

# CRIMINAL COURT RECOVERY MODELLING



December 2023



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This paper provides updated modelling in support of the criminal court recovery programme in the High and Sheriff Courts.

In response to the impact of the COVID-19 pandemic on criminal case backlogs, and the continued trend of increasing solemn case levels, the criminal court recovery programme commenced in September 2021. An additional 4 trial courts were allocated to the High Court, 2 for Sheriff Solemn and 10 for Sheriff Summary. In April 2023, recovery resources were switched from summary to solemn. An additional 2 trial courts were introduced in the High court and 6 for Sheriff Solemn with the simultaneous reduction of 10 trial courts in Sheriff Summary.

Trial court capacity from April 2023 is as follows:

- High Court: 22 trial courts (+38% compared to pre-pandemic)
- Sheriff Solemn: 26 trial courts (+44% compared to pre-pandemic)
- Sheriff Summary: 33 trial courts (as per pre-pandemic)

The combination of this annual modelling report and the regular publication of criminal case throughput reports allows measurement of the impact of the programme on scheduled trials and waiting times, illustrating the progress being made and the challenges ahead.

The additional trial courts, combined with excellent levels of collaboration across justice organisations, the legal profession and the 3<sup>rd</sup> sector, have increased trial capacity and case conclusions to above pre-COVID levels. The number of scheduled trials peaked at 43,606 in January 2022. Since then, with the introduction of the recovery programme, this has reduced by 16,344, with 27,262 scheduled trials as at the end of November 2023. The overall aim of the criminal court recovery programme is to return the number of scheduled trials to a revised baseline of around 20,000.

This updated modelling report follows extensive analysis of the recovery programme, reflecting both the impact of COVID-related backlogs and the increased level of new petitions, resulting in a higher number of registered indictments. The modelling demonstrates that solemn trial baselines have continued to grow, following the trend that was evident before the pandemic.

This suggests that in relation to solemn business, the case backlog is incrementally being replaced by a new higher baseline of scheduled trials and that a continued increase in court capacity will be required in the long term.

Future transformation of the prosecution of sexual offences, including the impact of the recent Court of Appeal judgement on the law of corroboration, may further increase the level of petitions and subsequent solemn indictments.

While modelling is not an exact science, it helps assess different scenarios and inform future decisions.

### **High Court**

Scheduled trials are projected to reach the revised trial baseline by March 2025, in line with previous modelling. COPFS plan to register 95 indictments per month for the coming 2 years, before dropping back to 80 indictments per month. While this is in line with current prosecution projections future levels of new petitions will continue to be assessed.

### **Sheriff Solemn**

Scheduled trials are projected to reach the revised baseline during 2026/27, slightly later than the previous modelling indication of March 2026. COPFS now plan to register 700 indictments per month for the coming 2 years, before dropping back to 600 indictments per month. This is significantly higher than the 2019/20 monthly average of 454 indictments, demonstrating the continued increasing trend in solemn case levels.

### **Sheriff Summary**

Scheduled trials are projected to reach the revised baseline during 2024/25, slightly later than the previous modelling indication of March 2024. This is a

result of higher than expected levels of sheriff summary registrations as Police Scotland and COPFS have cleared backlogs. COPFS have registered an average of 5,400 complaints per month during 2023/24, which will now return to the previous forecast of 5,000 per month from January 2024. In addition COPFS are increasing the number of summary cases marked within 28 days. While this does not increase the overall number of cases registered it does increase the scheduled trials baseline as cases are now added to the baseline earlier.

### **Justice of the Peace**

Scheduled trials have now returned to the original baseline level as a result of a continued reduction in case registrations. Whilst case volumes will be kept under review further modelling is no longer required as these have returned to anticipated levels.

Discussions are taking place through the Criminal Justice Board and between SCTS, the Faculty of Advocates and the Law Society of Scotland who have shared concerns on the pressures faced by the legal profession and the challenges that the increased level of solemn trial capacity creates for the profession.

The modelling reports help inform these discussions, underlining the commitment and collaboration of everyone in the justice system to deal with new levels of business and the length of time which it takes for cases to come to trial.

Scottish Courts and Tribunal Service  
December 2023

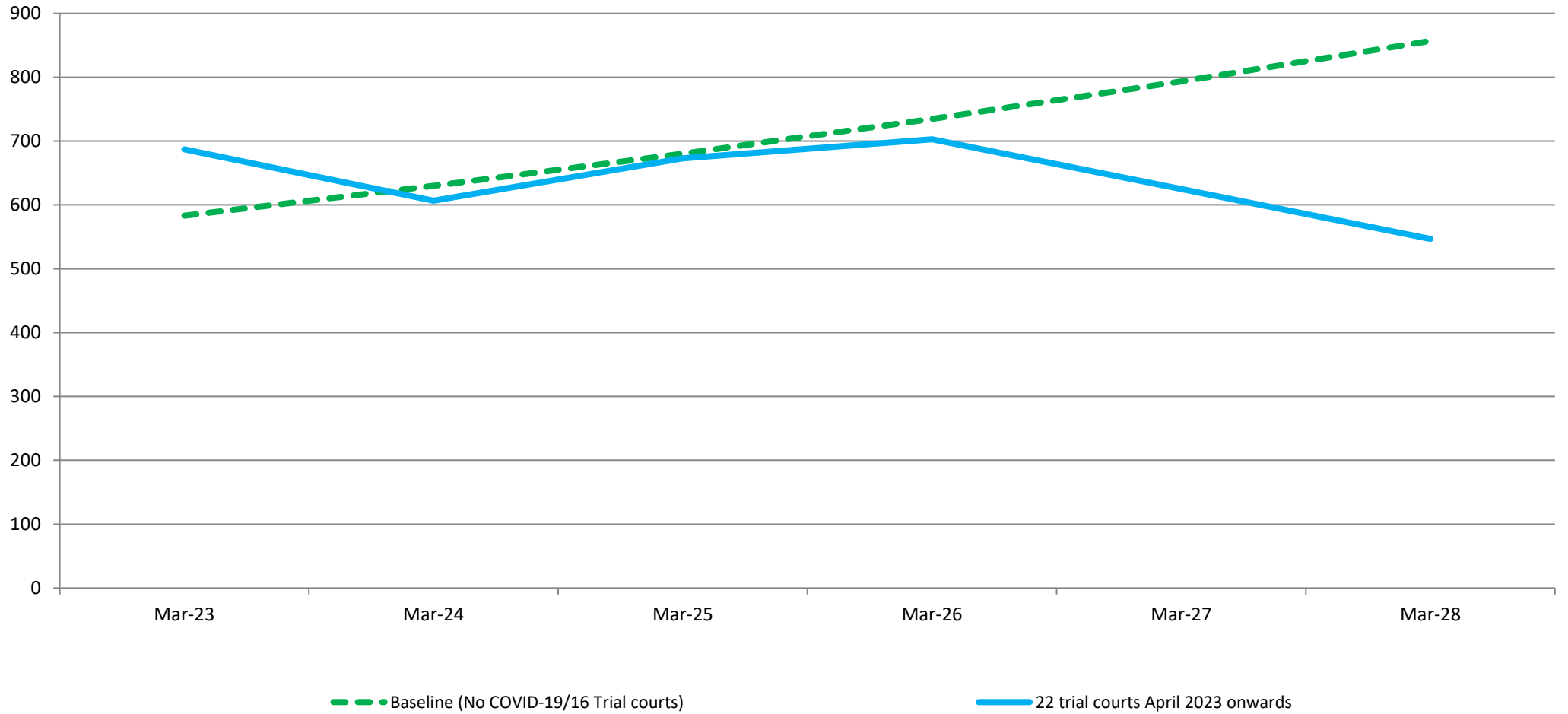
## High Court

High Court Indictments registered per month: Apr-Oct 2023 (70); Nov-Dec 2023 (80); Jan 2024 for 24 months (95) then Jan 2026 onwards (80)	Projected Scheduled Trials as at the end of					
	Mar-23	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID-19/16 Trial courts)	583	630	680	735	793	857
22 trial courts April 2023 onwards	687	607	673	703	625	547

High Court Indictments registered per month: Apr-Oct 2023 (70); Nov-Dec 2023 (80); Jan 2024 for 24 months (95) then Jan 2026 onwards (80)	Projected Trial Delay in weeks as at the end of					
	Mar-23	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID-19/16 Trial courts)	40	44	49	55	60	66
22 trial courts April 2023 onwards	50	42	49	52	44	36

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown'

