

THE CENTRE FOR PUBLIC DATA

# Data gaps in the justice system

Interim report, September 2022

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## 1. Summary

This interim report begins to map some of the most pressing data gaps in the English and Welsh justice system. We define ‘data gaps’ as areas where a lack of reliable data means that important questions from justice system stakeholders cannot be answered.

We have reviewed more than 165 reports published by Select Committees, independent bodies and civil society organisations, compiled our findings and shared them publicly, and reported on key themes identified by multiple stakeholders.

In this interim report, we focus on three major data gaps and the documented impact these have on justice system users:

- 1. Court operations:** Authorities lack basic information management data on court operations. Questions remain unanswered on the impact of the Covid-19 pandemic in courts, with information gaps on the make-up of the court backlog and how effective remote hearings have been in delivering fair justice. