

CRIMINAL COURT MODELLING



October 2024

Introduction and Key Points

This paper provides modelling for criminal business in Scotland's High Court and Sheriff Courts over the coming years. It provides an indication of the likely levels of business (in the form of projected scheduled trial numbers and associated waiting periods) drawing on the current assessment of likely future case levels. It sets out what the likely trial levels and waiting periods will be against a range of different court capacity levels – providing an indication of the level of court provision that will be necessary to maintain an effective system.

The impact of the COVID-19 pandemic saw the number of scheduled criminal trials in Scotland more than double to a peak of 43,606 in January 2022. Since then, with the introduction of additional trial courts, this has reduced to 23,361 as at the end of September 2024 – a reduction of 46% since the peak and a reduction of 86% in the additional level of backlog created by the pandemic. The additional trial courts, combined with excellent levels of collaboration across justice organisations, the legal profession and the 3rd sector, have increased both trial capacity and case conclusions. The overall aim is to return the number of scheduled trials to an optimum level of around 20,000.

This positive picture demonstrates the success of the criminal court recovery programme in tackling excessive backlogs – however the modelling also makes clear that the level of business entering Scotland's criminal courts has changed quite significantly since before the pandemic. In particular the level of solemn business (more serious criminal cases) has increased significantly and continues to do so. As a result of this the current level of trial courts operating represents the level necessary to ensure that recovery can be maintained and to avoid a sudden and highly negative increase in both outstanding trial levels and associated waiting periods. Projections indicate that an additional trial court may be required in the High Court to achieve recovery by 2026.

A number of initiatives intended to increase efficiency are under way – most notably the summary case management pilot, which has the potential to significantly improve efficiency in Scotland's summary courts. The modelling illustrates the potential of this initiative to realise improvements, which will be dependent on the speed at which it can be implemented with partners.

Background

In response to the impact of the 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, resources were switched from summary to solemn. An additional 2 trial courts were introduced in the High court and an additional 6 for Sheriff Solemn. At this point the 10 additional Sheriff Summary trial courts were removed.

Scotland's trial court capacity from April 2023 to date is therefore 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 (the same as pre-pandemic).

While modelling is not an exact science, it helps assess different scenarios and inform future decisions. Actual trial backlogs and waiting periods will remain sensitive to changes in both registration levels (input) and in trial court capacity (throughput). The combination of this annual modelling report and the regular publication of criminal case throughput reports allows measurement of the impact of the current programme on both scheduled trials and waiting periods, illustrating the progress being made and the challenges ahead.

This updated report is the result of extensive analysis of the court programme, reflecting the reduction in backlogs, the increased level of new petitions (resulting in a higher number of registered indictments) and the potential positive impact of the summary case management (SCM) pilot once implemented nationally.

Future Business Levels – Analysis

The modelling demonstrates that solemn trial baselines have continued to grow, following the consistent upward trend that was evident before the pandemic. As a result the pandemic-related solemn case backlog has now been replaced by a new higher baseline of scheduled trials. Future transformation of the prosecution of sexual offences, including the impact of the 2023 Court of Appeal judgement on the law of corroboration, may further increase the level of petitions and subsequent indictments. This indicates that the increased level of solemn trial court capacity will be required in the long term with the solemn models illustrating the substantial impact on scheduled trials and associated waiting periods should that trial court capacity be removed.

The solemn models assume that the time bar extensions provided under the Coronavirus (Recovery and Reform) (Scotland) Act 2022 will remain in force until 30 November 2025. Regulations have been laid to provide for this extension, however they are subject to parliamentary approval. Should they not remain in force the only option would be for an application to be made to the courts to extend the time limit in each individual case – adding significantly to workload. If the court does not grant the application, or no application is made, the accused would be released on bail or the case would fall, when the relevant time limit expires. The application process would require court and other judicial partner resource, adding an extra step to the proceedings, ultimately impacting on time to trial, the size of the prison population and on victims and witnesses.

In relation to summary business, despite higher than expected levels of complaints registered, scheduled trials will continue to reduce due to the national roll out of SCM. It may be feasible to consider a further switch of resources from summary to solemn at a future point. Regular discussions continue to take place through the Criminal Justice Board and with the Faculty of Advocates and Law Society of Scotland – focusing on both the pressures faced by the legal profession and the opportunities presented through initiatives such as the national implementation of SCM.