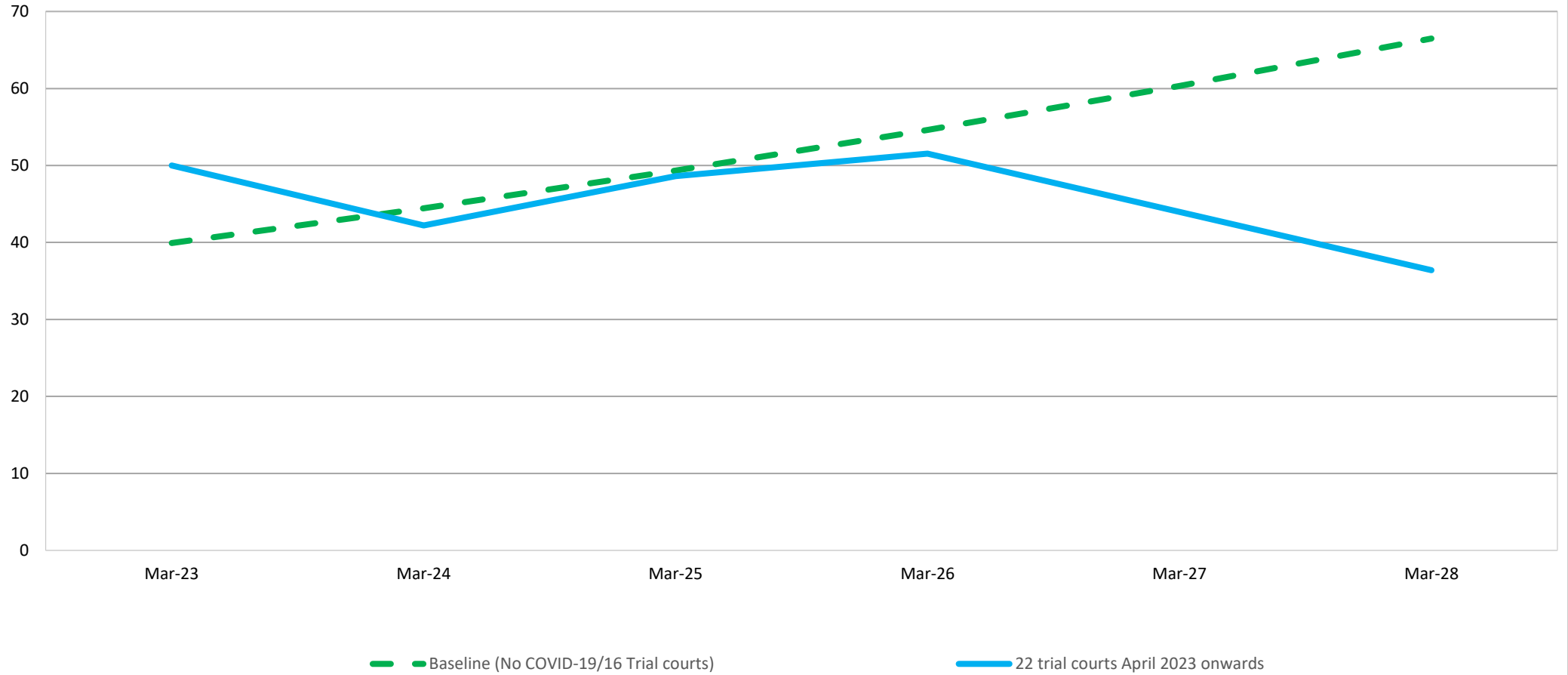
## High Court - Projected Scheduled Trials - Increasing indictments from April 2023 then reduction from January 2026



