%
Number of sessions (=100%)	241	345		172	173	586

## Assessment Findings

- COH sessions were less likely than standard hours sessions to run beyond their listed end-time, reflecting the ‘hard stops’ at the end of the AM and PM sessions at 1pm and 6pm respectively.
- COH morning sessions were more likely to run over their listed end-times than COH afternoon sessions.

# Delays in the pilot courts

The table below summarises the start time delays in the pilot courts: in both the standard hours courtrooms, the COH courtrooms, and each of the AM and PM sessions for the COH courtrooms.

Table x: Delays in the Pilots Courts							
	Standard hours	COH (all)		COH AM sessions	COH PM sessions		Total
No delay	24%	15%		17%	14%		19%
30 minutes or under	57%	62%		58%	65%		60%
Over 30 minutes	19%	23%		25%	21%		21%
Number of sessions (=100%)	241	345		172	173		586

## Assessment Findings

- COH sessions were slightly more likely than standard hours sessions to experience start time delays (85% compared with 76%).
- The most common reasons listed for delays in the COH courts were: *court not ready* or *other business overran*, *awaiting defendant* or *defendant failed to attend*, *awaiting legal professionals*, or *awaiting jury/jury delays*.

# Key Assessment Findings from the Quantitative Data

- COH appears to be an effective way of increasing the capacity of a single courtroom to dispose of cases disposing of an average of 3.5 trials per courtroom per week, compared to courts operating standard hours disposing of 0.9 cases per week. This reflects the different case types in different courts.
- With the 'blended approach' the model increased overall capacity of the pilot sites to dispose of cases while maintaining a mix of longer and shorter, complex and simpler cases.
- The additional capacity from COH (by comparing the average disposals of a standard hours court hearing similar cases, with a COH Court) is an estimated 40 additional trials over a 4 week period for every 10 courtrooms running COH.
- The proportion of effective, cracked and ineffective trials were broadly similar in standard operating hours courts and COH Courts.
- COH sessions were more likely than standard hours sessions to experience start time delays (85% compared with 76%), and this was marginally more likely in the PM session than the AM session.
- COH sessions were less likely than standard hours sessions to run beyond their listed end-time, reflecting the 'hard stops' at the end of their sessions.

# Research with pilot participants

■ The research strand of the assessment involved a large number of qualitative interviews (116) with participants across each of the COH pilot sites

- Interviews were conducted with – HMCTS staff, Judges, Legal professionals, CPS, Witness Care, Witness Service, witnesses, Prison operational staff, PECS & Probation

■ The main objectives of the research were to:

- Identify changes that should be made if COH was to continue
- Capture innovations that worked well for different sites
- Understand the experience of people operating in and with COH

■ The interviews from the research were then subjected to thematic analysis and the subsequent findings are summarised over the following three slides covering:

- Listing approaches across the COH pilots
- Resourcing and implementation of the COH pilots
- Wellbeing of pilot participants

# Listing approaches across the COH pilots

- Courts reported that they tended to list shorter cases and those that are likely to crack in the COH courtrooms. Longer, more serious cases were directed to the standard hours courtrooms because they needed the greater flexibility that a full day session provides.
- Listing officers were defining short cases as those with one defendant and estimated to last 3 days or less. Example cases which were listed in COH courtroom included drugs, fraud, ABH charges.
- The research indicated that courts found ways to adapt listing practices over the COH pilot
  - Some judges said they used future trial reviews to list cases they believed would crack prior to the day of the trial
  - One court started to list some longer more complex cases in the COH PM session by using time in the morning to have procedural discussions prior to the trial starting with the jury present.
- The listing of shorter cases in the COH courtrooms generated mixed views among judges and listing officers. Some appreciated the capacity to hear cases that would otherwise not be heard, while others felt that resource should be deployed on longer cases.