Modelling tables, Charts & Commentary

Pages 4-12 of this paper provide modelling data and charts for each of: The High Court (p4-6) Sheriff solemn courts (p7-9) and sheriff summary courts (p10-12) alongside commentary to explain the projections and detail presented.

High Court

High Court	Projected Scheduled Trials as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Indictments registered per month (92)					
Baseline (No COVID-19/16 Trial courts)	630	680	735	793	857
22 Trial Courts April 2023 onwards	693	726	760	793	826
Return to 16 Trial Courts April 2025 onwards	693	726	998	1269	1540
23 Trial Courts April 2025 onwards (1 extra)	693	726	720	714	707

High Court	Projected Ave. weeks to Evidence Led Trial as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Indictments registered per month (92)					
Baseline (No COVID-19/16 Trial courts)	44	49	55	60	66
22 Trial Courts April 2023 onwards	45	47	49	51	54
Return to 16 Trial Courts April 2025 onwards	45	47	65	82	100
23 Trial Courts April 2025 onwards (1 extra)	45	47	47	46	46

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

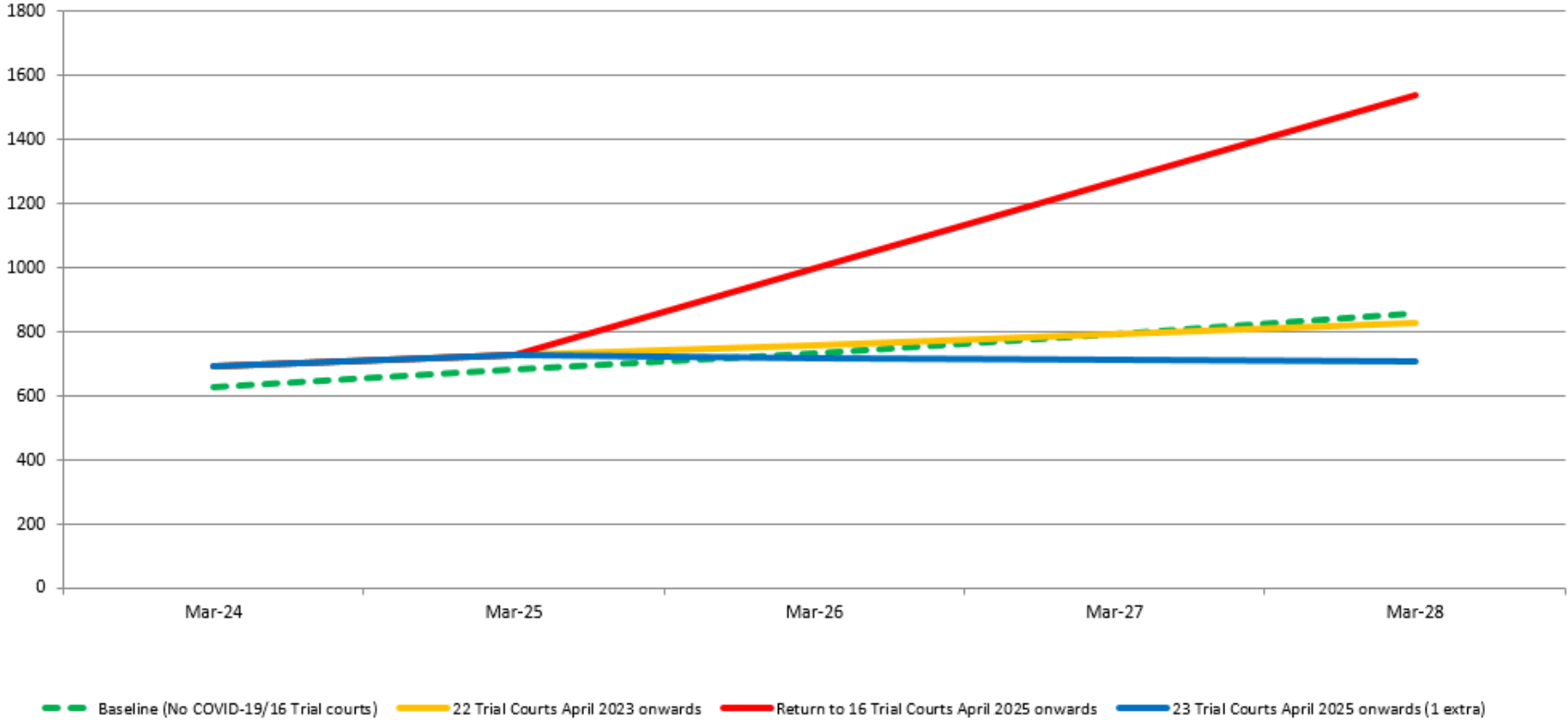
The main challenges in the High court remain similar to the previous modelling report:

- registration levels remain high and there is a significant upward trend in indictments;
- the sustained number of complex, multi-accused and lengthy trials and multi-judge appeals.
- COPFS plan to register 92 indictments per month for the foreseeable future but have indicated that levels could be even higher. (Pages 5-6).

