

The criminal justice system

How government reforms and coronavirus
will affect policing, courts and prisons



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About this report

This report sets out the potential impact of the government's plan to increase the number of police officers by 20,000 and the coronavirus crisis on the criminal justice system.

This analysis – produced in partnership by the Institute for Government and the Chartered Institute for Public Finance and Accountancy (CIPFA) – builds on our Performance Tracker project.

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Summary

The police, criminal courts and prisons have been subject to deep spending cuts over the last 10 years and some aspects of performance have subsequently declined. The Boris Johnson government has promised more money, but its plan to increase the number of police officers by 20,000 will put pressure on other criminal justice services: more officers will likely require the courts to process more cases, and the almost-full prisons of England and Wales* to house more criminals.

On top of this, the criminal justice system will now have to manage the effects of the coronavirus pandemic. Some prisoners are being released early and guidance on police charging decisions has already been updated. Most starkly though, the crisis had led to an unprecedented restriction on the courts' ability to process cases. Without subsequent additional spending, there will be bigger case backlogs – and therefore delayed justice – indefinitely.

The spending review planned for this year has been delayed. But when it comes, policy commitments such as more police officers, combined with the effects of coronavirus, mean the government will need to provide substantial extra spending for courts and prisons if it wishes to deliver on its manifesto promise of 'world class public services'.

The impact of planned government policy on courts and prisons

The government's criminal justice reforms, most significantly the plan to increase the number of police officers by 20,000, will place substantial pressure on the rest of the criminal justice system.

The scale of the impact will depend on how this increase in police officers affects the number of cases charged by police. Over the last few years, the number of charges per officer has fallen. This fall has been attributed to an increase in the volume and complexity of digital evidence; an increase in the severity of crimes; a fall in the capacity of the Crown Prosecution Service, which makes charging decisions alongside the police; and an increase in 'non-crime' demands on police time, such as mental health incidents.

* More information about the devolution of criminal justice can be found here at: www.instituteforgovernment.org.uk/explainers/criminal-justice-devolution

In this report we model three scenarios for how police charging will evolve over the next few years, each of which has different implications for courts and prisons. Our main findings are:

- **In our 'low demand' scenario**, charges per officer continue to fall at the same rate as they have since 2010. Under this scenario, the additional police officers would create little additional work for the courts and prisons – overall charges, and therefore court cases and the prison population, would be stable over the next four years. However, this would likely mean public and government disappointment at police performance, given the money spent.
- **In our 'central demand' and 'high demand' scenarios** (in which charges per officer are stable and rise again, respectively), charges would increase. Both these scenarios imply a bigger impact for the crown court than for magistrates' courts. The number of cases received each year by the crown court would – by 2023/24 – surpass 2016/17 levels under our central scenario. In our high demand scenario, cases received would rise close to their highest level since the turn of century.*
- **In both our 'central demand' and 'high demand' scenarios**, the prison population would increase to its highest ever level – reaching over 95,000 by 2023/24 in the high demand scenario – and well beyond planned prison capacity. In both scenarios, a higher proportion of prisoners would be short term (that is, serving sentences of less than 12 months). Prisoners are more burdensome to look after when they first enter prison, so this would increase pressure on prison officers even further.

The impact of coronavirus

On top of existing government policies such as the 20,000 extra police officers pledge, the criminal justice system must now also handle the impact of coronavirus.

It is already having an impact. The volume of recorded crime has fallen due to coronavirus and officers' time has been partially diverted from investigating crimes to enforcing the government's lockdown. The police workforce has also been diminished due to large numbers of officers taking sick leave or having to self-isolate. As a result, the number of crimes charged could fall substantially. But the ability of courts to hear cases is likely to fall even more dramatically as courtrooms are closed for all but a small number of priority cases, and jury trials have been suspended altogether.

In this report we model alternative scenarios for the impact of coronavirus on the police and courts, to show how the criminal justice system could be affected:

- Police – charging volumes fall by 0%, 20% or 40% for three or six months.
- Magistrates' courts – the volume of less serious, easy-to-process cases** falls by 25%, and other cases fall by 50%, 65% or 80% for three or six months.

* After adjusting for the fact that cases have become more complex.

** Those dealt with using the single justice procedure.

-
- The crown court – the volume of jury trials falls by 100% in April, and then by 70%, 85% or 100%, and non-jury trial cases fall by the same rate as magistrates' cases, for three or six months.

Our scenarios show that coronavirus could create a major backlog of cases. If the shutdown of courts lasts for six months, our central projection is that waiting times would increase by 60% in the crown court (from an average of 18 weeks to 29 weeks) and stay that long indefinitely without further action.

The government could try to conduct more hearings via video or over the phone. However, there are concerns that virtual courts, where defendants are not in the same room as the magistrates, judges and juries presiding over their cases, could result in unfair treatment. Justice delayed is preferable to justice denied, and the government should instead focus on reducing the backlog once the coronavirus crisis is over. If the government provided additional funding to enable the criminal courts to increase the number of cases processed back towards levels seen in 2015, waiting times could be cut back to pre-crisis levels within two years of the crisis ending.

The pressure on prisons from coronavirus is quite different. A fall in court cases will lead to the prison population being smaller in the short term (by around 15% if the court shutdown lasts for six months), implying spare capacity. But there is also a high risk of the virus spreading in prisons, and prisons are under pressure as up to 25% of staff are on sick leave or self-isolating. As a result, the government is taking steps to further reduce the density of the prison population by releasing prisoners early. As the turnover of the prison population is quite high, any reduction in prison population will not last for long, especially if the courts take action to remedy the backlog.

Implications for government spending

Our analysis shows that the government will need to spend more on courts and prisons if it wishes to maintain their performance in the wake of the coronavirus crisis, and as the impact of policy changes such as additional police officers is felt.

The pandemic has meant that the government's spending review, which was due to set out government spending plans for the next three years, has been delayed. When the spending review happens, perhaps in 2021, the government needs to set out a plan for the criminal justice system as a whole – recognising the knock-on effects of each part of the system on the rest.

It will also need to account for the impact of the decisions taken over the last 10 years, when spending on the police, criminal courts and prisons was cut faster than demand for any of these services fell. In the courts, an initial increase in backlogs and waiting times has been reversed in the last few years.

But in prisons, levels of violence, poor prisoner behaviour and self-harm have increased rapidly. This means that the criminal justice system is entering this next phase in a weak position – even maintaining existing service standards will be difficult.

The spending envelope for public services that was set out by the chancellor Rishi Sunak at the budget in March 2020 implied much more generous spending settlements over the next few years for unprotected services – that is, those outside of health, schools, defence and overseas aid – than they have received since 2010. Based on those figures, we would expect spending on courts and prisons to increase by 10.5% in real terms between 2019/20 and 2023/24.

Taking into account increases in demand and cost pressures from wage increases over the next few years, these settlements might just be enough (in the medium term) to maintain the performance of courts and prisons in our central demand scenario, if small efficiencies are made. However, in our high demand scenario, we estimate that the government would need to devote an additional £372m a year to the criminal courts and prisons by 2023/24 to avoid standards slipping.*

The government must also pay attention to the physical and human assets of the criminal justice system. Additional investment is needed in prisons to ensure there are enough places for growing numbers of prisoners. The government has pledged to build 10,000 additional prison places, but these are unlikely to be ready quickly enough to house the expected numbers of new prisoners – and previous governments have struggled to build prisons as quickly as planned. Recruiting enough police officers, judges, court staff and prison officers may also prove difficult, especially as the police and prisons may be fishing in a similar pool of applicants.

Finally, to address the court backlog that will be generated during the coronavirus crisis, we estimate that the government will need to devote additional spending to the criminal courts for up to two years after the crisis: £55m–£110m per year for two years would be sufficient to clear the backlog in our central scenario and return waiting times to 2019/20 levels. This funding would need to be agreed outside of the spending review process if the government wishes to start reducing the backlog in this financial year.

* All real-terms pound figures are in 2019/20 prices.

1 Introduction

The justice system maintains law and order and ensures that criminals and victims receive justice. The Home Office oversees crime and policing, while the Ministry of Justice is responsible for courts, prisons and probation services. Both work with dozens of public bodies, including 43 police forces, the National Crime Agency, prosecutors, criminal courts, the National Probation Service, youth offending teams and prisons. There are also hundreds of private and voluntary sector organisations delivering everything from cleaning and maintenance to 13 prisons and much of the probation service.

In the last decade, funding for the parts of the justice system that we assess in this report – the police, prosecution, criminal courts and prisons – has been cut.^{*} This has contributed to a decline in the number of crimes solved, which has fuelled concerns about the effectiveness of criminal justice in England and Wales.¹ In response to such concerns, the Johnson government announced reforms to policing, sentencing and prisons in 2019 and 2020.

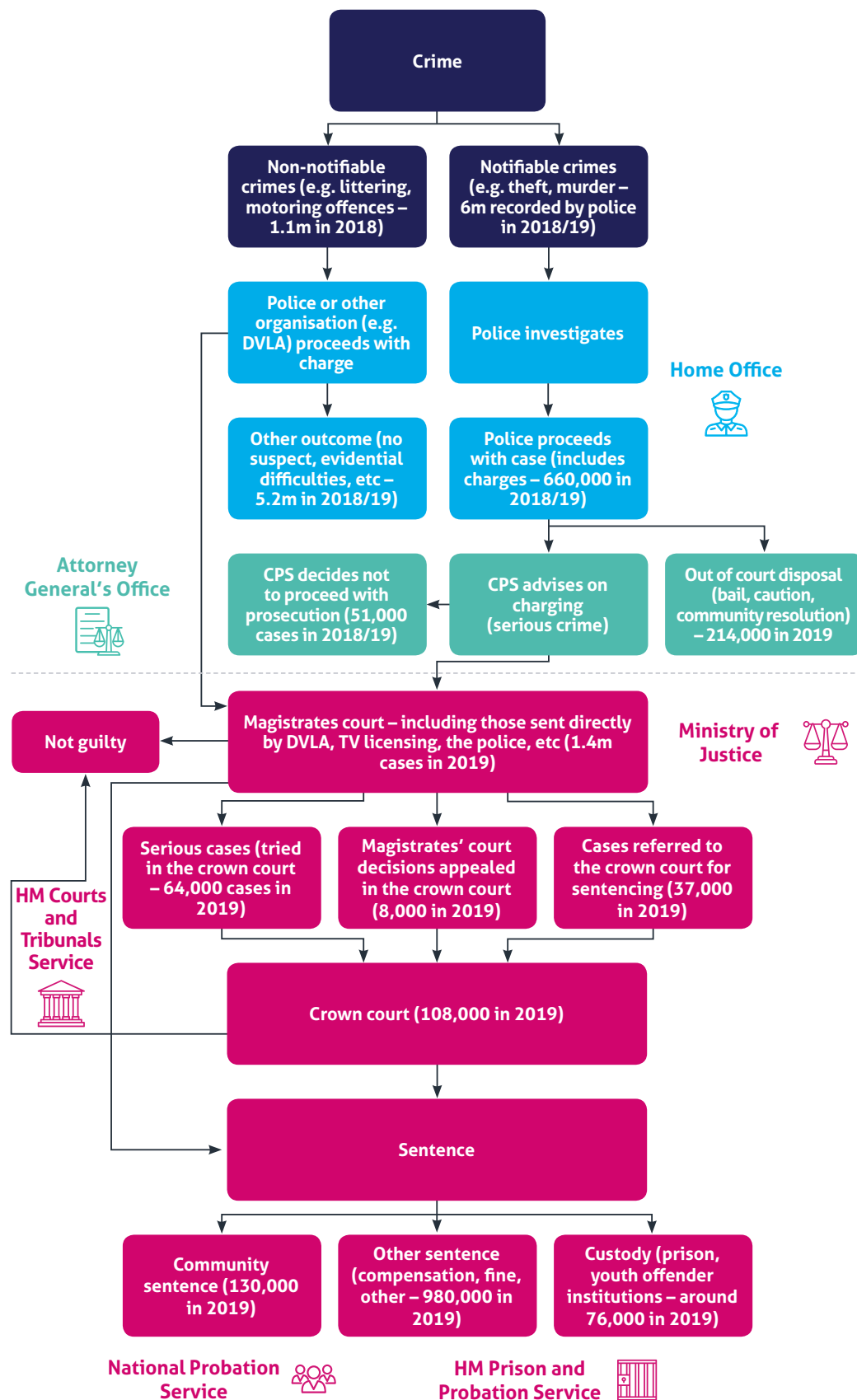
Criminal justice is a single system

Despite the number of bodies involved, criminal justice works (or not) as a single system. This means that policy decisions affecting one part of the system will have an impact elsewhere. For example, an increase in the number of police officers could result in more crimes being solved. This would lead to more cases going to prosecutors and to courts. This, alongside reforms to sentencing, could lead to an increase in the number of people going to prison. Because of this, the Crown Prosecution Service (CPS), the Law Society and others have called for government to invest in the whole system rather than specific parts.^{2,3}

In this section we briefly explain how a case progresses from the police, to courts, to prison, and examine how the work of various public bodies impacts on others in the system. Figure 1, overleaf, shows how the various parts of this system fit together.

^{*} This report focuses on the impact of government reforms on the police, courts and prisons in England and Wales, which are services that the Institute for Government has been monitoring through our annual Performance Tracker report. This report does not examine the effect of reforms on offences dealt with outside court or on other institutions involved in criminal justice, such as probation and rehabilitation services, although they are important components of the justice landscape. We focus on the four years to 2023/24, as they are likely to be the focus of the next spending review.