*“You needed to identify which cases, the shorter cases, the cases that were likely to plead, the cases you would normally not get on...there is mileage to it, but it needs to be thought properly, and resourced properly” (Court staff)*

*“Just to be clear the COH court i.e. morning or afternoon provided a vehicle for lots of short cases to be reached whereas without it many of those cases would be lower down on the priority list” (Court staff)*

# Resourcing and implementation of the COH pilots

- Resident Judges felt that the COH pilot may be a useful tool for increasing capacity for sites which have more Judges than available courtrooms.
- Court staff were taking on additional responsibilities as a result of COH and there was a strong feeling that sites would benefit from additional resource.
  - Some courts brought in additional resource from other jurisdictions or roles, but these staff needed extra support initially which impacted on existing experienced staff
- COH courtrooms operated hard stops at 1PM and 6PM, which created some inefficiency as sessions would finish early if they thought a witness would go past the stop time compared to standard hours courtrooms where they could overrun.
- Communication was effective in most courts and people were prepared for the COH pilot. However, in one court, partners (Witness Care, Witness Service) reported only being given a week's notice.
- Some courts scheduled weekly catch up calls with stakeholders which worked well as they were able to discuss and then address issues as they arose e.g. custody cases not being scheduled into the COH PM session.

*“Trials can’t go past a certain time which can be annoying for everyone involved...if a witness doesn’t get enough time to complete their statement, they have to come back the next day. Normally, they can just continue and the judge and everyone will wait” (Court staff)*

# Wellbeing of pilot participants

- Staff across sites volunteered to pull together and worked hard to ensure the COH pilot could get up and running but, as a result, some staff ended up working both the AM and PM sessions to help colleagues.
- Court staff, Judges and legal professionals who worked the COH PM session reported arriving home later in the evening, which caused many to feel that their work/life balance had been negatively impacted.
- Some legal professionals welcomed COH as an increased opportunity to earn fees which was important given that work had reduced during the pandemic.
- When there were no breaks in the COH sessions it was felt that concentration levels for all parties, and in particular jurors, were impacted.
- The research suggested concerns or requests for hearing changes were raised directly with the judge at the future trial review. This meant that there were only a small number of formal requests reported by listing officers to move a case from a COH courtroom.

*“By the end of the two weeks I was exhausted. I wasn't getting home until gone 8pm. I can't help with childcare [because of working the PM court] and my child is in bed when I get home” (Legal professional)*

*“The PM court is not equal to the AM. Nobody wants to be there. The energy is negative, people are very flat and tired” (Judge)*



# Survey of legal professional pilot participants

As part of the assessment process we asked legal professionals “*overall, how would you rate your experience of being involved in a trial as part of the COVID Operating Hours pilot*” on a scale of Very Good to Very Poor. 52 legal professionals responded to the survey. Of those, 40 had attended a COH session and responded to this question. Survey findings represent the views of respondents only and should therefore not be generalised to all legal professionals.

**Table 6: Legal Professionals’ ratings of being involved in COH trials**

	COH (all)		COH AM sessions	COH PM sessions
Very good	5%		4%	5%
Good	15%		18%	5%
Neither good nor poor	40%		39%	50%
Poor	28%		25%	25%
Very poor	13%		14%	15%
<b>Number of respondents=100%</b>	<b>40</b>		<b>28</b>	<b>20</b>

8 respondents attended both a morning and afternoon COH session. Their responses are listed against both types of session (and therefore duplicated), so responses do not sum to totals. Percentages may not sum to 100% due to rounding.

## Assessment findings

- Overall, 20% of legal professional respondents rated their experience as either good or very good, 40% rated it as neither good nor poor, and 40% rated it as poor or very poor.

[COH respondent characteristics: 68% male + 33% female; 48% aged 25-44yo + 53% aged 45-64yo; 45% had childcare responsibilities; 40% had other caring responsibilities]

# Summary assessment of COH

- As a 'blended approach' the COH model was found to increase capacity of the pilot sites to dispose of cases.
- Overall COH courtrooms dealt with more trials than standard hours courtrooms, with more cracked and effective trials being disposed of in COH courtrooms, reflecting, in part, the different nature of trials listed in the two types of room.
- Pilot sites adapted the approach to their local circumstances. The approach was considered to provide flexibility as one element of HMCTS' COVID recovery plans, but it was not suitable for all cases in the Crown courts.
- Extra staff were needed to support the COH courtrooms which should be considered in resourcing plans if future adoption is considered.
- There were a number of elements that supported effective running of the approach including; two teams of staff to manage movement of people, optimising space to enable management of jurors, clear agreed processes for implementation through Local Implementation Teams.
- Effective communication was considered to be key to the success of the pilots, including in advance to parties, through working groups and regular sessions with local partners to implement and manage the process.