In view of these continuing pressures the modelling demonstrates the impact of adding a further trial court in order to reduce scheduled trial levels and journey times to evidence-led trial. At the level of 92 indictments per month, scheduled trials would now meet the baseline by March 2027. On the basis of current projections one additional trial court would be required from 2025 to secure baseline recovery by 2026. COPFS have indicated there are a number of factors that could increase the monthly level of indictments – potentially quite significantly above this level – including the potential impact of the 2023 Court of Appeal judgement on the law of corroboration. Should that position transpire a number of additional trial courts would be required to manage throughput and we would revisit this modelling based on the new input levels.

High Court - Projected Scheduled Trials

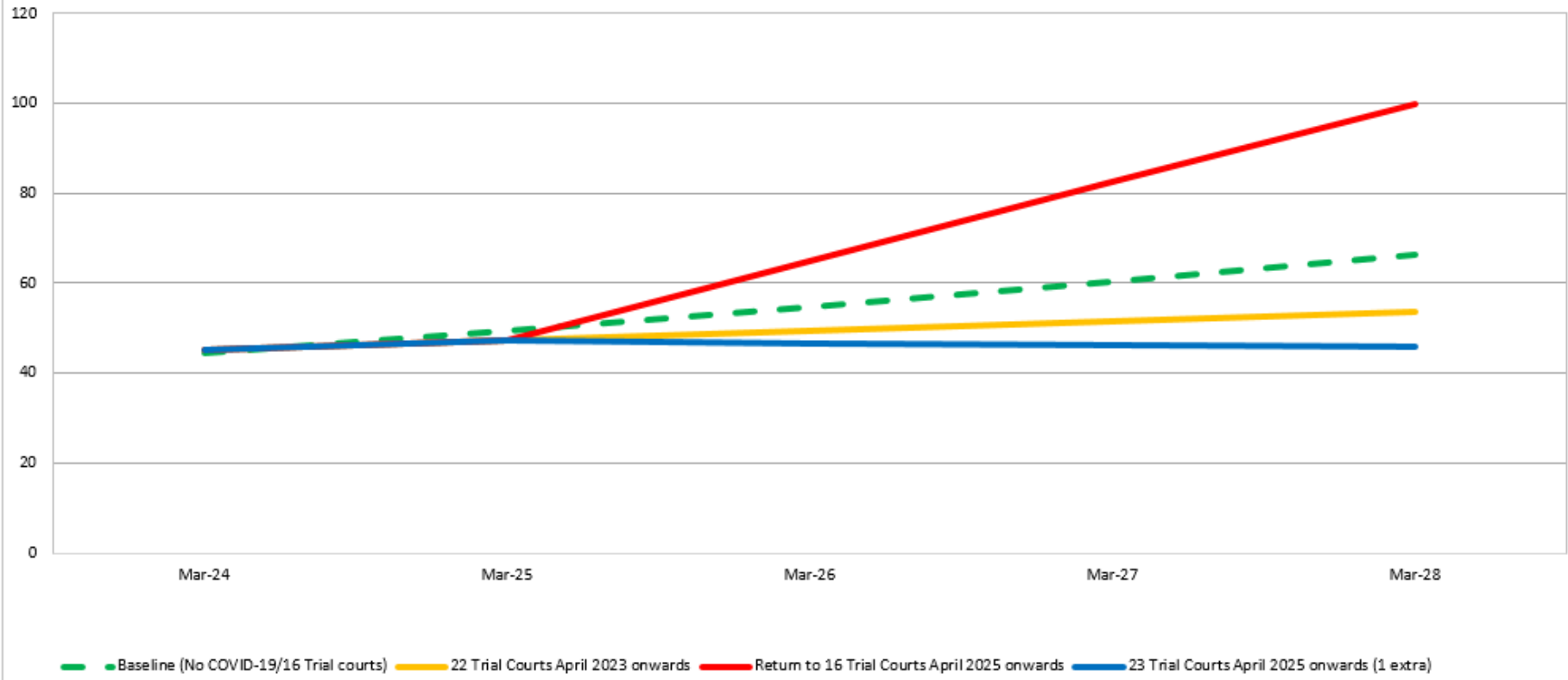
92 indictments registered per month



