

Written evidence submitted by Dr Jennifer Hough (CCB0012)

Inquiry - Crown Court Backlog

After numerous and extensive delays, HMCTS is both behind schedule and likely to be over budget in delivering the courts and tribunals reform programme (comprised of 44 separate projects currently) which has, since its initial implementation in 2016, been reduced and reset. Some of the delay can be justified by the Covid-19 pandemic, an unprecedented period in which authorities had to act swiftly and be more flexible in their approach to usually rigid systems and working practices. However, this does not mean that valuable lessons cannot be learned from this period, which could improve key priority areas in future and look to address the court backlog, currently at record levels (National Audit Office, 2024).

For example, one of the main aspects of the programme is the introduction of a 'common platform' which is a digital case management system to streamline administrative processes and allow all relevant parties to access information. Yet, following the expedited use of technology during the Covid-19 pandemic, its implementation should be more efficiently utilised than may have been anticipated pre-pandemic, as the employment of technology is now more integrated into working life across the majority of sectors. HMCTS thus needs to ensure that they are embracing new concepts proactively rather than reactively, particularly with the advancement of artificial intelligence [AI].

Delivering large-scale change within an organisational structure that has been required to adapt to change, rather than drive it, is always likely to prove difficult. Indeed, 'managing changes to such a complex programme in a challenging environment is akin to "redesigning the jet engine while it is in flight"' to use the Ministry of Justice's [MoJ] own words (House of Commons, p.12). However, the MoJ and HMCTS can draw on learning gained following its rollout of the Nightingale Court protocol during the pandemic to address some key priority areas, particularly improving access to justice and the impact on the workforce and court participants (witnesses, victims, and defendants).

Due to increased pressures on an already stretched criminal justice system during the Covid-19 pandemic, a selection of temporary courts – referred to as 'Nightingale Courts' in line with the similarly devised, although more aptly named 'Nightingale Hospitals' – were introduced. These newly fashioned, hybrid legal spaces were designed to tackle the increasing backlog of cases after national lockdowns and related restrictions halted the operation of courts in England and Wales. By utilising existing spaces and transforming them into functioning legal ones, using recognisable court machinery such as a dock, gallery and courthouse coat of arms, the Nightingale Courts were hailed as a way of reducing delays and delivering speedier justice for victims.

Initially, 10 temporary courts were announced, with many more established over the course of the pandemic, all of which were created in a variety of different buildings. Some reutilised a previous court building no longer in operation while others repurposed an entirely unrelated space into a fully functioning court. Transformable, mutable, and 'portable' justice in some capacity has a long history in England in particular. From the earliest initiation of a formalised legal procedure in England, courts of all varieties were often held in non-purpose-built or multi-functional spaces, such as village halls. Yet, they were recognised and treated as functioning judicial spaces due to the presence of legal

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machinery. Indeed, the report 'What is a Court?' (JUSTICE, 2015) just a few years prior to the pandemic, discusses the use of 'pop-up courts' and during the court building programme in the 1970s and early 1980s, when alternative buildings were fashioned as legal spaces to address the backlog of cases during this period as well.

There has also been a move towards more 'hybrid' courts in the sense of those which operate, at least partially, in a remote way, across the globe (see, for instance Remote Courts Worldwide, 2020). The Nightingale Courts built on this approach and were effective at ensuring trials could continue while adhering to social distancing measures and addressing some of the backlog, even following the end of lockdowns. Nightingale Courts were also flexible in what they dealt with, such as the court at the Leonardo Hotel in Croydon, which moved from holding crown court trials to family court matters. At one point, 32 Nightingale Courts were operational, and while this programme was due to close in 2023 and again 2024, there are still some in use now, at least until March 2025. This demonstrates that there is a definite need of additional space, but the Nightingale model can also offer an opportunity to re-evaluate the use of courts generally and offer a more flexible and responsive mode of justice.