## **Section 2**

# **COVID Operating Hours Proposal**

# The Proposed approach to widening the use of COH

- The following slides detail our proposed approach to the potential roll out of COH, if the decision is made to do so.
- Our proposed approach incorporates the learning from the pilots and HMCTS would welcome the feedback and ideas of legal professionals on how the operation of COH could be further improved.
- **We propose that COH would be a temporary measure, in response to the COVID-19 pandemic, and as such its operation would be time-limited.**
- It is proposed that the continued operation of COH would be formally reviewed in April 2021. In addition, Resident Judges would review the need for continued operation of COH at a local level as appropriate with Local Implementation Teams.
- As an indicative timeline, should a decision be taken to proceed with COH following the consultation, we anticipate that the first COH trials could take place from mid-January, following the set-up of Local Implementation Teams.
- Should a decision be taken to roll out COH, we propose continued assessment of the impact of COH, including whether it is delivering the expected increases in capacity and throughput.

# The COH model proposed for wider roll-out

- We propose that the ‘blended’ model, as piloted at the 7 sites, would be rolled out more widely.
- The ‘blended model’ involves a minimum of two jury trial court rooms in the same court centre, and requires adherence to COVID building risk assessments (i.e. safely managing levels of footfall within the building).
- In one trial court room, two lists operate: one in the morning and a second list in the afternoon, Monday to Friday. No one individual would be expected to participate in both the morning and afternoon sessions.
- Alongside this, at least one standard hours trial courtroom will operate. This will ensure that, if for any reason a case is unsuitable for the earlier or later session court, subject to the decision of the Resident Judge, it can still be listed in the usual way in a standard hours trial courtroom.

# The COH 'blended' model

## COH courtroom

9am to 1pm

Group A of staff, judge,  
advocates and jurors

1pm to 2 pm

HANDOVER

Close of 1<sup>st</sup>  
session

Court staff to  
clear as they  
would overnight  
/ lunchtime

Cleaning of  
Courtroom

Changeover of  
Judge and  
Jurors

2pm to 6pm

Group B of staff, judge,  
advocates and jurors



## Standard hours courtroom

1000 - 1630

This is a blended model where one COH trial courtroom runs am/pm sessions, and at least one other trial courtroom runs a standard 5-hour day.

This would ensure trials that were not suitable to be heard in the COH courtroom can still proceed, and would also mitigate against the diversity challenges of participants with caring or other responsibilities being unable to attend the morning and / or afternoon session.

### Notes:

- Available sitting time: 5 hours (not including a 60 minute break)
- The blended model requires a minimum of two courtrooms for jury trials in the same courthouse

### Notes:

- Available sitting time: Up to 7 hours (not including 2 x 30 minute breaks)
- Trials continuing from the am session go into the am session the following day; trials continuing from the pm session go into the pm session the following day.
- The court will determine the appropriate session / rooms for listing custody and bail cases depending on proximity to the local prison and discussions with PECS.
- Custody trials involving a female or young defendant are unlikely to be suitable for listing in an am/pm session court.
- A trial with a vulnerable witness (where s28 has not been utilised) is unlikely to be suitable for a shift court.
- A trial with a large number of witnesses is unlikely to be suitable for a shift court.

## Operating the COH Model

- The majority of the pilots operated the morning COH session from 0900-1300, and the afternoon COH session from 1400-1800.
- However, one pilot, Stafford, operated a variation of the approach, whilst maintaining the blended approach, to suit the specific issues faced at that court in safely managing building capacity.
- In order to safely run three trials per day, at Stafford, COH sessions ran from 9:30am to 1:30pm and 1:30pm to 5:30pm. As the morning and afternoon sessions trials sessions took place in different rooms the court did not need to allow time for a break for cleaning between sessions to take place (cleaning was completed before / after the sessions as usual). Non-trial hearings were heard in the COH courtrooms in the morning or afternoon when they were not being used for trials.
- HMCTS would support proposed local variations to the blended model where they were considered appropriate by the judiciary, were necessary to suit local conditions, comply with COVID building risk assessments, and were supported by all partners.

# Learning lessons from the pilots

- Local Implementation Teams (LITs) would be established to oversee deployment in every court site agreed as being suitable by the Resident Judge.
- LITs would be made up of representatives of all affected criminal justice partner agencies and legal professionals, at a local level. The LIT would be responsible for managing implementation and assessing readiness for go-live.