High Court - Projected Average weeks to Evidence Led Trial

92 indictments registered per month

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



Sheriff Court Solemn

Sheriff Court Solemn Indictments registered per month: 2024/25 & 2025/26 (650) then Apr 2026 onwards (550)	Projected Scheduled Trials as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID /18 Trial Courts)	1802	2128	2454	2779	3105
26 Trial Courts April 2023 onwards	1709	1495	1281	500	500
Return to 18 Trial courts April 2025	1709	1495	2693	3218	3743

Sheriff Court Solemn Indictments registered per month: 2024/25 & 2025/26 (650) then Apr 2026 onwards (550)	Projected Ave. weeks to Evidence Led Trial as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
Baseline (No COVID /18 Trial Courts)	34	40	46	52	58
26 Trial Courts April 2023 onwards	40	36	32	11	11
Return to 18 Trial courts April 2025	40	36	58	68	77

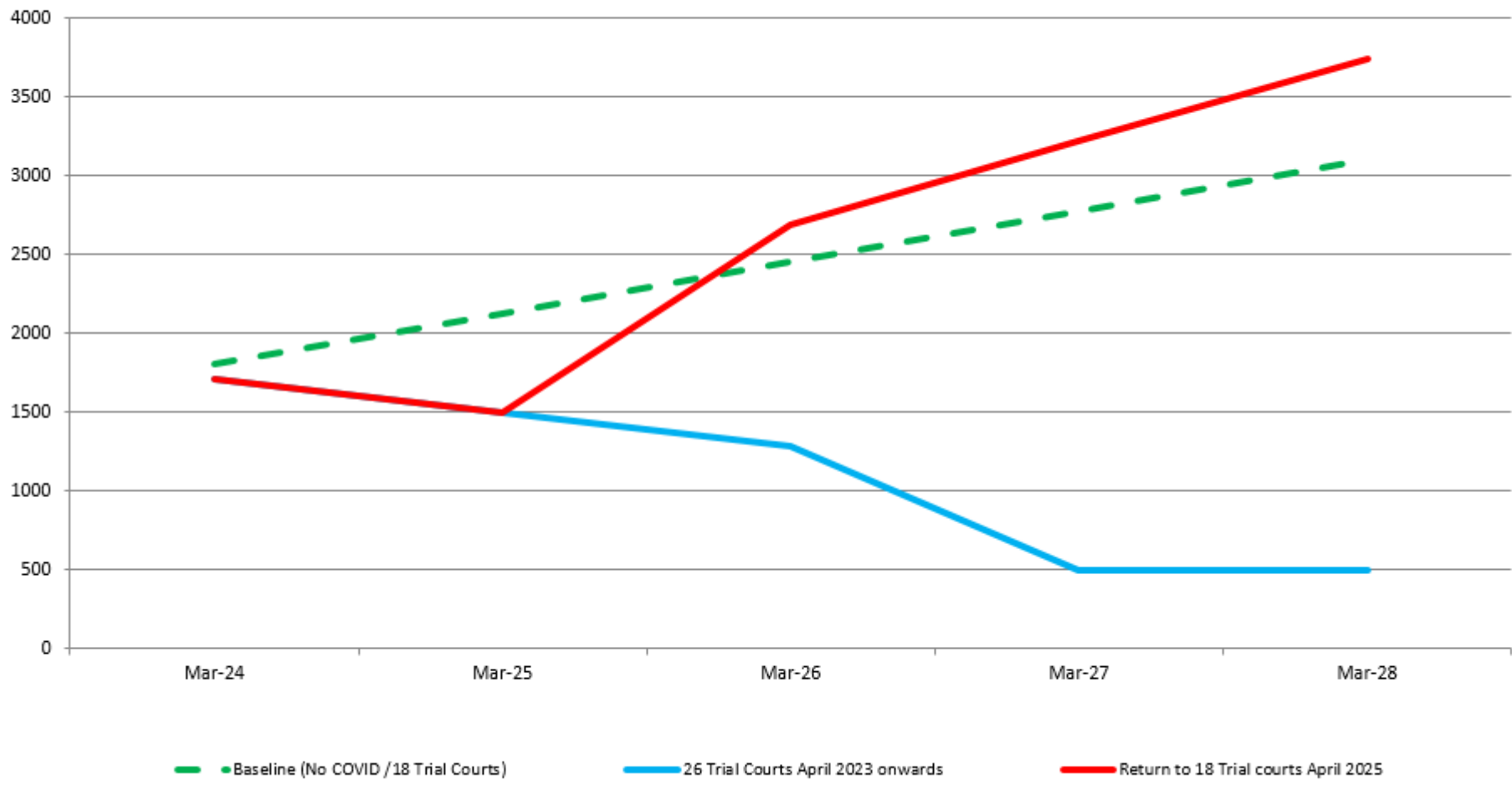
Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown'