# High Court - Projected Average weeks to Evidence Led Trial

## Increasing indictments from April 2023 then reduction from January 2026

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown





## Sheriff Court Solemn

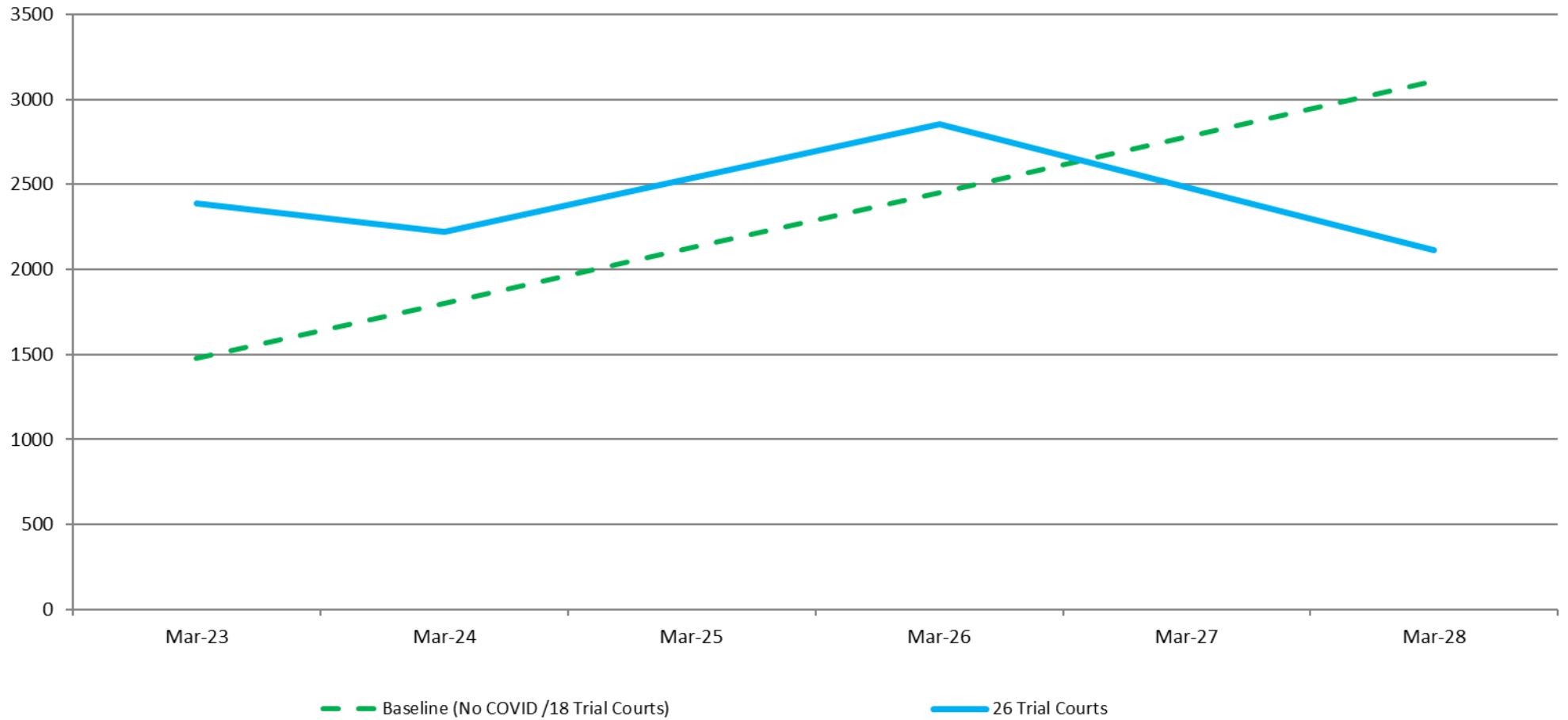
Sheriff Court Solemn Indictments registered per month: 2023/24 (630); 2024/25 & 2025/26 (700) then Apr 2026 onwards (600)	Projected Scheduled Trials as at the end of					
	Mar-23	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID /18 Trial Courts)	1477	1802	2128	2454	2779	3105
26 Trial Courts	2389	2223	2540	2857	2484	2110

Sheriff Court Solemn Indictments registered per month: 2023/24 (630); 2024/25 & 2025/26 (700) then Apr 2026 onwards (600)	Projected Trial Delay in weeks as at the end of					
	Mar-23	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID /18 Trial Courts)	28	34	40	46	52	58
26 Trial Courts	45	42	48	54	47	40

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown'