Figure 1 **The criminal justice system**



Source: Institute for Government analysis of Sentencing Council, Criminal Justice System simplified, 2015; College of Policing, 'Prosecution and case management: Charging and case preparation', 2013; Crown Prosecution Service, 'The Criminal Justice System', 2017; Ministry of Justice, Criminal Justice Statistics – Quarterly update: the year ending September 2019 – flowchart; Office for National Statistics, Crime in England and Wales: year ending March 2019; Ministry of Justice, Criminal court statistics quarterly: October to December 2019, Table C1 and M1, 2020.

Once a victim or third party reports a crime, one of the 43 territorial police forces working across England and Wales records it. The police then investigate the incident to decide whether to charge a suspect.⁴

If a suspect is identified and arrested, and the crime is minor – for example, it does not involve bodily harm or damages exceeding £5,000⁵ – the police charge it themselves. Forces may send cases to court or dispose of them out of court through issuing penalty notices, community resolutions or cautions.

Where the crime is serious, forces must seek advice from the CPS, which decides which of these cases to prosecute, what the charges should be, and prepares the case for court.⁶ Once charged, a defendant will be summonsed to appear before a magistrate. Courts can also receive cases from other bodies, for example, non-payment of TV licences from the TV Licensing Authority.

The two main types of courts are magistrates' courts and the crown court. All cases initially pass through a magistrates' court. That is as far as most cases go, but the most serious cases or those requiring a longer sentence are then passed on to the crown court.

Suspects found guilty of a crime are sentenced. Some criminals are fined, others serve a community sentence, including through probation. Finally, some criminals are sent to prison, mostly to serve short sentences.

The government is making important changes to the criminal justice system

The Johnson government has announced various changes to the criminal justice system, including increasing the number of police officers by 20,000, boosting CPS funding, toughening sentencing and building 10,000 new prison places.*

Policing

In July 2019, during the Conservative party leadership campaign, Boris Johnson pledged to increase police officer numbers by 20,000 by 2023.⁷ Such an increase would bring the number of police officers to 143,171. This is just shy of the number of officers that there were in March 2010 (143,734), before cuts to police funding led to a substantial reduction in the workforce.⁸

At the spending round in September 2019, the government committed £750 million to help deliver this pledge, and made clear that these additional officers would work both for the territorial police forces and for national bodies, such as the National Crime Agency. The National Police Chiefs Council has estimated that, in order to increase officer numbers by 20,000 overall, police forces will need to recruit around 42,000 new officers, including to replace those who are expected to leave.⁹

* The government has also announced a Royal Commission to "review and improve the efficiency and effectiveness of the criminal justice process". The government has yet to confirm its scope, but the Lord Chief Justice speculated that it could look at issues including how criminal courts operate and the decline in the share of cases sent to court. Reforms made in response to the Royal Commission could have an impact on the police, criminal courts and prisons, but we have not assessed these in this report.

Prosecution

The resources available to the CPS have a major impact on how many crimes are charged each year. In summer 2019, the prime minister announced a funding boost of £85m for the CPS over the next two years – which equates to around 17% of CPS's annual budget.¹⁰ This follows a 28% real-terms fall in spending between 2010/11 and 2018/19,¹¹ and should help the CPS manage the impact of the 20,000 additional police officers.¹²

Sentencing

Since the 2019 general election, the government has implemented measures to lengthen the time that the most serious offenders serve in prison. It has passed legislation to end the early release of terrorists – this will likely result in prisons having to accommodate around 100 additional prisoners per year (0.1% of the prison population in 2019).¹³

The government also amended secondary legislation to ensure that violent or sexual offenders sentenced to more than seven years in prison are no longer released halfway through their sentences, but instead serve at least two thirds of their sentence in prison.¹⁴ This could result in prisoner numbers increasing by 2,000 by 2030.¹⁵

Prisons

In August 2019, the prime minister announced that the government will build 10,000 new prison places.¹⁶ This is in addition to 3,360 places already under construction at Wellingborough and Glen Parva prisons, which are due to be ready by the end of 2023/24. These new prison places form part of a £2.75 billion (bn) package of measures to improve the prison estate and to upgrade security.

The new places could ease pressure on a prisons system that is already operating at capacity. In December 2019, the government estimated that the prison estate was 98% full, and some prisons are badly overcrowded. However, government has struggled to build prison places on time in the past. Five years ago, the David Cameron government pledged to build 10,000 prison places by 2020, but by the end of 2019 it had only built 206.¹⁷

Although the government's reforms focus on specific parts of the system, their impact is likely to be felt throughout. Of all the reforms this paper covers, additional police capacity will have the largest and most wide-ranging impact. The next chapters examine the effect of the government's reforms on the police, courts and prisons in detail, focusing on how changes in the number of crimes solved by police officers will have repercussions on the workload of courts and on the prison population. In the final chapter we assess the impact that the coronavirus crisis will have on these reforms and the criminal justice system.

2 Police

Since 2009/10, spending on English and Welsh police forces has declined and the number of police officers has fallen by more than 20,000, while the workload of the police (demand) appears to have increased. Over the next few years this pattern will be reversed as we project that police resources will increase faster than demand, with police officer numbers expected to grow by 20,000. Current government spending plans should be more than enough to maintain current levels of police performance, but whether the police are able to charge more crimes will depend on the complexity and seriousness of crimes, the volume of digital evidence, non-crime demand, and capacity of the CPS.

Past trends

Police spending fell by 16% in real terms between 2009/10 and 2018/19. In response to funding pressures, police forces have tapped into one-off sources of funding – such as spending money set aside for unforeseen circumstances (reserves) and selling off police stations and other capital assets. The police workforce has also been cut. To manage with fewer resources, forces have prioritised the most serious, or easier to solve, crimes.^{1,2,3}

While funding and staffing have fallen, demand for the police appears to have gone up. Evidence on crime levels is mixed. The number of crimes recorded by the police – a good estimate of severe offences such as knife violence or drug possession – has risen. But this increase is mainly due to improvements in how the police record crimes, and greater willingness from the public to report them.* In contrast, the government's Crime Survey – which measures the public's experience of crime and is useful for measuring more frequent and less serious offences like fraud or theft – suggests crime levels fell from the mid-1990s to 2017, and have remained flat since then. Overall, it is likely that investigating crimes has become more time intensive due to an increase in some violent, complex and organised crimes, and the growth in the volume of digital evidence.⁴ The amount of time police spend on non-crime work also appears to have increased substantially.^{5,6}

* In 2014, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) and the Public Administration Select Committee (PASC) found compelling evidence that the police were under-recording crimes, which affected the reported decrease in crime. As a response, the UK Statistics Authority stripped police-recorded crime of its National Statistics status and HMICFRS has been inspecting police forces' crime-recording practices since then. Therefore, the Office for National Statistics (ONS) notes that these improvements "have made substantial contributions to rises in recorded crime over the last five years [and that for many types of crimes,] these figures do not provide reliable trends in crime". See Office for National Statistics, Crime in England and Wales: year ending September 2019, 23 January 2020, retrieved 23 March 2020, www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingseptember2019#overall-estimates-of-crime

Are government plans sufficient to maintain police performance over the next few years?

In the years to 2023/24, demand is likely to rise in line with the UK population. The government's current plans will see spending grow more quickly than demand and staff cost pressures, enabling the police to maintain performance.

How will demand and cost pressures change?

The demands that the police face are complex, difficult to quantify and hard to forecast.^{7,8} There are reasons to think that some demands may stabilise or even fall over the next few years.

As outlined above, the number of crimes recorded has risen sharply over recent years, but that is mainly due to better recording⁹ and the true picture for crime-related demands may continue to be stable, as survey data suggests they have been in recent years. The time police staff have to spend on administrative tasks could fall if they make greater use of labour-saving technology. On the other hand, some non-crime demands (such as mental health incidents and anti-social behaviour) could continue to rise, particularly if other public services remain under-funded.

Given these uncertainties, a reasonable central assumption is that demand for the police will increase in line with the UK population – that is, by around 1.5% between 2019/20 and 2023/24.¹⁰

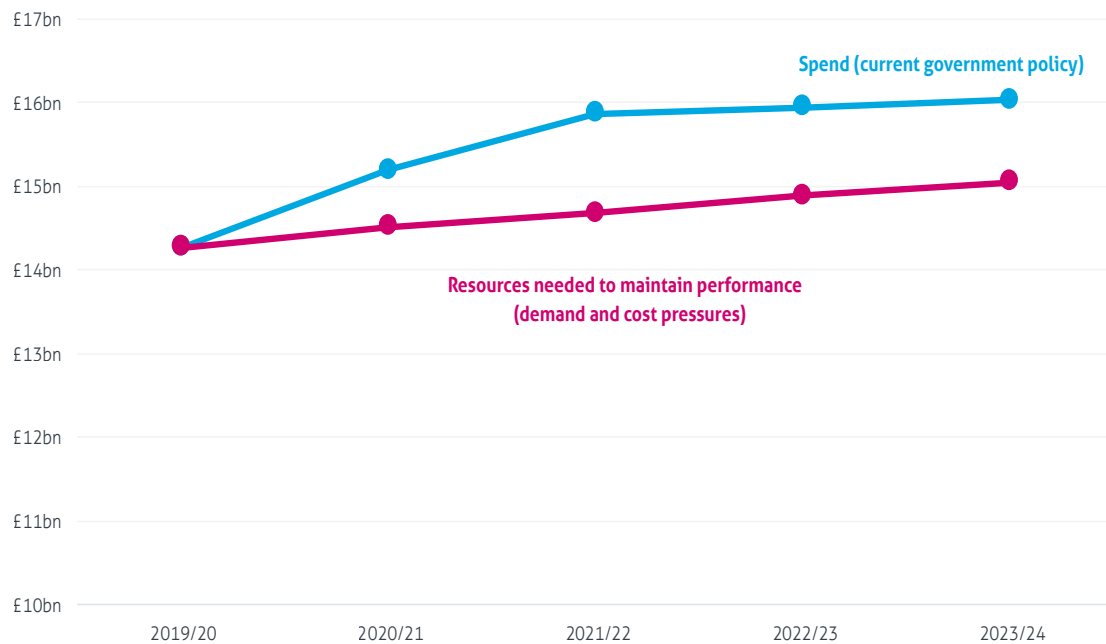
The cost of paying police staff is also likely to increase in real terms over the next few years, adding to pressure on police forces' budgets. Staff costs accounted for a little less than 80% of all police spending in 2018/19.¹¹ In recent years, the government held down police wages through the public sector pay cap. But that was lifted in 2017^{12,13} and the government awarded police officers of all ranks a 2.5% pay increase from September 2019.¹⁴ If police forces want to continue attracting the same quality of staff, they will likely need to increase pay at least in line with wages across the economy. That would imply an average increase of around 1% per year in real terms up to 2023, according to projections from the Office for Budget Responsibility (OBR).¹⁵ Pay increases of that size would add 4% to overall police spending in real terms by 2023/24.

Will the police be able to maintain performance?

The March 2020 budget earmarked £338bn for day-to-day spending on public services in 2020/21,^{*} rising to £388bn (in cash terms) by 2023/24, or an 8% increase in real terms. Stripping out money already promised to the NHS, schools, defence and foreign aid, this leaves other public services with a 6% real-terms increase. Such an increase for the police, combined with the money already allocated for 2020/21, equates to an extra £1bn a year (in 2019/20 prices) by 2023/24 compared to 2019/20 spending levels; taking spending back to its 2011/12 level in real terms. This would be more than sufficient to cover the potential 1.5% increase in demand and 4% increase in costs that we forecast, as shown in Figure 2, overleaf.

^{*} We have adjusted the figures so that they do not include spending that would otherwise have been done by the European Union (EU) in the UK, in order to make the comparison across years consistent as the UK leaves the EU.

Figure 2 **Current government policy and resources needed to meet demand and cost pressures, £bn**



Source: Institute for Government calculations using Home Office data. See Methodology for details.

Other factors

Our model does not capture all uncertainties which could influence resource pressures on the police in the next four years.

Pay rises may in fact need to be larger than assumed to help forces achieve the target of increasing officer numbers without reducing the quality of staff recruited. The competition for skilled workers could mean that forces find it difficult to recruit enough people in some parts of the country,¹⁶ which could require the government to review its pay offers in those areas. Conversely, hiring officers could be easier – or at least less costly – if the coronavirus pandemic leads to worse economic conditions, because there would be less pressure to increase wages.*

Either way, the current government spending plans are likely to also be enough to allow for more rapid increases in police officer pay to help recruit more staff.

* If economic conditions were poor, this would likely lead to lower staff costs for all public services. However, poor economic performance in the medium term is not guaranteed – for example, the OBR's coronavirus scenario was one in which there was no impact on economic performance from coronavirus at all. Furthermore, the resulting lower tax receipts would make it more difficult for the government to deliver the public spending commitments made in the budget.

How will an increase in officer numbers affect the number of crimes charged?

Hiring more police officers will have knock-on consequences for later stages of the criminal justice process.* But the overall impact of police activity on courts and prisons over the next few years will depend not just on the number of new officers hired, but also on other underlying trends which could affect how many cases the police charge. Given the uncertainty surrounding these trends, we present three alternative scenarios. In recent years, the number of crimes charged per officer has fallen substantially due to the growth in the number of complex and serious crimes,¹⁷ the volume of digital evidence,¹⁸ and non-crime demand.¹⁹ Reduced CPS capacity also contributed to this fall. As a result of these factors, the number of charges per police officer fell by around a third between 2009/10 and 2018/19, to 3.3 per year.

Low demand scenario

If the number of crimes charged per officer continues to fall at a similar rate for the next four years, the police will only charge 1% more cases in 2023/24 than they did in 2018/19, even with 20,000 additional officers. In the rest of this report, we refer to this as our 'low demand' scenario. This could occur if the police continue to spend more time on non-crime activities or if the volume of digital evidence grows faster than the ability of police forces and the CPS to process it.