While scheduled trials have now reached the revised baseline earlier than anticipated, they remain three times higher than 2019-20 levels. COPFS now plan to register 650 indictments per month for the coming 2 years, before dropping back to 550 per month. This is significantly higher than 2019-20 levels, further demonstrating the trend of increasing solemn case levels. Additional trial courts therefore remain essential until April 2026, to ensure that scheduled trial levels continue to reduce and the current long waits for victims and witnesses are addressed. As recovery continues to progress this will also have a positive impact on the length of time that accused persons spend on pre-trial remand.

Scheduled trials reduced in 2023/24 by a higher volume than expected. This is due to lower levels of new business than forecast and a significant rise in early guilty pleas (section 76) as evidenced by SCTS [published statistics](#) where the 2023/24 Section 76 volume is was 29% higher than pre-COVID levels (2024/25 is on track to be 50% higher than pre-COVID volumes). Early guilty pleas mean trial diets are not fixed so an increase in Section 76 causes a slowdown in the growth of Scheduled trials.

Sheriff Court Solemn - Projected Scheduled Trials

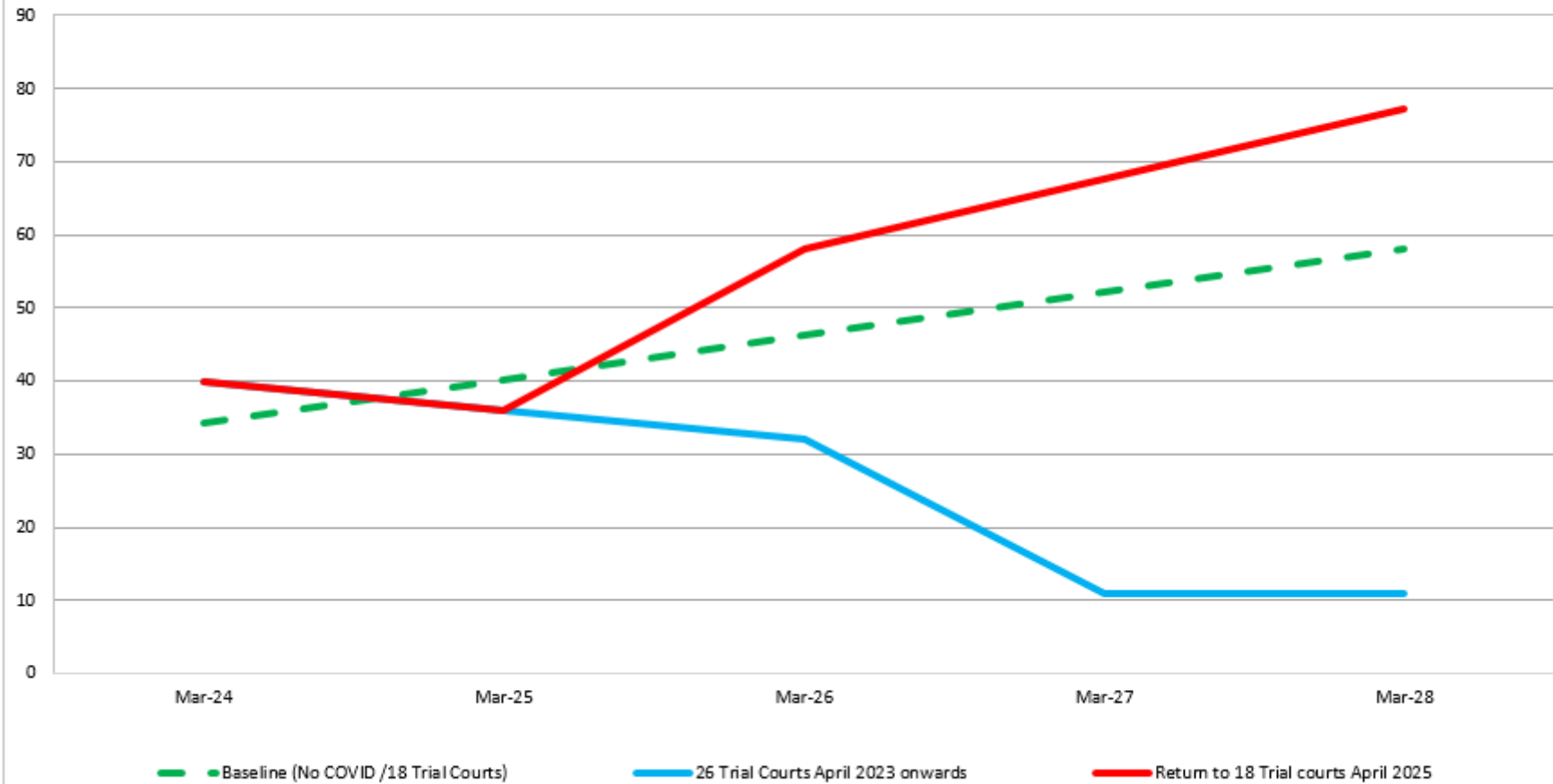
Increased indictments for 2 years then reduction from April 2026