## Sheriff Court Solemn - Projected Scheduled Trials

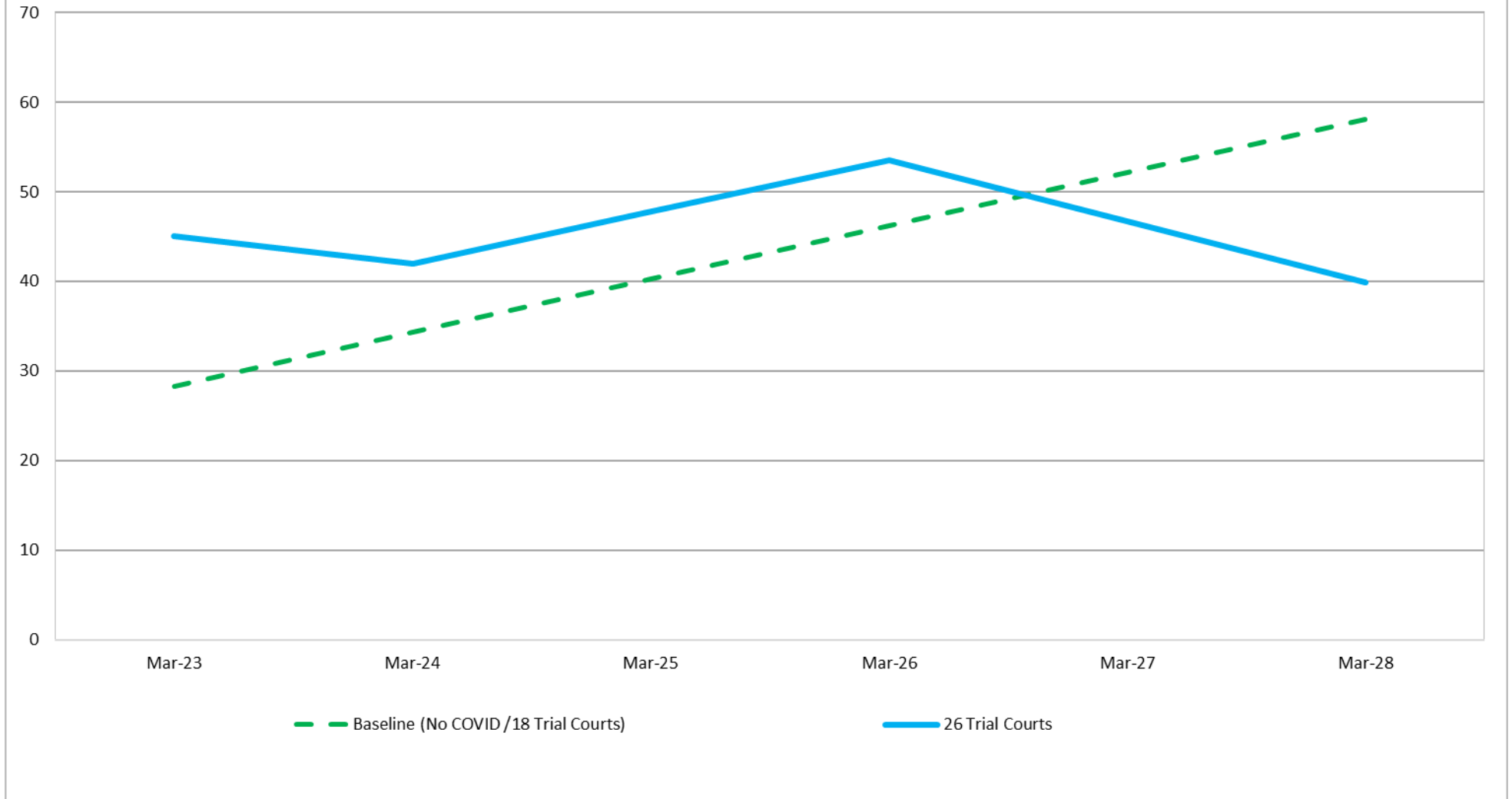
### Increased indictments for 3 years then reduction from April 2026



# Sheriff Court Solemn - Projected Average weeks to Evidence Led Trial

## Increased indictments for 3 years then reduction from April 2026

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month sh



## Sheriff Court Summary

<b>Sheriff Court Summary</b> <b>Complaints registered per month: 2023/24 (5400) then Jan 2024 onwards (5000)</b>	Projected Scheduled Trials as at the end of			
	Mar-23	Mar-24	Mar-25	Mar-26
Baseline (No COVID / 33 Trial courts)	14000	16600	16600	14000
33 Trial Courts	20064	20770	16340	14000

<b>Sheriff Court Summary</b> <b>Complaints registered per month: 2023/24 (5400) then Jan 2024 onwards (5000)</b>	Projected First Available Trial Date in weeks as at the end of			
	Mar-23	Mar-24	Mar-25	Mar-26
Baseline (No COVID / 33 Trial courts)	13	13	13	13
33 Trial Courts	14	14	13	13