Central demand scenario

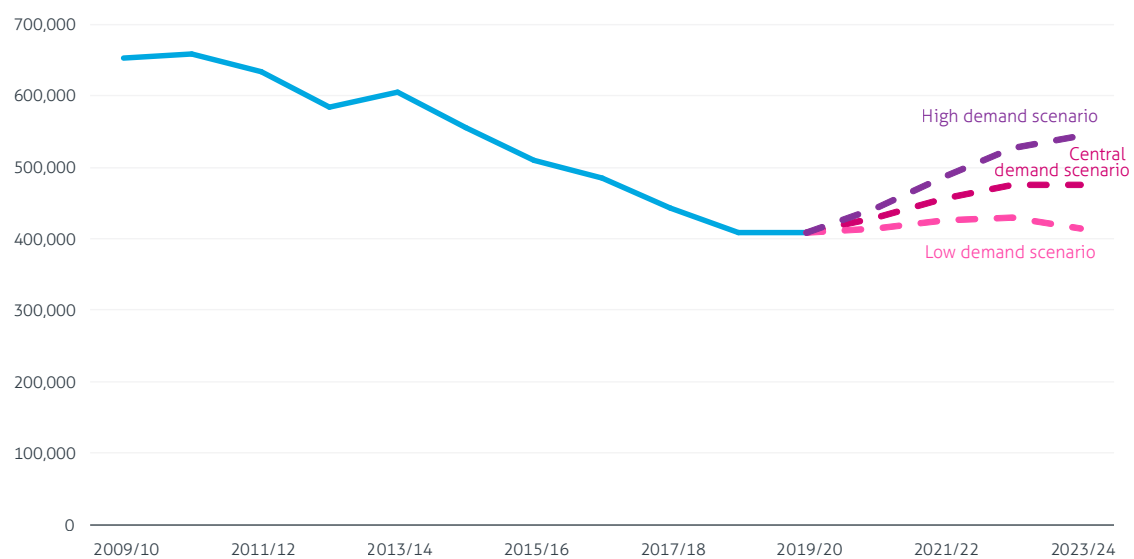
If, instead, police officers continue to charge an average of 3.3 crimes each per year, the planned increase in officer numbers of 20,000 would result in 66,000 (or 16%) more cases being charged each year by 2023/24. This could happen if the number of more complex violent, serious and organised crimes stop growing; if non-crime demand stabilises; or if the volume of digital evidence either stops growing or grows slowly enough that it is offset by increased CPS capacity to process cases. Locally elected Police and Crime Commissioners (PCCs), who are free to set priorities, could also choose to prioritise simpler, less time intensive crimes such as theft or possessing weapons. We refer to this as our 'central demand' scenario in the rest of the report.

High demand scenario

The final scenario we consider – which we refer to as the 'high demand' scenario – assumes that the number of cases each officer charges on average each year rises from 3.3 in 2019/20 to 3.8 by 2023/24. This rate of increase would match the average pace of decline in charging rates observed between 2009/10 and 2018/19. Such an increase could occur if the police and the CPS use their additional resources to develop more efficient ways to process digital evidence, benefit from technological advances including artificial intelligence and automation, or if the volume of non-crime work falls. There have also been suggestions that the government could reintroduce targets for the police, which might incentivise forces to aggressively focus on easier to charge crimes.^{20,21} In this scenario, charges would grow by almost a third, reaching 544,000 by 2023/24, as Figure 3 shows.

* As discussed in the previous chapter, a higher number of charges per officer would likely result in more cases going to the courts, adding to demands on courts' time. Judges may sentence some of these offenders to prison, which would lead to an increase in the prison population (while the prison estate is already nearly full).

Figure 3 **Projected number of police charges**



Source: Institute for Government calculations using Home Office data. See Methodology for details.

3 Criminal courts

Extra police charges will mean more cases for the courts to process, after years of falling numbers. Even a 10% real-terms increase in spending over the next few years, as the government's existing plans imply, might not be enough to maintain performance without further efficiency savings. There is currently spare courtroom capacity, meaning it should be possible for courts to scale up the number of cases processed with more spending. But growing demand may also prompt the courts to speed up plans to move some activities out of the courtroom and online.

Past trends

Spending on Her Majesty's Court and Tribunal Service (HMCTS) fell by 18% in real terms between 2010/11 and 2018/19.*

The experience of criminal courts over that period can be broadly divided into two phases. Between 2010/11 and 2015/16, spending fell by 21% in real terms. The number of cases prosecuted was more or less unchanged in the magistrates' courts, while cases received fell in the crown court – although this was offset by an increase in the complexity of crown court cases. Over that period, increased efficiency in the operation of courts was not sufficient to close the gap between spending and demand, leading to a growing backlog of cases (as more cases were received than were processed).

Since then, however, these trends have stabilised and reversed, allowing both magistrates' courts and the crown court to reduce their backlog of cases. Although the backlog began to rise again during 2019.

Since 2009/10, courts have become more efficient, especially in the way the magistrates' courts process less serious (so-called 'summary') offences. But concerns remain that, while on the surface the courts have managed to process the required number of cases despite deep spending cuts, this has come at the expense of the quality of justice dispensed. We discuss these issues in detail in [Performance Tracker 2019](#).¹

Are government plans sufficient to maintain court performance over the next few years?

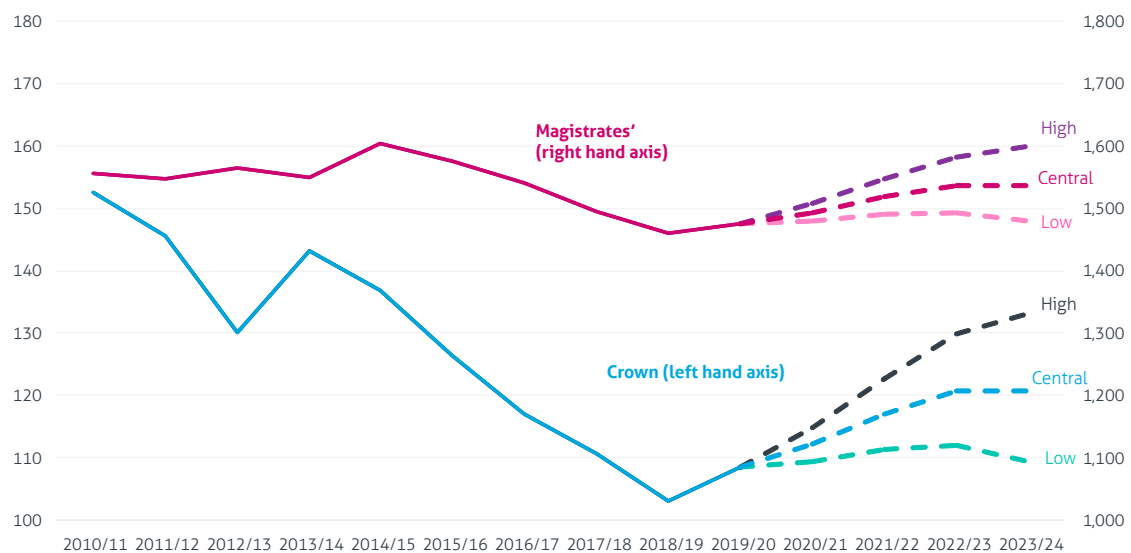
If the number of cases charged by the police increases over the next few years (as is the case in all the scenarios we model), this will lead to higher demand on the courts, particularly for the crown court. The government will need to spend more money on criminal courts if it wishes to maintain current levels of performance, but existing spending plans may be enough to cover this.

* HMCTS is responsible for the criminal courts, civil courts and tribunals. We estimate that a little under half of HMCTS spending is on the criminal courts. See Methodology for full details.

How will demand and cost pressures change?

Figure 4 lays out projections for the number of cases in the magistrates' and crown courts under the three scenarios for the number of charges per police officer outlined in the previous chapter. In all three of these scenarios, we assume that the number of summary cases heard in magistrates' courts (which are minor offences like speeding and licence fee or fare dodging) remain stable at their 2019/20 level.

Figure 4 **Cases received in the crown and magistrates' courts, including projections, 1,000s**



Source: Institute for Government calculations using HMCTS data. See Methodology for full details. Dotted lines indicate projection. 2019/20 data calculated on the basis of the first three quarters, scaled up.

Although the magistrates' courts receive many more cases than the crown court, magistrates' courts are cheaper to run and cases take less time.* This means that the crown court accounts for slightly over half of cost-weighted demand for the criminal courts. In our 'central demand' scenario, overall demand in 2023/24 would be 11% higher than it was in the most recent financial year, 2019/20. The figure would be 1% and 22% in the low and high demand scenarios, respectively.

Demand on the courts could increase more quickly than this if the average complexity of cases rises. This could happen either because the police increasingly focus on charging more complex offences or because the growing quantities of evidence (particularly digital evidence) continue to increase the amount of time taken to hear cases. Average hearing times for almost every type of offence have been going up over the last few years. After accounting for differences in the case mix and the number of guilty pleas, average hearing times increased by 16% (or 4% per year) between 2014/15 and 2018/19. This trend partially reversed in 2019/20, suggesting that it may have peaked. And better-resourced police may return to the less serious and less complex crimes that have been de-prioritised over the last few years.

* In 2015/16, the National Audit Office (NAO) estimated that a day in the magistrates' courts cost £1,150, while a day in the crown court cost £1,900.

However, if case complexity continues to increase at the same rate as it did between 2014/15 and 2018/19, demand on courts would increase by an additional 16% by 2023/24.

Courts, like other public services, are also likely to have to offer above-inflationary pay rises over the next few years to help recruit and retain appropriately trained staff. For the past decade, pay for court staff and the judiciary has been held down by the public sector-wide pay cap. However, with public sector pay already at its lowest level relative to the private sector since at least 1993,² it is likely that pay will need to increase in future, at least as quickly as wages in the wider economy. As described above, that implies real-terms wage growth of around 1% per year over the next few years. With staff and judiciary costs accounting for over half of total HMCTS spending, this implies an overall cost increase of 3% in real terms by 2023/24.

Will criminal courts be able to maintain performance?

Taken together, these demand and cost pressures suggest that by 2023/24 real-terms spending on the criminal courts will need to increase by:

- 4% (or £30m a year) in the 'low demand' scenario
- 14% (or £125m a year) in the 'central demand' scenario
- 25% (or £225m a year) in the 'high demand' scenario.

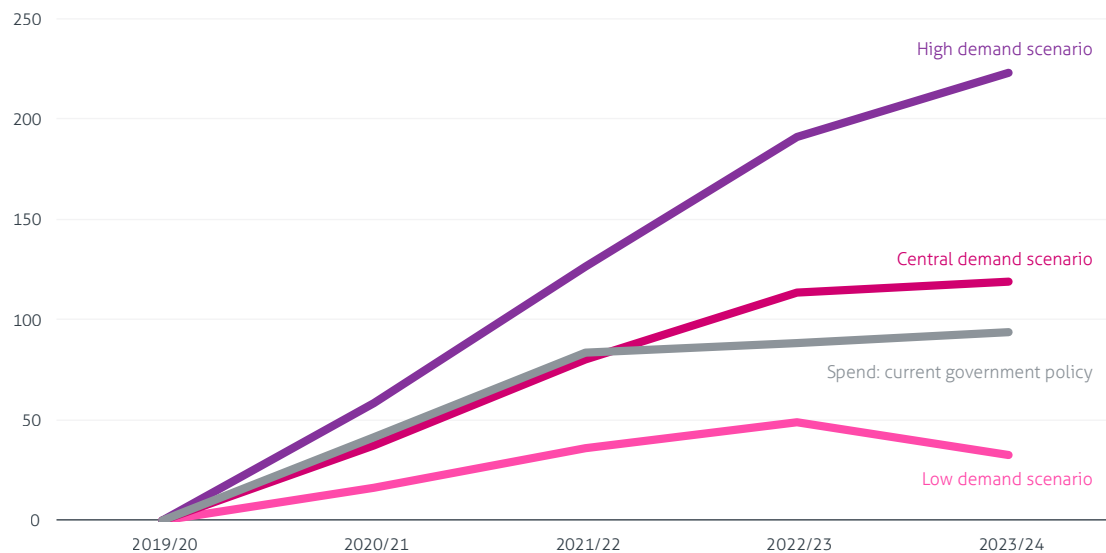
As described above, the government's latest spending plans (set out at the March budget) imply that 'unprotected' spending will increase in real terms over the next few years. If HMCTS spending were to grow in line with the Ministry of Justice (MoJ) budget between 2019/20 and 2020/21 (the year covered by the 2019 spending round), and then in line with unprotected spending thereafter, it would rise by a total of 10% in real terms between 2019/20 and 2023/24.

Under our central demand scenario, that spending would be sufficient to meet rising demand and costs over the next couple of years, but not beyond 2021/22, as Figure 5 shows. We estimate the government would need to spend an extra £30m more on courts than currently planned in 2023/24 to keep pace with demand and cost increases and maintain standards in the courts, unless further increases in efficiency can be made.

An extra £130m a year would be needed by 2023/24 to meet demand and cost pressures in our high demand scenario. Although that is a small amount of money in relation to total public spending, it equates to 15% of current HMCTS spending on criminal courts. Without that additional funding, in this scenario the courts would be unable to process as many cases as they receive each year, leading to a substantial increase in the backlog of cases, longer waiting times and delayed justice. In contrast, we estimate that the government's current spending plans would be more than sufficient to allow the criminal courts to meet expected increases in demand and costs in our low demand scenario – and would potentially allow for improved performance.

The scenarios detailed here show how sensitive court demand is to assumptions about how the number of cases charged by the police evolves.

Figure 5 **Spending for courts required under different projections and current government policy, £m**



Source: Institute for Government calculations using HMCTS data. See Methodology for full details. Low, central and high demand scenarios differ due to assumptions about how police charges per officer will evolve.