Sheriff Court Solemn - Projected Average weeks to Evidence Led Trial

Increased indictments for 2 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

Sheriff Court Summary	Projected Scheduled Trials as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
33 Trial Courts - vary volume of complaints registered per month					
Baseline (No COVID / 33 Trial courts)	16600	16600	14000	14000	14000
5400 for 1 year then 5000 complaints - no further SCM roll out	20644	19030	15303	14000	14000
5400 for 1 year then 5000 complaints - SCM rolled out within 2 years	20644	18130	14000	14000	14000
5800 for 1 year then 5000 complaints - no further SCM roll out	20644	21142	17415	14000	14000
5800 for 1 year then 5000 complaints - SCM rolled out within 2 years	20644	20242	14514	14000	14000

Sheriff Court Summary	Projected Ave. weeks to Evidence Led Trial as at end of:				
	Mar-24	Mar-25	Mar-26	Mar-27	Mar-28
33 Trial Courts - vary volume of complaints registered per month					
Baseline (No COVID / 33 Trial courts)	27	27	23	23	23
5400 for 1 year then 5000 complaints - no further SCM roll out	38	31	25	23	23
5400 for 1 year then 5000 complaints - SCM rolled out within 2 years	38	30	23	23	23
5800 for 1 year then 5000 complaints - no further SCM roll out	38	35	29	23	23
5800 for 1 year then 5000 complaints - SCM rolled out within 2 years	38	33	24	23	23

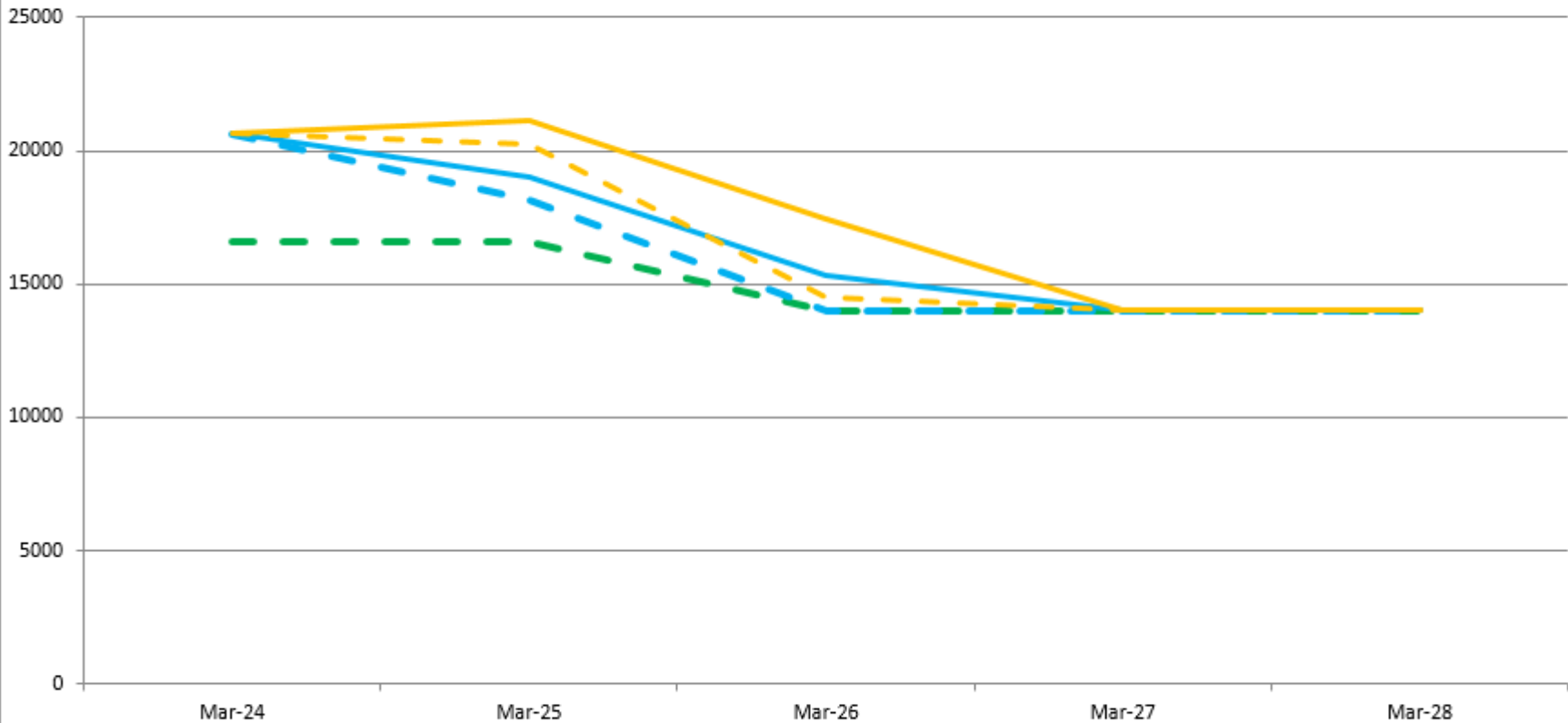
Average weeks to Evidence Led Trial is 'Average weeks from Pleading Diet to Evidence Led Trial where ELT occurs in month shown'

Scheduled trials are continuing to reduce, albeit over a longer timescale than previously modelled. This reflects both Police Scotland and COPFS clearing backlogs, resulting in in complaints registered in court averaging 5400 per month as opposed to the forecast of 5000. The increase has been driven partly by increased levels of petition cases being registered as 'reduced to summary' cases. COPFS have indicated that registrations could grow to 5800 per month, so this scenario has been modelled above. Additionally, COPFS are now marking the majority of summary cases within 28 days – while this does not increase the overall number of cases registered it did impact on the scheduled trials baseline as cases are now added to the baseline earlier.

The route to improve efficiency in the summary courts is to ensure the earliest appropriate resolution of cases, to avoid trials being unnecessarily fixed. The [evaluation](#) of the SCM pilot was published on 20th September 2024, showing real potential to reduce the level of trials that need to be fixed. It is anticipated these benefits could be replicated nationally once the pilot approach is fully implemented. The modelling projects the impact that such a national roll-out could achieve in the coming years. In addition to significantly reducing the burden on victims and witnesses (particularly police witnesses) successful implementation should allow summary court capacity to be reduced over time – supporting reallocation to address increasing pressures in solemn business should they persist as modelled.