As noted, alternative, or flexible courts are not a new concept. Even in recent history, such as in September 2021, Manchester opened its first 'super courtroom' designed for cases involving organised crime gangs. Housed in Manchester Crown Court, it is three times the size of a standard court, with an extended dock, larger area for victims and legal counsel and can hold 12 defendants at a time. In the same month, France revealed a different type of 'super courtroom' for the trial of those accused of the 2015 Paris terrorist attacks. Taking over 2 years to plan, this room was also housed within a previous court building but had been specially designed for maximum security as well as being large enough to accommodate the staggering number of plaintiffs involved. It could hold over 500 people at any one time, with 13 separate 'overflow' spaces to enable broadcasting of the debates to over 2000 more. It is, perhaps most significantly, a different form of 'pop-up court' in that it is designed to be dismantled once the trial is complete and the space will revert to its original use as the courthouse's concourse, demonstrating how these spaces can be mutable yet efficient and responsive to the needs at the time.

Of course, for there to be an effective legal process, more than a building is required. There needs to be sufficient funding, trained personnel, and successful multiagency working with a victim-centred focus. However, increased capacity of legal courts has been identified as part of tackling the backlog of cases facing the criminal justice system, by both the former and current government (Hough, 2025). Yet there are often courtrooms sitting unused while the backlog of cases has increased. This is why providing further space alone is not sufficient, there needs to be a more tailored approach. The systematic employment of alternative court spaces could provide not only a reduction in delays but also more accessible justice if implemented with effective long-term strategic planning. The pandemic has enabled an opportunity to rethink the way courts are created and utilised more generally, something which was already under discussion pre Covid-19, but which can now be accelerated following essentially a pilot protocol with the Nightingale Courts.

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HMCTS and MoJ should consider how they can be more innovative in their approach to the court estate, particularly following the end of the programme in 2025, by utilising the experience of the Nightingale court model to provide more transformative and user-friendly avenues for justice administration. Changes to traditional architecture could provide a more reassuring experience for participants from different vulnerable groups, such as those with neurodiverse needs, enabling better participation during the trial. It could also be more cost effective, if implemented more strategically, and provide better outcomes for victims, witnesses, and defendants by expediting trials and reducing the case backlog. Adopting a more flexible approach to court spaces would also improve the workplace for court staff who would not need to navigate the challenges presented by purpose-built but no longer fit for purpose buildings. Moreover, facilitating a coordinated and pioneering approach to the use of court spaces would position UK as world leaders in innovative methods of justice administration.

'Pop up' courts would also avoid 'cost-shunting' as buildings which require extensive repair or are costly to maintain could also be removed from the court estate while greater capacity for in-person hearings would facilitate access to justice for the more vulnerable populations, reducing negative impacts on court participants and related services. This approach would also reduce the requirement for legal staff to cross large geographical areas even during the same day to attend trials at the current static sites. Flexible courts, from research conducted in the Nightingale Courts, would require only basic furnishings and could be easily transported to different locals when required (Hough, 2023).

While court closures in the last decade and a half have been largely due to cost-saving measures, the proposals for more flexible court spaces could provide greater savings long term. While the outlay for the Nightingale Courts may have been expensive (Naidu, 2023) these were created in exceptional circumstances with limited lead time and requiring a specific use of space to adhere to social distancing directives. With greater planning, time for contract negotiation and utilising the learning from the Nightingale Courts, more mutable courts could be created in currently disused property or temporarily leased sites, reducing costs ringfenced for extensive repairs to some of the existing court estate, for example.

Staff have also reported significant issues with the current court estate, such as rodent infestations and leaking buildings, and it should be remembered that these are workplaces and should be in an acceptable condition. Feedback from staff who participated in the Nightingale Courts, particularly those in non-traditional spaces, appreciated the flexibility of the spaces and identified the facilities as being a positive attribute (Hough, 2023). It is evident that current mechanisms and provision are not allowing for any significant reduction in the Crown Court backlogs and the issue is likely to become worse if staff retention falls due to unsatisfactory working practices and conditions, especially if current issues with the common platform persist. It is clear that greater feedback mechanisms and transparent action are needed, as well as further and more specific evaluation(s).

However, if there is to be true reform to the courts and tribunals service, then HMCTS and MoJ need to consider not only the digitalised parts of the court process, but also how to optimise the experience of those seeking justice when in physical court spaces too.

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Following the end of the programme, at present in March 2025, HMCTS should consider ways to safeguard progress made but also how innovative approaches to legal spaces could help to tackle the extensive court backlogs. This would require a more long-term strategic vision than what was possible during the pandemic, but the Nightingale Courts have demonstrated that flexibility in the court estate has not diminished justice, but increased access to it.

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