Other factors

Being able to meet demand is not just about whether HMCTS is given enough money – there also need to be enough court buildings, judges and magistrates to hear extra cases. Despite large numbers of court closures since 2010/11, there is still spare capacity in the court estate – many courtrooms lie empty – although there have been persistent complaints about the quality of the court estate that may require substantial capital investment at some point.³

The digital courts reform programme (due to be finished by 2023/24) is designed to help people to “deal differently with things that don’t need to be in court”.⁴ To help meet higher demand, HMCTS could attempt to roll out these changes more quickly. But doing so risks implementing changes before they have been fully evaluated. We highlighted in *Performance Tracker 2019*, for example, that the impact of virtual hearings on case outcomes has not been well-studied and that further research is needed. HMCTS now has a research board, which is commissioning work that may shed light on these issues.⁵ But there is a risk that higher demand could lead HMCTS to push ahead out of necessity rather than based on sound evidence.

While we do account for some above-inflation pay increases, if anything, pay for the judiciary may need to increase more quickly than this. There are already signs of recruitment problems for judges and some senior judicial roles have been left unfilled in recent years, which was previously unprecedented – leading in 2019/20 to double-digit pay awards for some senior judges. However, changes to the tax treatment of pension contributions for high earners, announced in the 2020 budget,

will have removed some of the disincentives that high earners previously faced to taking on judicial roles. As noted above, coronavirus could also have an impact on the pressure to increase wages.

There are also risks to the quality of justice dispensed because of a lack of magistrates, who despite being unpaid still need to be recruited. There is already a shortage of magistrates – their numbers have almost halved since 2010. As a result, an increasing number of trials are being heard by a panel of two magistrates, rather than three. The government plans to recruit more magistrates and there should be willing volunteers – the shortage thus far appears mainly to be a result of the government’s failure to run recruitment rounds, rather than vacancies being left unfilled.⁶ But, if this proves more difficult than anticipated, there could be a further shortage, which will threaten the magistrates’ courts’ ability to process cases.

4 Prisons

Cuts to prison funding and staff numbers in the first half of the last decade have left prisons in a poor state to manage more prisoners. Yet, recruiting 20,000 additional police officers could result in a prison population in England and Wales that is far larger than at any time in history. Even maintaining current levels of performance will require more money. Existing government spending plans may be enough, but could be hundreds of millions of pounds short, depending on the number of cases charged by the police.

Past trends

The size of the prison population has remained broadly stable over the past decade and, as of December 2019, stood at 82,868. But demands on prisons and their staff have probably increased due to the growth in the number of elderly prisoners and increased drug use.

In 2018/19, the government spent £3.4bn on prisons; 10% less in real terms than in 2009/10. However, like courts, funding for prisons can be divided into two distinct periods. Between 2009/10 and 2015/16, spending fell by 19%. Since then, spending has increased by 11%. A similar pattern can be observed with prison staffing levels. The number of operational prison officers* declined by 26% between 2009/10 and 2013/14, before partially recovering from 2016/17 onwards.¹

Cuts in funding and staff numbers have contributed to a severe decline in the performance of prisons. There has been an explosion in the number of incidents of assault, self-harm and 'protesting behaviour'.** Prisoners now also have less access to rehabilitative activity and evidence from inspection reports suggests that they are spending longer in their cells, with fewer opportunities to take part in 'purposeful activity'. These issues are discussed in detail in *Performance Tracker 2019*.²

Are government plans sufficient to maintain prison performance over the next few years?

Increasing the number of police officers by 20,000 will mean that there will be at least 1,500 more prisoners in 2023/24 than previously expected, and possibly substantially more. Exactly how many and whether existing government spending plans will be enough to meet this growth will largely depend on how many cases are charged by the police.

How are demand and cost pressures likely to change?

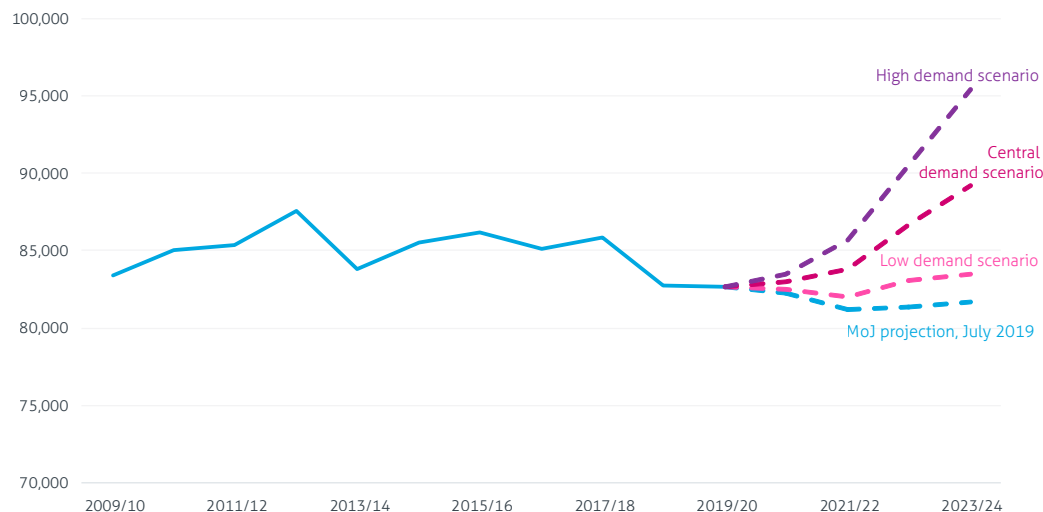
The MoJ's latest prison population projection, which does not account for the 20,000 additional police officers, estimates that the number of prisoners will fall from 82,676 in June 2019 to 81,200 in June 2021, before rising slightly to 81,700 in June 2023.

* Bands 3–5.

** This includes climbing over bars or netting, taking hostages, refusing to comply with rules, and erecting barricades.

Figure 6 sets out the impact on the prison population under our three scenarios, compared to the MoJ projection. Under the central demand scenario, the number of prisoners rises gently initially, reaching 83,833 in 2021/22. Thereafter, the prison population rises rapidly, increasing by 8% in total and reaching almost 90,000 by 2023/24, the highest level in history.* The figures are even starker in the high demand scenario, with the number of prisoners growing to 95,378 in 2023/24. Even under the low demand scenario, there would be over 1,500 more prisoners than in the MoJ projection.

Figure 6 **Prison population, including projections**



Source: Institute for Government calculations using MoJ data. Figures are for 30 June each year.

Prison staff costs are also likely to increase. Wages were subject to the public sector pay cap between 2011/12 and 2016/17, but prison officers, particularly the most junior, have received above-inflation pay rises in recent years.³ It is likely this trend will need to continue if Her Majesty's Prison and Probation Service (HMPPS) wishes to recruit and retain enough staff. Staff costs account for just less than 40% of HMPPS's budget. Projected real-terms wage growth of around 1% per year will increase overall costs by 2% in real terms in 2023/24.

As discussed in more detail below, this is more likely to underestimate the pay rises that will be necessary, given the competition for staff from other employers, particularly the police.

Will prisons be able to maintain performance?

These demand and cost pressures mean that the government will need to spend more money on prisons if it wishes to maintain current levels of performance:

- 3% (or £100m a year) in the 'low demand' scenario
- 10% (or £339m a year) in the 'central demand' scenario
- 18% (or £596m a year) in the 'high demand' scenario.

* The previous record was 88,167 in November 2011. Ministry of Justice, 'Offender Management Statistics Quarterly', prison population, Table 1.1.

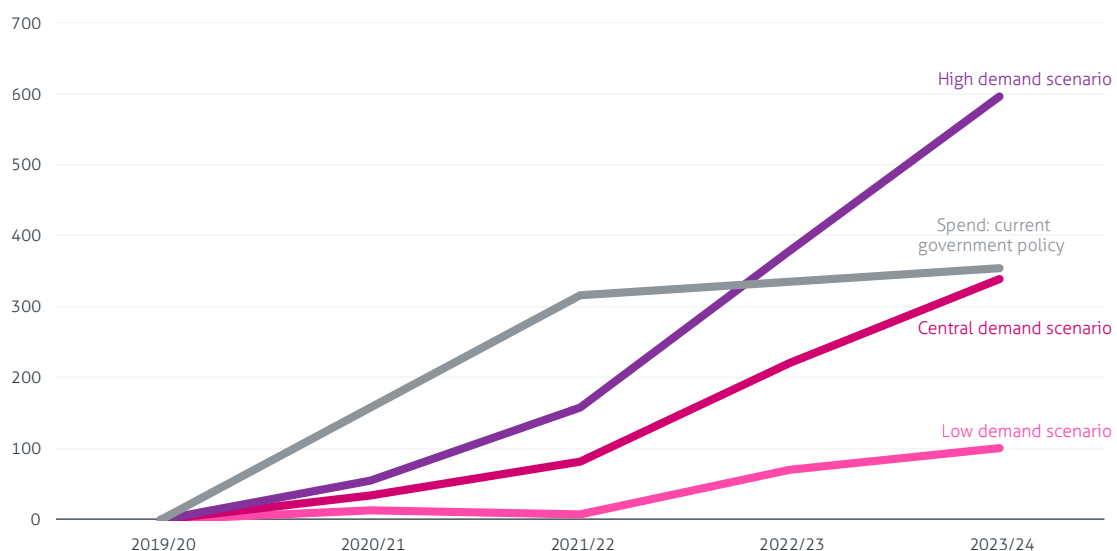
The government has not produced spending plans for HMPPS up to 2023/24. For the purpose of modelling existing government policy, we therefore assume that HMPPS spending will grow in line with the overall MoJ budget between 2019/20 and 2020/21, and then in line with 'unprotected' spending for the following three years. That equates to a 10% real-terms increase between 2019/20 and 2023/24.

This is nearly a quarter of a billion pounds more than would be necessary to meet demand and cost pressures under the low demand scenario. The surplus spending could allow HMPPS to hire more staff, provide greater access to rehabilitative activities and reduce violence levels.

In the central demand scenario, government plans would be just sufficient to meet demand, allowing performance to be maintained, but probably not improved unless further efficiencies were made.

Only under the high demand scenario is there is a meaningful gap. There would be a £44m shortfall in 2022/23, growing to £242m in 2023/24. At 6% of total prison spending, it is likely that such a gap would result in a further decline in prison performance.

Figure 7 Spending for prisons required under different projections and current government policy, £m



Source: Institute for Government calculations using MoJ data. See the Methodology section for details.

Other factors

In addition to those that we have modelled, there are some other important factors that will have an impact on how much money prisons will need if the government wishes to maintain existing standards.

First, the severity of crimes charged. Short sentences put disproportionate pressure on prisons. The reception of new prisoners is time intensive⁴ and people tend to be more disruptive when they first enter prison. If prisons officers spend more time inducting new prisoners, they will have less time for efforts to reduce levels of violence or

prepare prisoners for release. An increase in the proportion of prisoners serving short sentences – for example because the additional police officers are largely deployed to tackle street-level crimes – would require additional funding to maintain existing standards.

Second, the severity of sentencing. The government's change to sentencing rules for serious violent and sexual offenders will increase the prison population by around 2,000 by March 2030,⁵ although it won't have any impact on numbers over our projection period.* However, if the government decided to increase sentences more broadly, or if its strong rhetoric and media pressure influenced judges to hand down harsher sentences,⁶ the impact on the prison population could be substantial. For example, if every new sentence from March 2020 was 10% longer (in terms of time actually served), there would be an extra 7,000 prisoners in March 2024.

Third, pressures to increase pay. HMPPS is likely to need more prison officers, even under the low demand scenario. However, recruitment and retention of staff has become increasingly difficult, with the number of prison officers falling in the last year. Ensuring HMPPS has enough staff, particularly the numbers that would be required under the central or high demand scenarios, may require paying more.** Despite recent pay rises, pay is still lower than in the police, which could also be considered to have higher status and better working conditions. As such, it is likely that some of 20,000 additional police officers will be people who have previously been prison officers or would otherwise have applied to join the prison service.

Fourth, the prison estate. Prisons in England and Wales are effectively full. The government will need to build new prison places under all three scenarios and has plans in place to do so. New prisons, already under construction, at Wellingborough and Glen Parva, are due to deliver 3,360 places by the end of 2023/24. The government has committed to a further 10,000 places on top of this.⁷ However, at the time of publication, it had only confirmed that 1,440 places will be built at Full Sutton⁸ and these are unlikely to be ready in time to house the additional prisoners in our projections.

The government has a poor record at building new prisons,** but even if all the Wellingborough, Glen Parva and Full Sutton places are ready quickly, the number of prisoners will exceed the capacity of the estate in 2023/24 under the central and high demand scenarios.*** Existing prisons cells may also be lost quicker than expected if HMPPS doesn't clear its backlog of major capital works, estimated at nearly £1bn.⁹

* No individuals subject to the new rules would have been eligible for release before June 2023 under the old rules.

** Although coronavirus could reduce the pressure to increase wages.

*** In 2015, the Cameron government planned to build 10,000 new prison places by 2020, but delivered just 206 due to financial pressures on HMPPS. This Johnson government has committed to substantial capital spending, but other problems could arise. For example, earlier plans for a prison in Port Talbot were scrapped in response to objections from the local community.

**** NAO analysis of HMPPS modelling shows that maximum operational capacity, which includes Wellingborough and Glen Parva but not Full Sutton, will not exceed 87,000 across the period of our analysis. National Audit Office, *Improving the Prison Estate*, 2020, p21.

5 The impact of coronavirus on the criminal justice system

The scenarios set out in the previous three chapters were developed before the coronavirus crisis. They assume a relatively stable operating environment – and at some point in the next 12–24 months, normal operations will, to some extent, resume. For this reason, the analysis remains relevant and useful. However, the coronavirus crisis means that the next few years – and the next few months in particular – will be anything but stable.