Sheriff Court Summary - Projected Scheduled Trials

Vary complaints registered per month

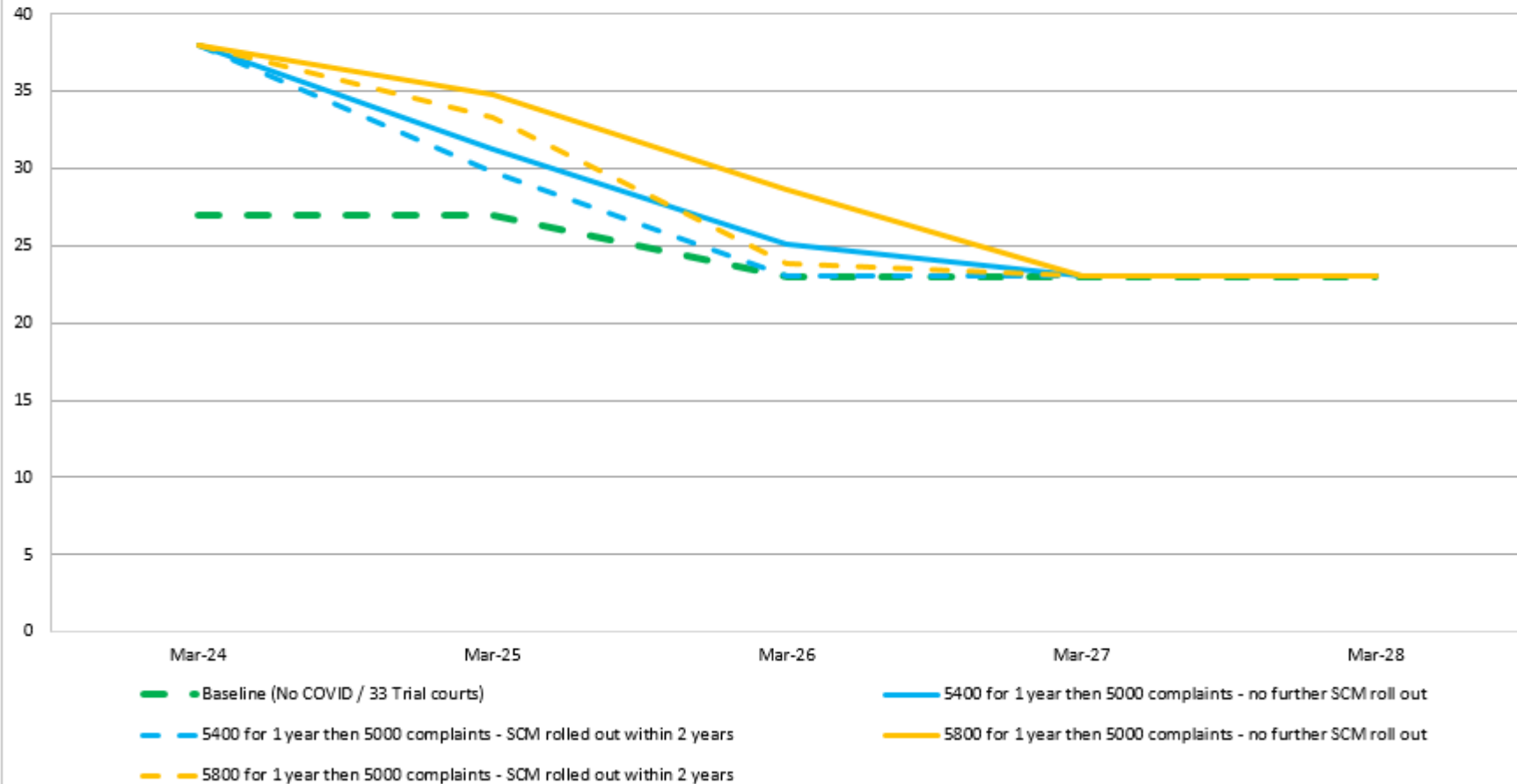


- Baseline (No COVID / 33 Trial courts)
- 5400 for 1 year then 5000 complaints - no further SCM roll out
- 5400 for 1 year then 5000 complaints - SCM rolled out within 2 years
- 5800 for 1 year then 5000 complaints - no further SCM roll out
- 5800 for 1 year then 5000 complaints - SCM rolled out within 2 years

Sheriff Court Summary - Projected Average weeks to Evidence Led Trial

Vary complaints registered per month

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



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

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 business

High Court – indictments registered in 2023/24 were lower than COPFS forecast and pre COVID. COPFS latest forecast is an increase to 92 per month (100 per month including Section 76 cases).

Sheriff Solemn - indictments registered have been at a higher rate than pre COVID and are lower than COPFS forecast in 2023/24. COPFS latest forecast is that the level of indictments registered will be around 650 per month for a period of two years then 550 per month. These figures include Section 76 and the model makes the necessary adjustments).

Sheriff Summary – complaints registered have been higher than COPFS forecasts for the last 18 months and are currently averaging 5400 per month rather than the COPFS forecast of 5000. A higher level of 5800 has been modelled also.

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 initially established and this has proven useful in measuring recovery as case levels had remained relatively stable until 2023/24 which 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 was amended to reflect the impact of this matter.

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 was 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 on the [SCTS website](#).

Scottish Courts and Tribunals Service

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