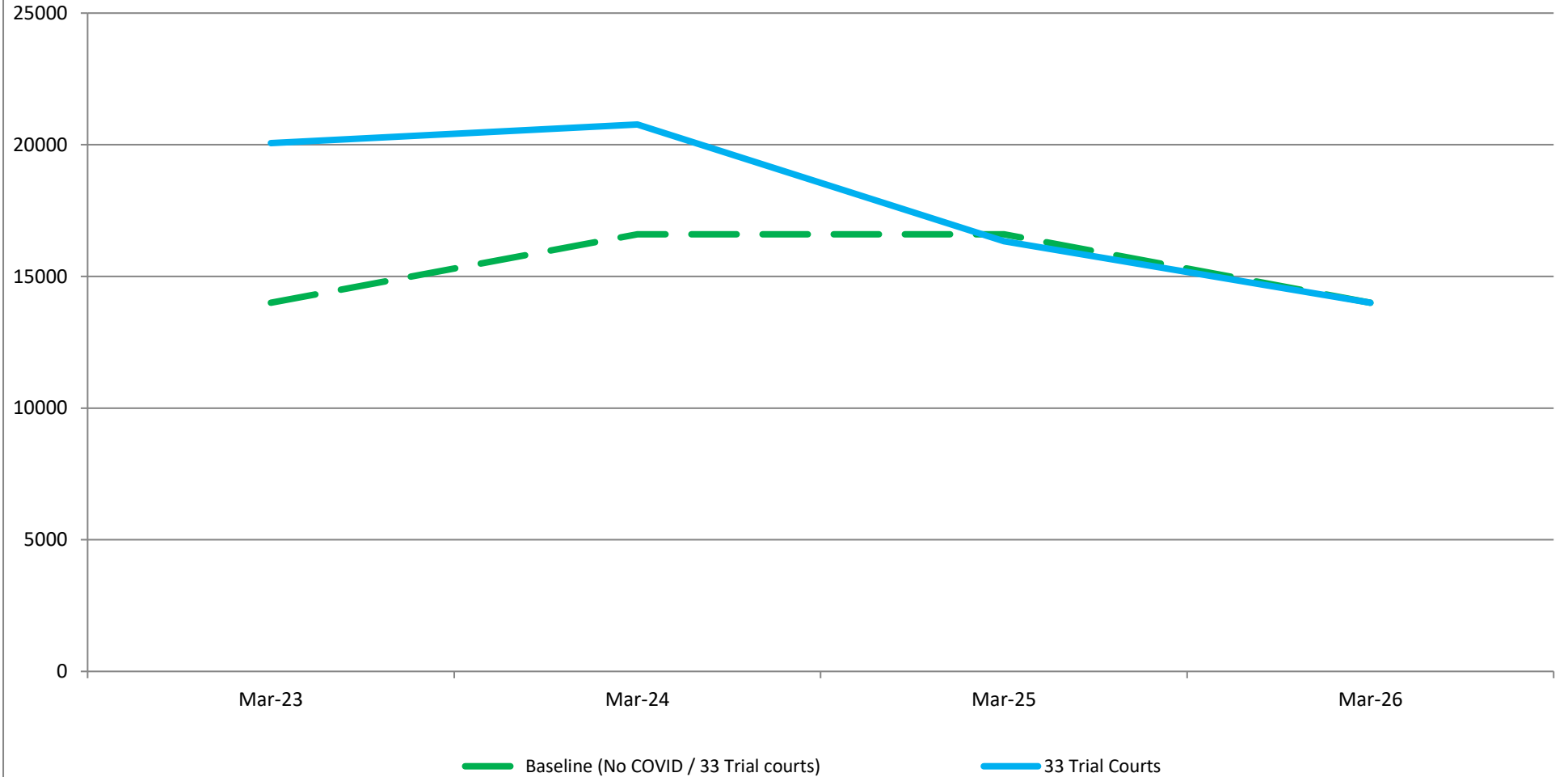
<b>Sheriff Court Summary</b> <b>Complaints registered per month: 2023/24 (5400) then Jan 2024 onwards (5000)</b>	Projected Trial Delay in weeks as at the end of			
	Mar-23	Mar-24	Mar-25	Mar-26
Baseline (No COVID / 33 Trial courts)	23	32	32	23
33 Trial Courts	45	48	31	23

First Available Trial Date is 'Earliest trial diet available in court programme following a 'not guilty' plea'

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown'