While the government is imposing a lockdown, the volume of crime is likely to fall, the nature of crime will change, and police time has been diverted towards enforcing social distancing measures rather than investigating and charging crimes. Courts' capacity will fall for as long as courtrooms are closed, with hardly any in-person hearings taking place and no jury trials. In all areas of the justice system, staff shortages due to sickness and self-isolation will also affect these services.

Given this shock to the system, in this chapter we analyse how the coronavirus crisis has already affected – and will continue to affect – police, criminal courts and prisons. There is considerable uncertainty about what exactly the impact will be, and how long any disruption will last. In order to quantify the likely impacts, and the uncertainty surrounding them, we model police charging and the number of cases processed by criminal courts (and knock-ons to the prison population) under a set of plausible assumptions. We assume that disruption to police activity and courts either lasts for one quarter (April–June 2020) or two quarters (April–September 2020). Our key findings are:

- The volume of crime is likely to fall (with some types of crime falling further than others), although there will still be more crimes recorded than the police have capacity to investigate and charge. The volume of police charges is also likely to fall, due to the number of officers on sick leave and the need for the police to enforce social distancing.
- Court backlogs are almost certain to increase substantially because largely untested virtual hearings cannot and should not be implemented on a mass scale to replace proceedings that would normally take place in court. Longer waiting times will persist unless and until that backlog is addressed.
- If the government wants the criminal courts to provide the same quality of service (in particular waiting times) as before the crisis by 2022/23, then additional spending over the next two years of between £55m and £110m per year will be required, on top of the money needed to maintain performance as police officer numbers increase.

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- Fewer cases being processed in court will mean a sharp fall in the number of prisoners incarcerated in the short term. Early release of prisoners would lead the prison population to decline further, but this would not ease medium-term pressures on the prison estate from growing prisoner numbers.

The impact of coronavirus on the police

The government's lockdown is affecting almost every aspect of daily life, including crime. Evidence so far suggests that the number of crimes committed during lockdown is around 20% lower than we would otherwise expect.¹ Some crimes – for example thefts – are likely to fall, while others – such as domestic abuse and fraud – may increase. Investigating crimes normally takes up the majority of police time and resources, so a fall in crime means a fall in demand for the police, which should allow police to investigate and charge a higher proportion of recorded crimes. This is the case even though domestic abuse cases are more costly for the police to investigate and charge, on average, than theft offences.²

Some other demands on police time have diminished too. People are adhering to the lockdown, meaning that police do not need to respond to incidents relating to nightlife and drinking in public, or monitoring mass events.

However, other aspects of police demand have increased. Specifically, enforcing the lockdown is a new demand on police time that is likely to divert resources away from crime investigation. It is also possible that the volume of mental health incidents and referrals from children's social care departments will rise substantially due to the lockdown. Overall, therefore, police will likely be spending more time on activities other than investigating crime during the crisis.

Police capacity will also be affected by the crisis. Like most employers, the police are having to deal with a larger-than-usual proportion of their workforce being on sick leave. Indeed, as key workers who come into contact with lots of people, they are at a higher risk than most of contracting Covid-19. At the time of writing, police forces were reporting between 6% and 20% of their workforce being on sick leave.^{3,4,5} Police forces should have some capacity to deal with staff sickness, but the number of staff on sick leave, and the length of time the pandemic will last, means that forces' capacity is likely to be partially diminished during the pandemic.

Police may also deal with crimes differently to usual. For instance, the CPS has recommended that for the duration of the crisis the police make greater use of cautions and community resolutions for less serious 'summary' offences.⁶

How police charging will change during the coronavirus crisis

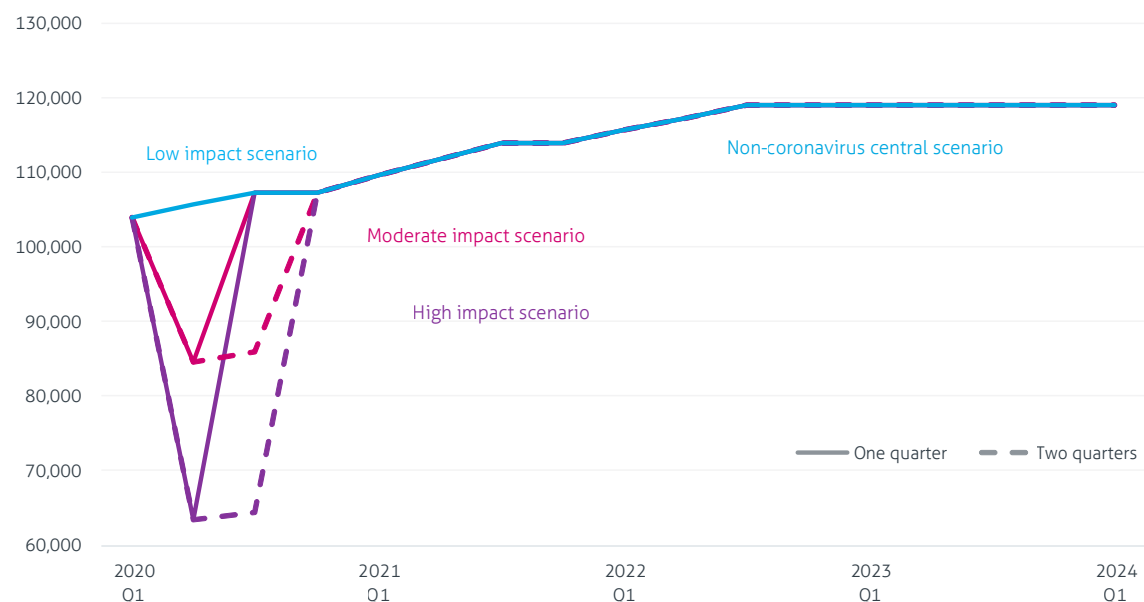
In our analysis below, we do not model how the volume of crime will change. In 2018/19, the charging rate was only 8%, suggesting that the volume of crime would have to fall dramatically for that to have a meaningful effect on the number of crimes charged. Rather, we assume that the change in the number of crimes charged is determined by how much time the police devote to investigating crimes.⁷

Figure 8 sets out three scenarios, based on changes to non-crime demand and police capacity, for how police charging might change during the coronavirus outbreak.

- Our 'low impact' scenario is that police charging volumes continue as normal. This would be a scenario in which police staffing models were able to cope with the number of officers on sick leave at any one time, and the additional police time required to enforce the government's lockdown is diverted from other non-crime activities (such as monitoring sporting and other large events).
- Our 'moderate impact' scenario is one in which police charging volumes are 20% lower than they would otherwise be, because staff shortages lead to some reduction in overall capacity and further officers are diverted towards enforcing the lockdown. In this scenario, the number of police charges falls to 84,518 after one quarter.
- Our 'high impact' scenario is one in which police charging volumes are 40% lower than they otherwise would be. This assumes a 20% reduction in police capacity due to officers being on sick leave, and 25% of the remaining officers' investigation time instead being taken up with lockdown enforcement and other coronavirus-related non-crime activity. In this scenario, the number of police charges falls to 63,388 after one quarter.

In each case we assume that charging volumes return to normal after either one or two quarters of disruption.*

Figure 8 **Different scenarios for police charging per quarter during the coronavirus crisis**



Source: Institute for Government assumptions. See Methodology for details. Solid lines indicate the path if the crisis lasts for one quarter; dashed lines indicates the path if the crisis lasts for two quarters. The low impact scenario is the same as the no coronavirus central demand scenario, which is the central demand scenario outlined in chapter 3.

* We assume that the police do not 'catch-up' by charging more cases in subsequent quarters than they otherwise would have done, because we already assume that police are charging as many cases as they can given their capacity, the severity and complexity of crime, the growing volume of digital evidence, and the capacity of the CPS.

The impact of coronavirus on the police should be predominantly confined to the duration of the crisis itself, unless it disrupts the government's plans to increase police officer numbers by 20,000. Fewer police officers would mean less capacity to investigate crimes in the short term, but unless the target is abandoned, police capacity in 2023 and 2024 should be more or less unaffected.

The impact of coronavirus on criminal courts

A reduction in police charging will ease pressure on the courts a little as they receive fewer cases. However, courts' capacity to process cases is almost certain to fall further than this. All jury trials have been suspended – accounting for three quarters of the usual crown court workload.* And while video and teleconference hearings are permitted for other criminal court activity, in practice this technology has been used sparingly in the past and it cannot and should not to operate at scale. The short-term disruption will, without additional spending, have long-term consequences with higher case backlogs and longer waiting times before justice is dispensed.

Magistrates' courts

Any reduction in cases charged by the police and the CPS should translate directly into fewer court cases received in the magistrates' courts (all cases start in the magistrates' court before more serious cases are transferred to the crown court). We assume that the CPS continues to prosecute cases in the same way, and so the number of cases received by magistrates' courts changes in line with police charging.**

Given that courts are only open for essential business,⁸ the fall in court cases processed is almost certain to be larger than the fall in cases received.

Less serious 'summary' offences will be able to proceed more smoothly than other cases. Since 2015, many of these cases have been processed by one magistrate and a legal adviser, without the defendant being present, under the Single Justice Procedure (SJP). Over 50% of all magistrates' cases are now processed in this way. As the SJP does not require the use of a courtroom, it should be possible for magistrates to process these cases as normal. However, given a possible shortage of magistrates, district court judges and legal advisers to process the cases, and the challenges of legal files being accessible away from court, we assume that 75% of the normal caseload is processed.

The remaining cases, where hearings would normally take place in person, will be more adversely affected. Magistrates' courts are currently processing only a minority of priority cases in courtrooms. And although phone and video hearings are legally permitted for most hearings at magistrates' and judges' discretion, with their scope expanded by the Coronavirus Act,⁹ in practice the courts' digital infrastructure is not yet ready to handle high volumes of hearings not in person. This is despite the fact that HMCTS has made efforts to expand the capacity of its teleconferencing systems, including using Skype for Business.¹⁰

* Institute for Government calculations, multiplying receipts by average hearing time.

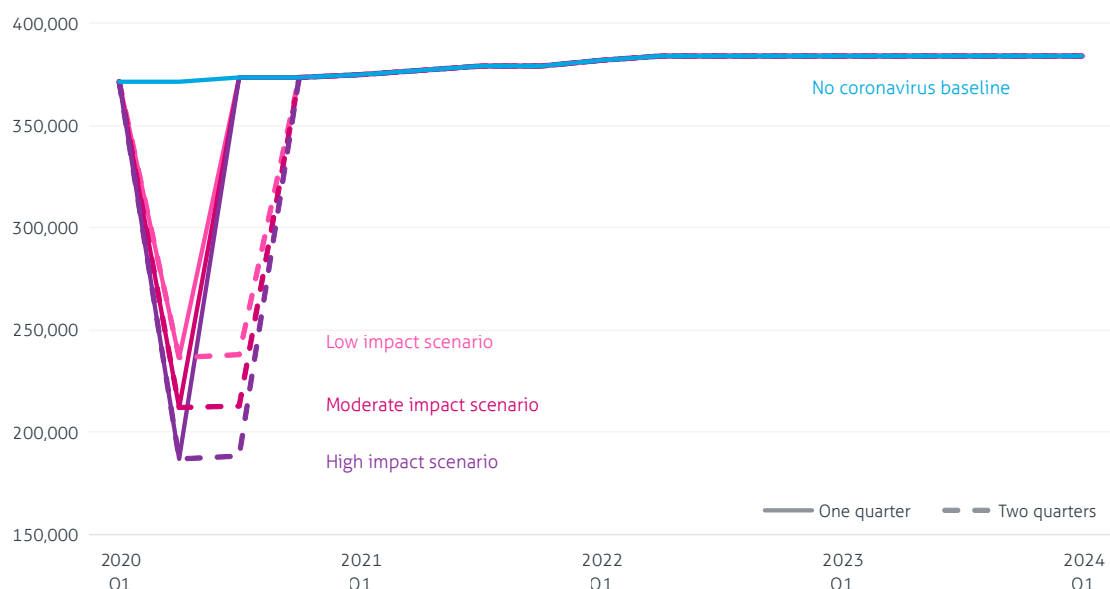
** It is possible that the CPS will decide to charge and prosecute fewer cases due to revised CPS guidelines which are in place for the duration of the pandemic. In that case, the CPS could choose to delay its charging decisions on some cases until after the pandemic, even when there is sufficient evidence to charge. If this were to happen, the case would not be officially recorded as a court receipt (thus adding to the official backlog) until after the pandemic is over, but it would still be part of the de facto backlog of cases that the courts would need to process.

The longer-term plan for the criminal courts system was already to make greater use of phone and video hearings as part of the digital courts reform programme, but few of the planned changes have so far been delivered.¹¹

Beyond practical capability, there are other concerns about HMCTS expanding phone and video hearings. These concerns mean that HMCTS should be reluctant to experiment in this way on a mass scale, and the backlash from the legal profession would be large if it did. First, the principle of ‘open justice’ – that proceedings are open to the public and the press – is difficult to uphold if hearings are held online. According to Transform Justice, “the sudden introduction of [video and phone] hearings has revealed a gaping hole in the theory and practice of digital justice – how you keep justice open”.¹² HMCTS has said that it is working on solutions to this.¹³ Second, an important but unresolved question is the extent to which holding virtual hearings changes the outcome of those hearings, and therefore the nature of justice dispensed. Concerns have been raised that magistrates and judges will be harsher when the defendant is not in the room.^{14,*}

Even if non-SJP cases are moved online in many cases, the magistrates’ courts’ capacity will be substantially diminished. In Figure 9 below we set out three scenarios for the number of cases processed by magistrates’ courts: one in which non-SJP capacity falls by 50% (low impact – and consistent with 50% of courts remaining open at this time);¹⁵ one in which it falls by 65% (moderate impact); and one in which it falls by 80% (high impact).^{**} We assume SJP capacity falls by 25% in all three scenarios.