Subject	How we would address / mitigate
<b>Safety</b>	Building risk assessments at COH courts would be updated to take into account how increased footfall would be safely managed and what additional mitigations may be required on a site by site basis.
<b>Considering participant availability and caring responsibilities</b>	The blended approach would allow, subject to the decision of the Resident Judge, cases to be moved from COH trial courtrooms to standard trial courtrooms where representations were made. We would ensure that LITs consider how participant availability information (including for defendants on bail) can be effectively be provided to assist with judicial decision making.
<b>Jury Management</b>	We have developed an expedited version of jury induction to avoid delays and we would recruit more staff to support juror engagement.
<b>Defendants in Custody</b>	We would work closely with PECS and their contractors to ensure appropriate arrangements were made for the delivery of defendants in custody. Some courts would not be able to list custody cases in some / all COH sessions.
<b>Witness support</b>	We would continue to collaborate with MoJ and Witness Service on the support that they can give to early morning and late afternoon sessions. Where they were unable to facilitate, we would mitigate by use of HMCTS resources.
<b>Staffing</b>	We are considering potential COH staffing requirements in our ongoing recruitment campaigns. If decision is made to roll out, we would have sufficient additional court clerks, jury officers and ushers in place.

# Where could we run COH courts?

- In identifying potential sites for roll out of COH the first criterion is that the site is capable of implementing the blended model. To do this, it must have at least two trial courtrooms available, in order that COH trial sessions can operate in one, and standard hours trial sessions can operate in the other. There are 65 Crown court sites which meet this criterion.
- However, there are other considerations: some sites only have two courtrooms in total and we would therefore need to consider whether there is a suitable alternative means of hearing non-trial work from that site, for example at a nearby court centre.
- The Resident Judge at each court site would be responsible for determining whether implementation of COH is appropriate, and HMCTS would be responsible for determining whether this can be done safely in line with building risk assessments.
- There are approximately 254 jury trial courtrooms open and available at the 65 Crown court sites. Should we decide to proceed with COH we assume that the maximum number of jury trial rooms operating COH hours would be 65, meaning 75% of the available jury trial rooms would continue to operate standard operating hours and 25% operating COH sessions, for a time limited period.



## Why are both COH and additional Nightingale courts required?

- COH provides an opportunity to make full use of the rooms we can safely use on our own estate. But COH only works in courts where there is a minimum of two rooms running jury trials.
- Shorter trials are generally more suited to the COH court, whilst Nightingale courts offer us extra capacity to hear longer non-custodial cases (custody cases can't be heard easily in Nightingale courts).
- Both types of courts therefore have a part to play in reducing the backlog of all types of cases.
- COH courts would, by their nature, run on the existing HMCTS estate. This means that there would be minimal set-up or new property costs involved, making them more straightforward and practicable to set up.
- COH courtrooms use judge time less efficiently: two judge sitting days are required for one COH day, one for each session.
- COH courtrooms are particularly suited to shorter trials and could make a significant difference to court productivity. This means that COH would enable these shorter cases to be heard by effectively ringfencing a number of courtrooms to operate in this way, whilst still protecting space and time for longer and more complex cases in the majority of court rooms, including Nightingale Courts.
- The pilot assessment demonstrates that a COH courtroom could dispose of, on average, 3.5 cases per week. Taking the assumption from the assessment that a standard hours courtroom, operating with a similar case mix as in the COH rooms (i.e. short, simple cases), could dispose of 2.5 trials per week, COH delivers additional capacity and throughput of cases to support recovery. As a result, for every 10 courtrooms running COH, we could dispose of an additional 40 trials over a 4-week period.