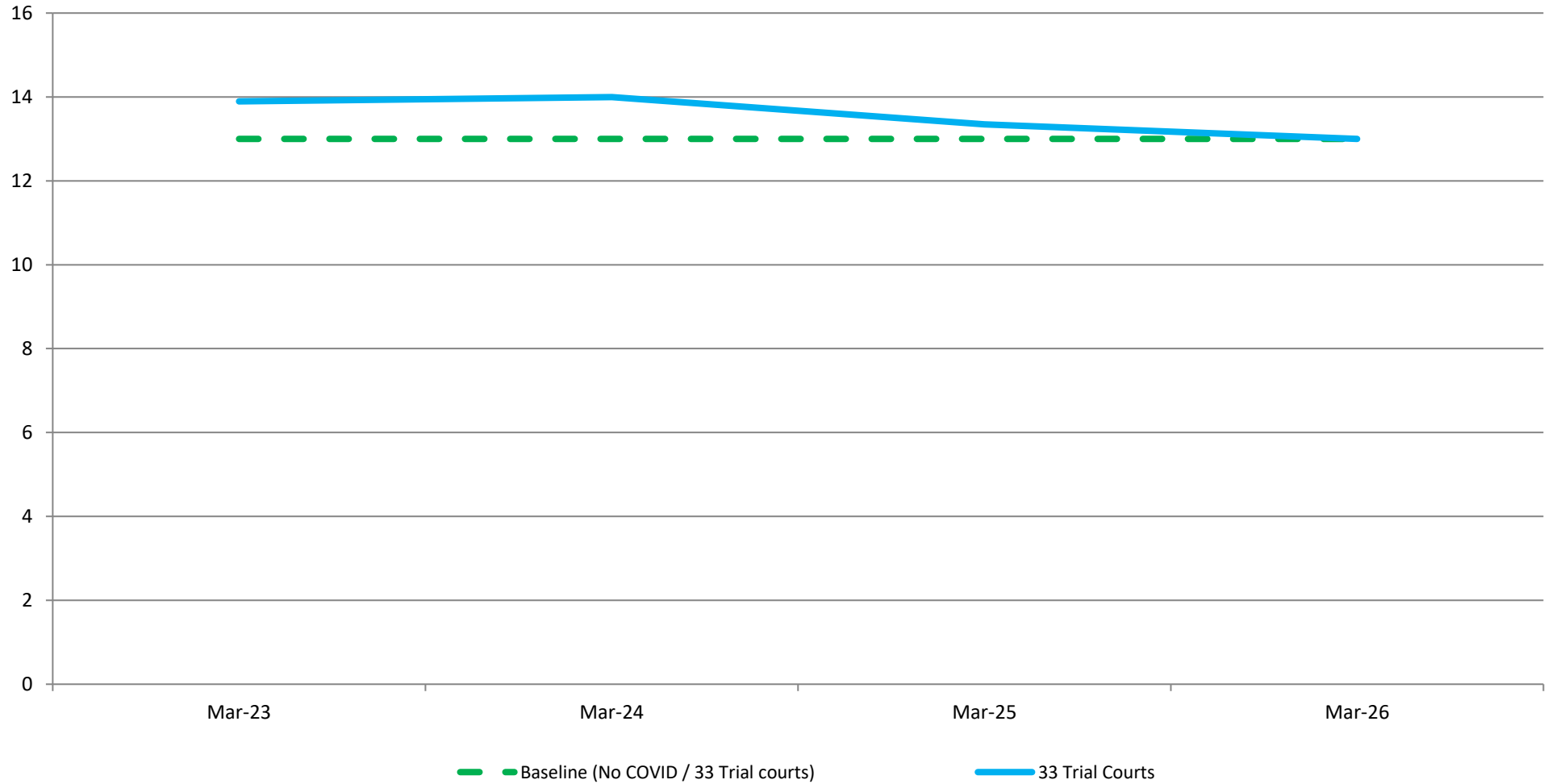
# Sheriff Court Summary - Projected Scheduled Trials