Figure 9 Projections for the number of magistrates’ court cases processed per quarter during the coronavirus crisis



Source: Institute for Government assumptions. See Methodology for details. Solid lines indicate the path if the crisis lasts for one quarter; dashed lines indicates the path if the crisis lasts for two quarters. No coronavirus baseline is the central demand scenario outlined in chapter 4.

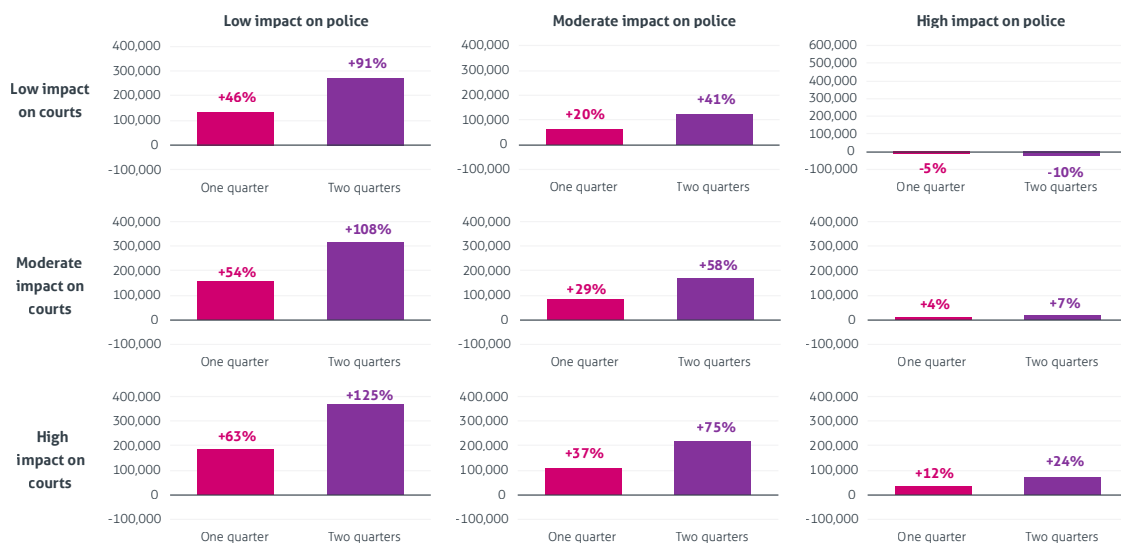
* For further discussion of this, see our [Performance Tracker 2019](#).

** The figure for the high impact scenario is chosen as 80% because magistrates will still process some priority cases during this time, and we assume this to be 20% of non-SJP cases (8% of all cases usually processed).

Figure 10 shows how the change in magistrates' courts' backlog depends on the fall in police charging (and so the number of cases received by magistrates' courts) and the fall in court capacity (the number of cases processed) for both a one quarter and a two quarter crisis. The key findings are that:

- Unless police charging falls by as much as 40%, the backlog will grow.
- If there is a moderate impact on both police and magistrates' courts, a one quarter crisis would mean the backlog increasing by 29% and waiting times of over six weeks. If the crisis lasts two quarters, the backlog would increase by 58%, to the highest level since at least 2012 (the first year for which we have data). Waiting times would increase to over seven weeks, also the highest on record.
- If there is a low impact on police, but a high impact on magistrates' courts, a one quarter crisis would mean the backlog increasing by 63% and a two quarter crisis by 125%, with waiting times of 7.5 weeks and 9.7 weeks, respectively.

Figure 10 **Projected change in the number of magistrates' court cases outstanding in March 2024 depending on the impact of the coronavirus crisis (% changes relative to no coronavirus baseline)**



Source: Institute for government calculations. See Methodology for full details. Low, moderate and high impact on police assumes 0%, 20% and 40% fall in police charges during the crisis, respectively. Low, moderate and high impact on courts assumes 50%, 65% and 80% falls in capacity for non-SJP magistrates' cases, and 25% for SJP cases, respectively. Pink bars are projections if the crisis lasts for one quarter. Purple bars are projections if the crisis lasts for two quarters.

How much will it cost to reduce the backlog?

Magistrates' courts currently only process as many cases as they receive. If magistrates' courts' capacity to process cases returns to normal after the crisis, they won't be able to shift the backlog. The implication is a permanently higher backlog and waiting times.

If the government was unwilling to allow longer waiting times – and therefore a diminished magistrates' court experience for defendants and witnesses – to persist, it could increase spending on the magistrates' courts to reduce the backlog. Returning

the backlog to December 2019 levels would – if there had been a moderate impact on both police and magistrates’ courts – require an additional £10m per year for two years if the crisis lasted one quarter, and £20m per year for two years if the crisis lasted two quarters. This spending would be on top of spending to manage the impact of additional police officers outlined in chapter 3, but clearing the backlog should be achievable as it would only imply the magistrates’ courts processing 3% more cases each month following a one quarter crisis, and 6% more in a two quarter crisis.

The crown court

All cases in the crown court must first pass through the magistrates’ courts.* If, as seems likely, the capacity of magistrates’ courts to process cases falls faster than the number of police charges, there will be a sharper fall in the number of cases received by the crown court than the magistrates’ courts.**

The crown court’s activities are even harder to continue remotely than magistrates courts. All trial cases where the defendant pleads not guilty must be heard by a jury. This is a longstanding legal principle that the government has indicated it is unwilling to breach.*** Holding jury trials by video or phone is not practical, and as a result they can only take place in person. For the time being, jury trials have been suspended, but the government could reinstate them in a minority of courtrooms if suitable social distancing practices can be instituted.

Our model assumes that there were no jury trials in April, as new jury trials were suspended on 23 March,¹⁶ and we model three different scenarios where, beyond April, jury trials continue not to operate at all (high impact scenario), 15% of jury trials can go ahead (moderate impact scenario) and 30% of jury trials can go ahead (low impact scenario).

For cases that do not require a jury (all crown court cases, except for trials where the defendant pleads not guilty), we assume that the share of cases processed is the same as in the magistrates’ courts. This actually accounts for most cases in the crown court – around 60% of defendants plead guilty, and 40% of cases processed by the crown court are appeals or sentencing decisions from magistrates’ court cases.

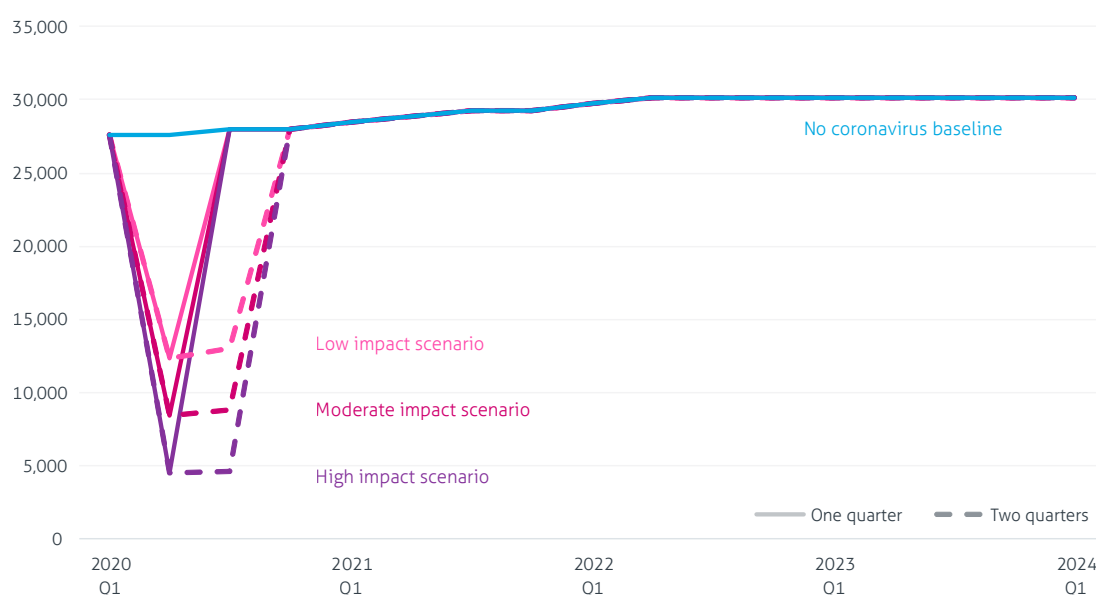
Figure 11, overleaf, shows that, even in the high impact scenario, the crown court would still be able to process some cases – those not requiring a jury, and therefore quicker to process – though the subsequent backlog would include a higher number of jury trials, which will therefore be harder to shift.

* Since 2013/14, there no longer needs to be a ‘committal hearing’ to formally pass a case to the crown court, but cases still need to be processed in the magistrates’ court first.

** As the cases that magistrates send to the crown court are the most serious, we assume that magistrates would prioritise these cases after the crisis is over. This means that crown court receipts are initially much lower than anticipated, but are then higher than anticipated for the remainder of 2020/21. As a result, over the next few years crown court receipts fall in line with police charges overall, but receipts will fall more sharply initially. See Methodology for full details.

*** Crown court trials can take place without juries if there is evidence of, or a high risk of, jury tampering. This has only been applied to a very small minority of cases since the law took effect in 2007.

Figure 11 **Projections for the number of crown court cases processed per quarter during the coronavirus crisis**



Source: Institute for Government assumptions. See Methodology for details. Solid lines indicate the path if the crisis lasts for one quarter; dashed lines indicate the path if the crisis lasts for two quarters. No coronavirus baseline is the central demand scenario outlined in chapter 4.

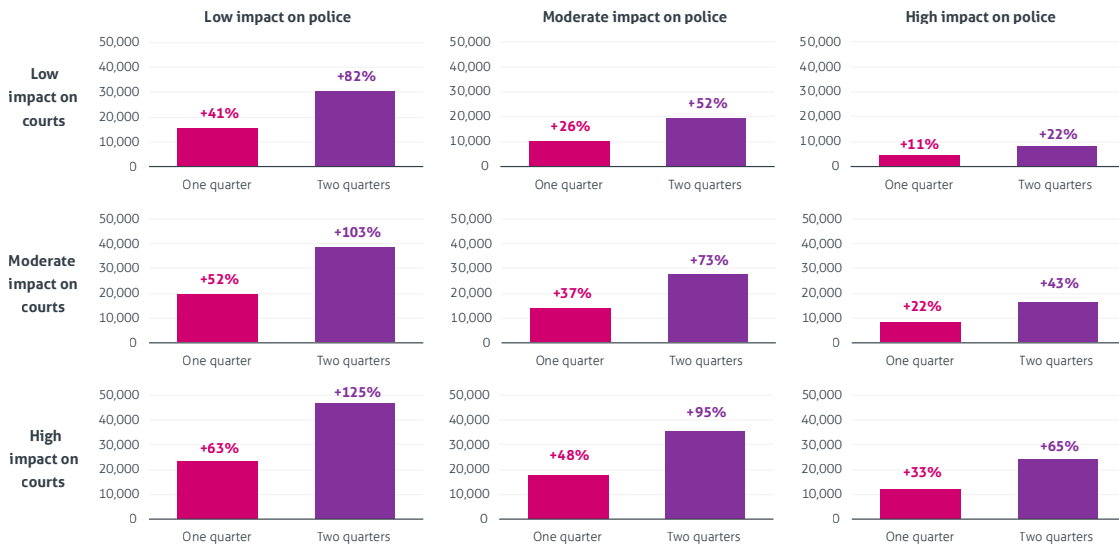
As in the magistrates' courts, the number of cases received by the crown court will exceed the number they process, and backlogs will therefore rise, meaning that waiting times increase. Waiting times at the crown court (that is, the time between a case being received at the crown court and the main hearing) are already much longer than in the magistrates' courts – around 18 weeks. Figure 12, overleaf, shows the impact on crown court caseloads under different assumptions for police charges and court capacity.

The key findings are that:

- In all scenarios, crown court backlog rises, in most cases by over 25%.
- If there is a moderate impact on both the police and courts for one quarter, the backlog would increase to 51,000 (just short of the previous peak in 2014) and waiting times would increase to 23 weeks.* If the shock lasted two quarters, the backlog would increase to 65,000, the highest since at least 2000, when the data was first recorded. Waiting times would increase to 29 weeks, the highest on record.
- For a two quarter shock where there is a low impact on police charging but the impact on court capacity is high, the backlog would more than double. Waiting times would increase to 35 weeks.

* Waiting times increase proportionally less quickly than backlogs, because the waiting time is determined by the share of new and existing cases (receipts plus backlog) that can be disposed of in a given period. See the Methodology section for details about how we calculate waiting times.

Figure 12 **Projected change in the number of crown court cases outstanding in March 2024 depending on the impact of the coronavirus crisis (% changes relative to no coronavirus baseline)**



Source: Institute for government calculations. See the Methodology section for full details. Low, moderate and high impact on police assumes 0%, 20% and 40% fall in police charges during the crisis, respectively. Low, moderate and high impact on courts assumes 0%, 85% and 100% falls in jury trials and 50%, 65% and 80% falls in other crown court cases, respectively. Pink bars are projections if the crisis lasts for one quarter. Purple bars are projections if the crisis lasts for two quarters.

How much will it cost to reduce the backlog?

The crown court, like the magistrates' courts, currently only processes as many cases as it receives. If there is a moderate impact on both the police and courts, and the government wishes to reduce the backlog to 2019 levels within two years, then it will have to spend more: £45m a year for two years after a one quarter crisis, and twice that for a two quarter shock.

To achieve this, it would also be necessary to run many more trials than the crown court has done in the last few years. The required increase in capacity would be 8% for a one quarter shock and 15% for a two quarter shock.