# Summary of the Public Sector Equality Duty Statement

*HMCTS has continued to assess equality impacts, and mitigations, of COH courts in line with our statutory responsibilities under Section 149 of the Equality Act 2010. This is an ongoing duty with new evidence and information regularly assessed including that gathered through the assessment of the early adopter courts.*

- The coronavirus pandemic has created new challenges for the justice system. Coronavirus has a disproportionate impact on particular communities and that it has exacerbated existing structural disadvantages in our country. In responding to the pandemic public bodies must recognise these unequal impacts, ensuring that measures put in place do not lead to an increase in discrimination and disadvantage in the years to come.
- HMCTS has continued to assess equality impacts, and mitigations, of COH courts in line with our statutory responsibilities under Section 149 of the Equality Act 2010, with new evidence and information regularly assessed including that gathered through the assessment of the early adopter courts. We have engaged closely with the Bar Council and circuit leaders on the range of data we collected to assess the COH Court pilots. The pilots provided us with insight which we have evaluated to consider the potential impacts on different groups, including professional users, vulnerable court users and those with caring responsibilities.
- We have also reviewed important secondary evidence, such as the circuit reports from the Midlands and North East, and results from the Women in Criminal Law survey, to update the equality assessment with the very latest information and insight on potential impacts. The potential adverse impacts from COH courts are the potential for indirect sex discrimination, linked to impacts on legal professionals with caring responsibilities, and in particular the impacts on female legal professionals.
- Mitigations of these impacts include guidance the judiciary have provided on the types of case which are suitable for listing into the COH courts, with shorter, more straightforward cases proving most suitable. The blended approach ensures there is at least one or more courtroom running standard operating hours, hearing more complex trial work, alongside a COH court at each site. This should provide flexibility for legal practitioners not able to attend either an AM or PM trial. This mitigation is underlined with parties able to make representations at Trial Reviews whether a case should be listed into a COH or standard hours court. The trial review takes place in advance of the listing of the trial. Alongside this are provisions for practitioners to make an application (supported by reasons) to move a case should attendance at a COH court be impractical. The pilots showed applications of this type were low in number at pilot courts.
- These provisions should mitigate potential adverse impacts, including those linked to days of religious observance (the religion and belief characteristic), if they are reflected in listing decisions. Listing remains a judicial function and decisions whether a case should be listed in a COH or standard hours court, or whether to move a case between or out of COH sessions are decided by the trial judge.

# Summary: Proposed approach to potential roll out of COH

- COH would be a temporary measure in response to the COVID-19 pandemic. Should the proposal be progressed it is proposed that the continued operation of COH would be formally reviewed in April 2021.
- We are proposing to roll out the blended model of COH more widely. When compared to the same number of standard hours courtrooms dealing with a similar case mix (i.e. short, simple cases), every 10 COH rooms could enable us to dispose of 40 additional jury trials per 4-week period.
- In identifying potential sites for roll-out of COH the first criterion is that the site is capable of implementing the blended model. There is a 'long-list' of 65 Crown court sites which meet this criteria. In each case we would check whether COH could be run safely in line with the building risk assessment, and the decision on suitability of a court site to operate COH would be for the relevant Resident Judge.
- Local Implementation Teams (LITs) would be established to oversee deployment in every court agreed as being suitable by the Resident Judge.
- COH courtrooms will enable shorter cases to be heard by effectively ringfencing a number of courtrooms to operate in this way, whilst still protecting space and time for longer and more complex cases in the majority of courtrooms, including in Nightingale Courts.
- Our proposed approach incorporates learning from the pilots and we would also incorporate feedback and ideas from this consultation should the decision be taken to proceed with further roll-out of COH.**



## **Section 3**

# **COVID Operating Hours Consultation Process**

# Consultation questions

We would like to hear your views on whether we should proceed with COH, as well as what else we could do to make sure COH courts are operated in the most effective way, limiting negative impacts on those who work within the justice system.

Below is a set of key questions on our proposal to which we would like to hear your responses:

1. How do you think we could improve the proposed COH model?
2. What features of the COH model work well and should be strengthened?
3. What would we need to consider in the transition and roll out of COH?
4. Are there other user groups in the Criminal Justice System that we should consider, and why?
5. Do you agree that, should we proceed with further roll-out, the operation of COH should be reviewed in April 2021, and what do you consider are the key points the review should focus on?

## Next steps with the consultation

- The consultation will be open for written responses until 11.45 pm, Thursday 10 December
- Please email your responses, or any questions, at this link: [HMCTS COVD operating hours](#)
- We would like responses coordinated through the representative bodies (Bar Council, Law Society, Criminal Bar Association) but we also propose to offer a webinar for practitioners to present the COH pilot assessment findings and proposal.
- Your feedback will feed into decision-making about whether, and how, to proceed. If the decision is made to roll out further COH, we expect that would take place from January 2021.