5400 complaints per month from April 23 then reduction to 5000 from January 24



# Sheriff Court Summary - Projected First Available Trial Date

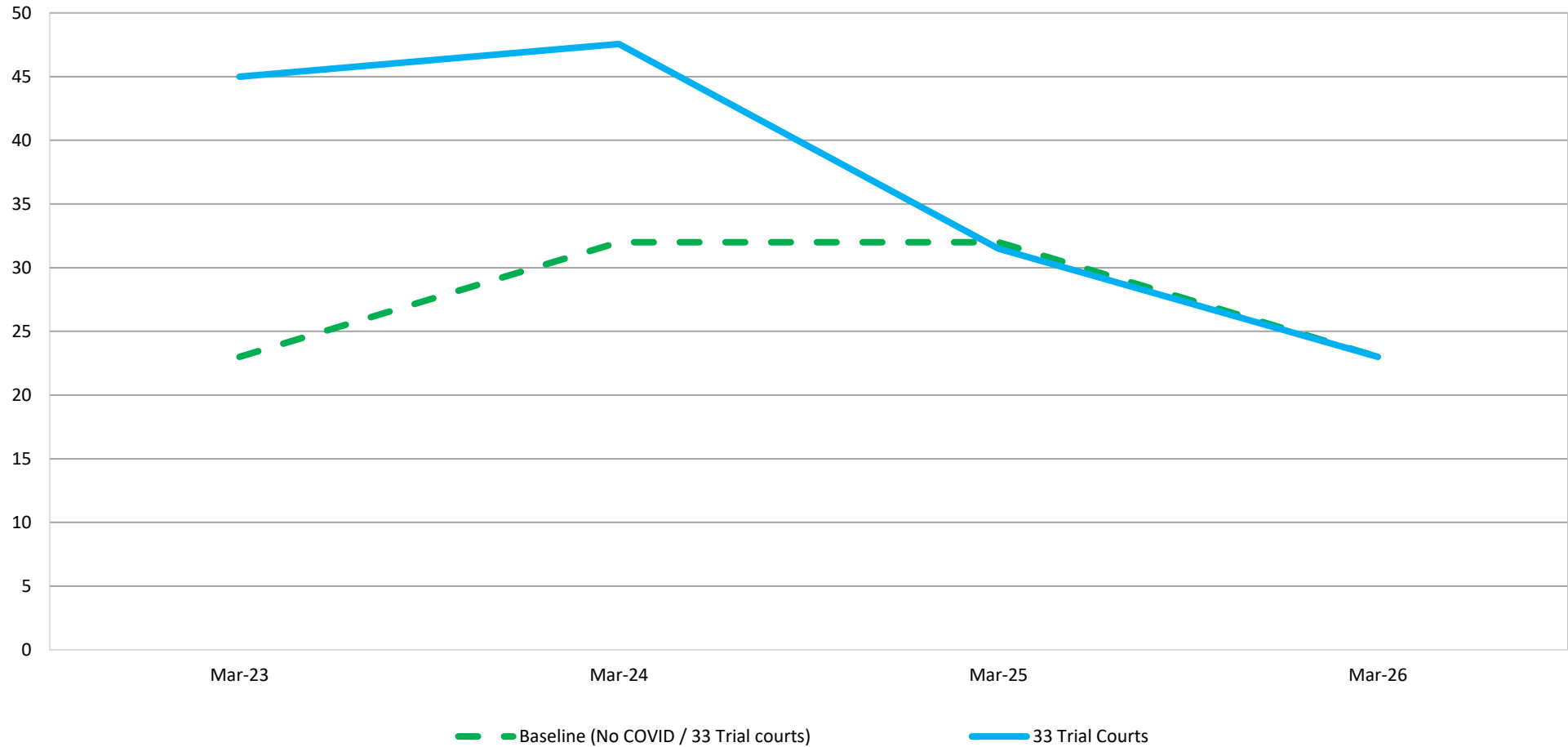
5400 complaints per month from April 23 then reduction to 5000 from January 24



# Sheriff Court Summary - Projected Average weeks to Evidence Led Trial

## 5400 complaints per month from April 23 then reduction to 5000 from January 24

Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occ



## Modelling Assumptions

Metrics	High Court	Sheriff Court Solemn	Sheriff Court Summary
Scheduled Trials (pre COVID-19)	390	500	14000
Average weeks to Evidence Led Trial (pre COVID-19)	22	11	23
Trial courtrooms (pre COVID-19)	16	18	33
Average length of Evidence Led Trial	6 days	3 days	2 hours 40 minutes
Conversion rate of Trials Called to Registrations	80%	71%	62%
Conversion rate of Evidence Led Trials to Trials Called	62%	36%	17%

### Projected scheduled trials methodology

Scheduled trials as at last data point plus estimated new trials fixed per month minus trials concluded per month.

### Projected delay periods methodology

Delay as at last data point divided by scheduled trials at last data point multiplied by projected scheduled trials.

### Future levels of solemn business

High Court – indictments registered have been at a lower rate than pre COVID. COPFS forecast that the level of indictments registered will increase to 95 per month for a period of two years.

Sheriff Solemn - indictments registered have been at a higher rate than pre COVID and are in line with COPFS forecast for 2023/24, while petitions registered continued to increase following the pre-COVID trend. COPFS forecast that the level of indictments registered will increase to 700 per month for a period of two years.

### Baseline

When the modelling work commenced, baselines were introduced to reflect a situation that assumed the pandemic had not happened and that the number of trial courts was unchanged. The baselines provide a useful comparator within the models that aids understanding and helps to quantify recovery.

For summary business, a flat baseline was established and this has proven useful in measuring recovery as case levels had remained relatively stable until 2023/24 saw a spike in complaints registered due to a COPFS non-COVID related change in marking timescales that would have pushed scheduled trials up. The summary baseline reflects the impact of this change.



For solemn business, the trend of increasing indictments that was evident pre COVID has continued with the increased levels of petitions reflected through higher levels of indictments in the coming years. As a result the trial baseline has been revised to include the trend of non-COVID related indictment increases.

#### Time Periods to Trial Diets

In a complex justice system multiple system factors impact on the time to trial, including; case preparation, availability of forensic evidence, disclosure, witness availability, failure to appear, parties not ready to proceed, lack of court time. These factors create non linearity, which requires further analysis to understand and quantify the modelling complexities.

The modelling currently assumes a linear relationship between number of trials forecast and the time to trial, with an estimate of factors built in. Therefore some caution is advised when using the time to trial projections. The actual average time between the pleading diet and completed evidence led trials is published monthly in the SCTS criminal case throughput report