For comparison, we project that court capacity would need to increase by 16% in total between 2019/20 and 2023/24 to meet the additional demand from the extra 20,000 police officers. Taking into account the impact of extra police officers and reducing the coronavirus-induced backlog from a two quarter crisis would mean running the courts at 125% of 2019/20 levels. This would only require the crown court to process as many cases as in 2015, and so there should be enough courtrooms and judges available if additional funding is provided.

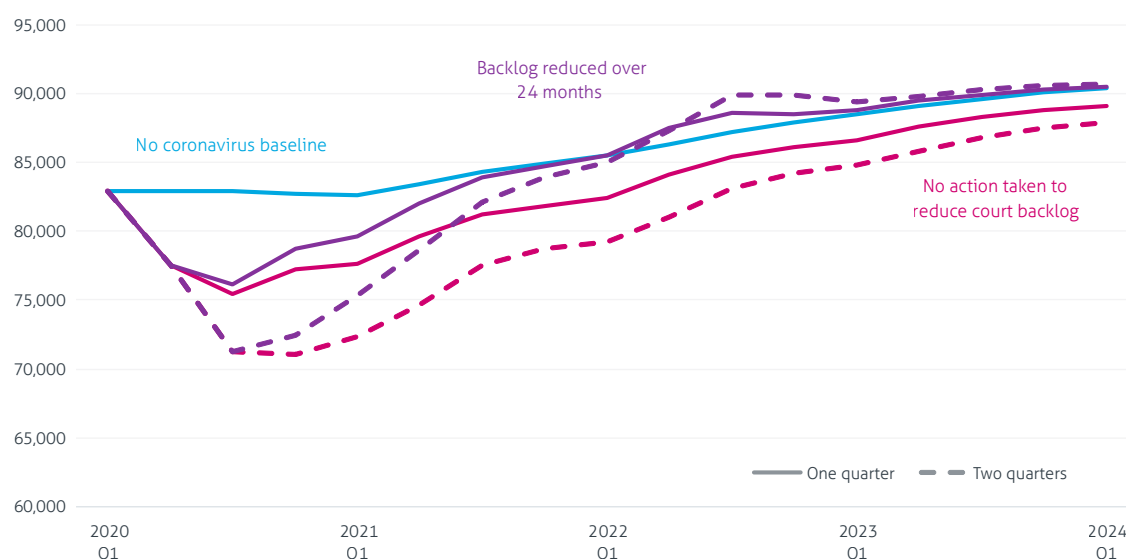
The impact of the coronavirus on prisons

Understandably, the focus on prisons during the crisis thus far has been on the risk of the virus spreading there. This risk, and substantial staff shortages, will clearly put strain on this part of the criminal justice system. However, fewer court cases being processed means a fall in the inflow of prisoners into prison. As Figure 13 shows, in our moderate impact scenario (police charging falling by 20% and crown court trials falling by 80%), the prison population could drop to 70,000 by September 2020 if the crisis lasts for six months – a fall of over 10,000.

The overall numbers mask a change in the type of prisoner in custody. The number of sentenced prisoners would fall by over 15,000, but the number of prisoners on remand (either before trial or before sentencing) would increase by over 5,000, more than 50%. This group is of particular concern because months-long delays could lead to many of these people spending longer in custody than they would do if they were found guilty in court. For those waiting for a jury trial, spending longer on remand means they could spend less time in prison by pleading guilty and being sentenced in a timelier manner. The government should set out clearly how it will mitigate this risk.

As turnover in the prison population is quite fast (14,000 people enter prison each month, and at any one time around 9,000 people are serving sentences of two years or less),^{*17} the impact is much smaller in the longer term. Even with a two quarter crisis in our moderate impact scenario, the prison population would return to 88,000 by March 2024, only 2,000 lower than our projection without coronavirus. If the government decided to provide additional resources for courts to reduce the backlog of cases, the projection for the prison population in March 2024 would be almost unchanged.

Figure 13 **Projected paths for the prison population under moderate coronavirus impact scenario and no coronavirus scenario**



Source: Institute for Government calculations. See Methodology for details. No coronavirus baseline is the central demand scenario outlined in chapter 4. Pink lines show the path if no action is taken to reduce the crown court backlog. Purple lines show the path if the court backlog is reduced back to December 2019 levels over two years from the end of the crisis.

* The reason why only 9,000 of the current prison population are on short sentences, even though the vast majority of those entering prison do so on short sentences, is that many stays in prison are short. As a result, the average sentence length among existing prisoners is much longer than the average sentence length among new prisoners.

Some prison governors have called for the early release of low-risk prisoners who are near the end of their term.¹⁸ The Scottish government has also announced its intention to do this, though precise details have not yet been provided,¹⁹ and it has now been announced that up to 4,000 prisoners will be released early in England and Wales.²⁰

The proponents of this policy cite three advantages. First, staff shortages are putting a strain on the system and reducing the number of prisoners would improve the prisoner-staff ratio. In the first week of April, 25% of prison staff in England were on sick leave or were self-isolating.²¹ Second, reducing the density of prisoners in prison would reduce the risk of the virus spreading further in these institutions. Third, there is a risk of prison violence escalating further from already high levels. Prisoners were already confined to their cells for most of the day before the coronavirus outbreak hit and are now spending even less time outside than before, and staff levels are low. This could be a perfect storm for prison riots, as happened in Italy in March.²²

Figure 13 does not account for the early release of prisoners, because at present prisoners have only been released early when they were due to be released within this quarter anyway. The impact would be substantial if the UK government were to extend this policy further. For example, releasing all of the prisoners due to be released in the next six months (for home detention), and not sentencing people to time in prison shorter than this, could temporarily reduce the prison population by at least 15,000.

However, the nature of this policy – releasing people who were due to be released shortly anyway – means that the impact would be short term. It would also impose considerable additional demand in the short term on a probation system that has already faced problems in the last few years. It is not clear that it would have the capacity to cope.

5 Conclusion

The coronavirus crisis, combined with the government's plan to increase the number of police officers by 20,000, will have a major impact on criminal justice system. This report has set out a number of plausible scenarios to show what the scale of change may be, and the implications this will have for public spending. The exact outcome will depend on the complex interplay of factors including the nature of crime, the volume of digital evidence, sentencing decisions, and (perhaps most hard to predict) the speed at which the coronavirus can be tamed. Despite the uncertainty, the government must have plans in place to deal with the fallout.

The impact of more police officers on the rest of the criminal justice system could be substantial. Under our central demand scenario, demand on the crown court would rise to its highest level since at least 2000 and the prison population would reach nearly 90,000, its highest ever level. It is not clear how the government will be able to safely house this number of prisoners given its existing plans and the slow speed at which previous governments have been able to build prison places.

On top of this, coronavirus will markedly reduce the volume of cases that criminal courts are able to process. Police will also be affected – though most likely to a lesser extent – with the result that the backlog of cases in the magistrates' and crown court could grow considerably. Conversely, the prison population will fall, but the effect will be temporary.

Managing the effects of coronavirus and enabling the courts and prisons to manage the impact of 20,000 additional police officers will cost money. Current spending plans may be enough to deal with the latter but clearing the court case backlog could cost hundreds of millions of pounds on top. These are relatively small sums in the context of the government's response to the coronavirus crisis – but will be vital if delays to justice are not to become permanent.

6 Methodology

In this report, we project how demand, cost pressures and spending will change in the police, criminal courts and prisons service.

Demand

Police

Due to complexities in accurately measuring police demand, we assume that all police demand grows in line with population growth. We use the Office for National Statistics's (ONS) 'No net EU migration scenario', consistent with the Office for Budget Responsibility's (OBR) March 2020 Economic and Fiscal Outlook.¹ This implies that demand grew by 7.2% between 2009/10 and 2019/20, and will grow by 1.5% between 2019/20 and 2023/24.

Criminal courts

We project demand separately for the crown court and magistrates' courts.

For the crown court, we calculate demand as the number of cases received each year, weighted by the average hearing time for cases completed in each year. We do this separately for triable either-way cases, indictable-only cases, appeals from the magistrates' courts and sentencing decisions from the magistrates' courts.² We assume that: (i) longer hearing times are a result of cases being more complex, rather than because the court is operating inefficiently; and (ii) the cases received would have had similar hearing times to the ones disposed of, within case type (triable either way, indictable only, appeals and sentencing), in the year in question. For 2019/20, we only have data for the first three quarters. We assume that court activity in the fourth quarter is the same as the first three.

For magistrates' courts, where the data we have is less detailed, we measure demand simply as the number of cases received in each year.³ We assume that magistrates' court demand and crown court demand evolved in the same way between 2010/11 and 2012/13 (magistrates' court data is only available from 2012/13).

We weight magistrates' and crown court demand to come to an overall measure of court demand. We do this using two components. First, we use the number of sitting days in the crown court and magistrates' courts in 2018.⁴ Second, we use the average cost per sitting day in the crown court and magistrates' courts, which the National Audit Office (NAO) reported in 2016.⁵ This implies that 61% of court demand comes from the crown court and around 39% from the magistrates' courts.

We then project demand forward separately for the crown court and magistrates' courts.

Impact of 20,000 police officers

We model three scenarios for the impact of 20,000 additional police officers on the criminal justice system, assuming that the number of officers grows by 6,000 in 2020/21, 8,000 in 2021/22 and 6,000 in 2022/23.

- 'Low' – charges per officer continue to decline at the same average annual rate as they have since 2010 (3.4% per year).
- 'Central' – charges per officer stay constant from 2019/20 onwards.
- 'High' – charges per officer increase at the same average annual rate as they have declined since 2010 (i.e. increase by 3.4% per year).

For simplicity, we assume that the additional officers are present throughout the year, and so they have a constant impact on charging from April to March.

Table 1 **Data on number of police officers, number of charges and charges per police officer since 2009/10**

Year	Number of police officers	Number of charges	Charges per police officer
2009/10	143734	651,757	4.53
2010/11	139110	658,713	4.74
2011/12	134100	633,985	4.73
2012/13	129584	584,564	4.51
2013/14	127909	603,962	4.72
2014/15	127192	555,648	4.37
2015/16	124066	510,456	4.11
2016/17	123142	485,184	3.94
2017/18	122405	443,084	3.62
2018/19	123171	409,297	3.32

Sources: Table 2.2 of Home Office, 'Crime outcomes in England and Wales', National Statistics, July 2019 and Table H3 of Home Office, 'Police Workforce in England and Wales Statistics', July 2019.

In the magistrates' courts, we assume that the least serious 'summary' cases are unaffected by the number of police officer charges, as some of these are brought by non-police organisations and they are simple, routine offences. This means that 74% of 2019/20 magistrates' court cases are unaffected by the subsequent increase in charges, while 26% are and increase in line with charges. All cases in the crown court are affected.

Table 2 **Components of criminal court demand and growth rate assumptions**

Service category	Share of demand in 2019/20	Historic growth rate	Growth rate assumption
Crown court: triable either way	22.5%	-14.6% since 2010/11	Increase in line with police charges
Crown court: indictable only	32.8%	-13.5% since 2010/11	Increase in line with police charges
Crown court: sentencing from magistrates'	3.9%	+21.1% since 2010/11	Increase in line with police charges
Crown court: appeal from magistrates'	1.5%	-32.1% since 2010/11	Increase in line with magistrates' cases
Magistrates' courts: summary offences	29.6%	+2.7% since 2012/13	Unchanged going forwards
Magistrates' courts: other	11.9%	-24.7% since 2012/13	Increase in line with police charges

Source: IfG calculations using Ministry of Justice, 'Criminal court statistics October to December 2019', 26 March 2020.

Prisons

We measure demand on prisons as the size of the England and Wales prison population in the June of the financial year.

We take as our starting point for our projections the Ministry of Justice's (MoJ) central estimate for prisoner numbers over the next five years, which was published in August 2019,⁶ but which does not incorporate the impact of the 20,000 extra police officers.

To model the new prison population, we assume that the number of new prisoners will grow in proportion with new crown court case disposals (so if disposals increase by 10%, new prisoners increase by 10% too). We assume that the severity of sentences handed down is the same among the new prisoners as it was for the existing prisoners (based on sentences handed down between October 2018 and September 2019).⁷ In addition, for each type of sentence handed down, we model a distribution of time actually served in prison, because most people do not spend their full sentence tariff in prison (split into 3 month, 6 month, 12 month, 24 month, 36 month and >48 month groups). We do not distinguish between custody lengths beyond 48 months because we are only modelling the prison population up to March 2024, four years from April 2020 when the model starts.

We choose these proportions so that the mean time served in prison matches the mean time served in prison for people leaving those sentences in 2018/19.

We then calculate how many additional prisoners this implies for each month between April 2020 and March 2024, and add this to the existing August 2019 projection. We have three different scenarios depending on charges per officer.

Table 3, overleaf, sets out the share of people we assume are sentenced for different lengths of time, and how long they will actually spend in prison.

Table 3 **Sentences and time spent in custody for new prisoners**

Sentence	Share of new prisoners	Length of time spent in custody (months)						
		3	6	12	24	36	48	>48
<6 months	46%	46%						
6-12 months	10%	3%	5%	2%				
12-24 months	13%		6%	7%	1%			
24-48 months	16%			7%	8%	1%		
4-5 years	3%				1%	2%	1%	
5-7 years	4%					1%	2%	1%
7-10 years	2%							2%
10-14 years	1%							1%
>14 years	1%							1%
Extended determinate	1%							1%
Indeterminate	1%							1%
Total	100%	50%	11%	15%	10%	4%	3%	7%

Source: Institute for Government calculations from Table 2.5a of Ministry of Justice, *Offender Management Statistics*, on data from October 2018 to September 2019. Time spent in custody for each sentence type is calculated to match mean time served in Table 3.1 of Ministry of Justice Offender Management Statistics over the same period. Figures may not sum due to rounding.

The impact of coronavirus

We assume that the coronavirus crisis will persist for either one or two quarters, with two principle impacts on the criminal justice system: lower police charging and lower criminal court capacity. We calculate everything relative to our 'central' scenario, without coronavirus, for demand in the criminal courts and prisons. We model impacts at a monthly frequency.

Police

We have 'low impact', 'moderate impact' and 'high impact' scenarios for the police. We assume that police charging is determined by police capacity, rather than the number of crimes. We assume this because the charging rate – the share of recorded crimes charged – is less than 10%.⁸ This implies that there are more crimes that the police could charge if they had more resource. A reduction in crimes committed could therefore affect the charging rate, but not the number of crimes charged.

- In the low impact scenario, police charging does not fall. This scenario could be one in which efficient rota-ing means the police can cope with staff shortages, and additional non-crime demand is made up for by falls in other non-crime demand (such as large-scale gatherings and sporting events).
- In the central impact scenario, charges fall by 20%.
- In the high impact scenario, we assume charges fall by 40%, reflecting additional non-crime demand and staff shortages.

We assume that these effects persist for either three months or six months, after which they return to the 'central' path (charges per officer assumed constant) outlined above.

Magistrates' courts

Receipts

We assume that magistrates' court receipts fall immediately, in line with police charging.

Disposals

We assume that magistrates' court disposals for summary cases heard under the Single Justice Procedure (SJP) – 55% of all disposals – fall by 25% for the duration of the shock (either three months or six months).

For other cases, where a courtroom would usually be required, we model much larger falls.

- In the 'low impact' scenario, we assume disposals fall by half.
- In the 'central impact' scenario, we assume disposals fall by 65%.
- In the 'high impact' scenario, we assume disposals fall by 80%.

After the shock ends (after three or six months), we assume that disposal caseloads return to normal. We assume that the magistrates' courts expedite more serious cases that would be sent to the crown court more quickly, so that overall crown receipts fall, in line with police charging only and no further. Specifically, we assume that any additional backlog from these cases is cleared over 12 months, meaning higher crown court receipts over that period, and implicitly lower case disposals for other types of case in the magistrates' courts.

Backlog and waiting times

We calculate the change in backlog as receipts minus disposals. We calculate changes in the steady-state waiting time (by which we mean the time from a case being charged to being disposed of in the magistrates' courts) as changing by a factor of $[(\text{Receipts} + \text{Backlog}) / \text{Disposals}]$ because the denominator determines how many cases are processed in a given month and the numerator is the number of cases that *could* be processed in a given month. In other words, we scale waiting times by the inverse of the probability that the case is seen to in a given month (because the probability that a case is seen to is $[\text{Disposals} / (\text{Receipts} + \text{Backlog})]$). Intuitively, waiting times increase when the number of cases to be processed grows by more than the number of cases that can be processed in a given time period.

We also calculate how many extra cases would need to be processed to return the backlog to December 2019 levels by dividing the increase in the backlog by 24. We assume that $1/24^{\text{th}}$ of the additional cases would be processed each month for 24 months. To calculate the additional cost, we multiply the share of court demand accounted for by the magistrates' courts (39%) by the percentage increase in court disposals required.

Crown court

Receipts

Crown court cases are received via the magistrates' court. crown court receipts therefore fall in line with magistrates' court disposals for non-SJP cases (SJP cases do not go to the crown court).

In the low impact, central impact and high impact scenarios, receipts therefore fall by 50%, 65% and 80%, respectively. However, we assume that these cases are subsequently prioritised in the magistrates' courts over the next 12 months. This means that *overall* crown court receipts are determined by changes in the number of police charges. If the number of police charges is higher, crown court receipts will be higher in the 12 months after the crisis than they would be if police charges were lower.

Disposals

Most time in the crown court is spent processing triable either way and indictable only cases. If the defendant pleads not guilty, a jury trial is necessary. This is a minority of crown court cases, but 73% of overall hearing time (see Table 4, overleaf).

We assume that jury trials do not happen at all in April. In our 'high impact' scenario, jury trials do not happen for the duration of the crisis either. In our moderate impact scenario, only 15% go ahead for the remainder of the crisis. In our low impact scenario, 30% go ahead.

Other disposals, including sentences and appeals from the magistrates' courts and trials where the defendant pleads guilty, do not require a jury and so can continue. We assume that they continue at the same rate as non-SJP magistrates' court cases in the corresponding scenarios (i.e. 50% of the usual number processed in the low impact scenario, 35% in the moderate impact scenario and 20% in the high impact scenario).

Backlog

We calculate a simple backlog in the same way as we do for the magistrates' courts.

However, we also calculate a 'weighted backlog', which is constructed by weighting disposals for different types of case according to their average hearing time. We then deduct 'weighted disposals', rather than actual disposals, from receipts. This is necessary because waiting times will depend on the time it takes to process cases rather than the pure number of cases.

We calculate the steady-state change in waiting times by scaling the December 2019 waiting time (17.7 weeks) by the change in [(Receipts + Backlog)/Disposals] in the final month (March 2024).

Table 4 **Assumptions for how magistrates' and crown court disposals proceed during the coronavirus crisis**

Type of case	Share of crown or magistrates' demand	Share of crown or magistrates' cases	Assumption (low/moderate/high impact)
Crown			
Trial – not guilty plea	73%	18%	None in April, then (0%/15%/30%)
Trial – guilty plea	18%	41%	(20%/35%/50%)
Magistrates' sentencing referral	7%	34%	(20%/35%/50%)
Magistrates' appeal	3%	7%	(20%/35%/50%)
Magistrates'			
Single Justice Procedure	55%	55%	75%
Other			(20%/35%/50%)

Sources: Table 2.2 of Home Office, 'Crime outcomes in England and Wales', National Statistics, July 2019 and Table H3 of Home Office, 'Police Workforce in England and Wales Statistics', July 2019.

We also calculate how many extra cases would need to be processed to return the backlog to December 2019 levels by dividing the increase in the backlog by 24. We assume that $1/24^{\text{th}}$ of the additional cases would be processed each month for 24 months. To calculate the additional cost, we multiply the share of court demand accounted for by the crown court (61%) by the percentage increase in court disposals required.

Prisons

We use the same prisons model as above to calculate changes in the prisoner population relative to our central scenario. Specifically, we assume that the sentenced prison population will fall in line with (weighted) crown court disposals. We make this assumption because these are the cases that are most likely to result in lengthy prison sentences.

However, we also need to account for the fact that the remand population – those in prison but awaiting trial or sentence – will increase as courts are unable to process cases. We focus specifically on the approximately 7,500 people who enter prison on remand awaiting a hearing each quarter.⁹ We assume that, in line with the rest of the population awaiting trial, 33% plead not guilty and require a jury trial. These cases are processed as quickly as jury trials in general (15% processed in the moderate scenario). We assume that the remaining 67% of those on remand have their cases processed as quickly as non-jury trial cases (35% in the moderate scenario).

This may overstate the increase in the remand population if these cases are prioritised, as is possible. We assume that after the crisis, the remand population falls steadily, returning to pre-crisis levels after six months.

We also model a scenario in which the court backlog is removed in the two years following the crisis, meaning extra court disposals (and therefore new prisoners) for two years. To calculate the additional prisoners, we increase the number of new prisoners in line with the increase in crown court disposals.

Cost pressures

In each service, we model wage cost pressures (the additional money government might need to spend on wages to ensure that it does not have difficulties recruiting and retaining staff). We assume that all non-staff costs grow in line with inflation (and so are flat in real terms). But we assume that staff costs, which account for 78%, 56% and 39% of operational spending of the police, courts and prisons, respectively, grow differently.

Looking backwards, we assume that staff cost pressures grew in line with overall average public sector pay (ONS series KAD8). Going forwards, we assume that staff costs grow in line with average earnings as forecast by the OBR in March 2020. This assumes that public sector pay will grow at the same rate as private sector pay over the next four years. We assume this because we think government will at least need to maintain the differential between public and private sector pay so that existing public sector workers do not have higher incentives to join comparable private sector organisations.

How we project future spending

In this report, we also project how spending on police, courts and prisons are likely to change between 2019/20 and 2023/24.

Our projections include two spending scenarios for each service area:

- Current government policy – spending in 2023/24 based on the government's currently announced spending plans.
- Meet demand and cost pressures – spending in 2023/24 needed to meet the projected demand and cost pressures described above.

Current spending

We take as our starting point spending in 2018/19 for each service. We know these numbers directly for police and prisons. However, for criminal courts we only know spending for Her Majesty's Courts and Tribunal Service (HMCTS) *overall*.

We cannot perfectly identify the share of spending devoted to running the criminal courts. However, we use the latest available figures for the number of sitting days in tribunals¹⁰ and civil courts,¹¹ alongside data on sitting days in the magistrates' and crown courts, to construct an estimate. We assume that family and civil court sittings are more expensive than magistrates' courts, but cheaper than the crown court because crown court judges are better paid and required levels of security are much higher. Specifically, we assume civil court and tribunals cost £1,300 per day to run (compared with £1,900 and £1,150 for magistrates' and crown courts, respectively). This implies that around 45% of HMCTS spending – £900m in 2018/19 – is spending on criminal courts. This is the number we use as 'criminal court spending' throughout this report.

Current government policy

We construct implied 'current government policy' in two parts.

In 2019/20 and 2020/21, we assume that spending on each public service grows in line with the spending of their parent department (Home Office for the police, MoJ for criminal courts and prisons), as set out in the September 2019 spending round.¹²

Beyond 2020/21, we assume that spending on these services grows in line with the implied path for 'unprotected services', which we define as all services outside of the NHS, schools, defence and overseas aid (for the first two of these, the government has set out a long-term spending plan, for the latter two the government has a stated target to maintain spending as a share of national income).

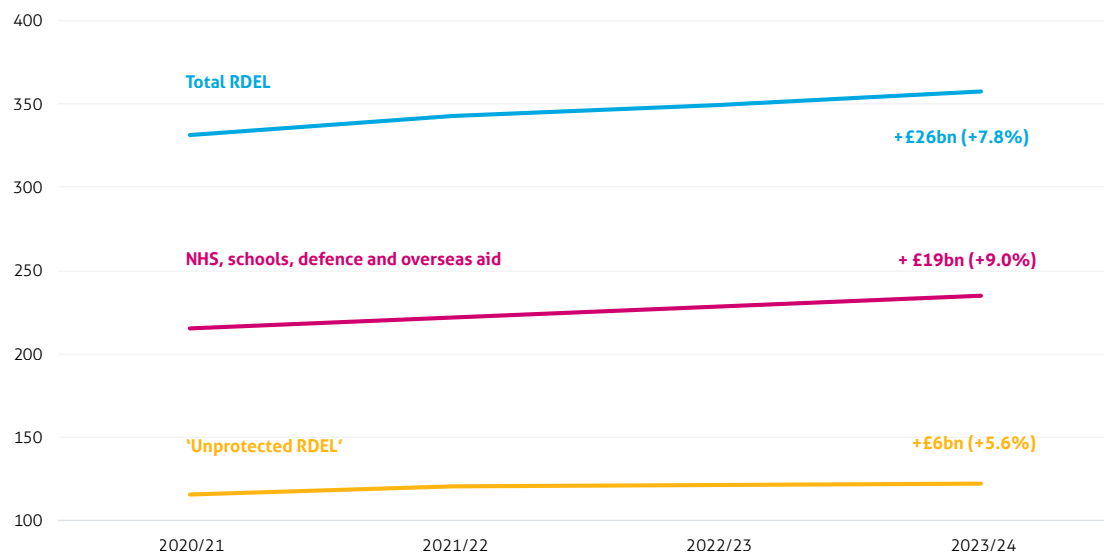
To calculate the implied path for 'unprotected' spending, we first take the path for day-to-day departmental expenditure limits (RDEL) set out in the budget in March.¹³ We then assume that the extra money added for 2020/21 in the 2019 spending round will be maintained in real terms from 2021/22 onwards, which gives us a new path for total RDEL between 2020/21 and 2023/24. This path is set out in Figure 14.

Next, we calculate the amount of spending already committed for 'protected areas' – the NHS, schools, defence and overseas aid:

- For the NHS¹⁴ and schools,¹⁵ we take the totals set out in their long-term plans (as well as subsequent policy announcements in the case of the NHS).
- For defence and overseas aid, for which the government's targets (2% of gross domestic product [GDP] and 0.7% of gross national income [GNI], respectively) refer to total spending, rather than just day-to-day spending, we assume that:
 - Capital spending in defence and overseas aid continues to increase in line with the total capital departmental expenditure limits (CDEL), adjusting OBR figures published in the March 2019 Economic and Fiscal Outlook¹⁶ to account for the extra money committed for 2020/21 at the 2019 spending round.
- RDEL increases such that the overall spending target is met.

We deduct this 'protected spending' from calculated total RDEL, which leaves us with an implied path for 'unprotected spending', which covers day-to-day spending on all central government funded public services apart from the NHS, schools, defence and overseas aid. This path is set out in Figure 14.

Figure 14 **Implied path for total day-to-day spending, protected spending and unprotected spending, £bn**



Source: Institute for government calculations using Office for Budget Responsibility Economic and Fiscal Outlook, March 2020. Total day-to-day spending is calculated as Public Sector Current Expenditure in RDEL excluding spending that would otherwise have been done by the EU in the UK if it were still a member, to ensure comparability. Protected spending includes the NHS, schools, defence and overseas aid.

Meet demand and cost pressures

To calculate the amount needed to meet demand and cost pressures, we calculate the percentage change in demand between 2019/20 and 2023/24 and multiply it by the percentage change in total cost pressures between 2019/20 and 2023/24. Implicitly, we are assuming that no further efficiency savings are made. Another way of stating this is that the gap between 'current government policy' and 'amount needed to meet demand and cost pressures' could either be met by additional spending or efficiency savings.

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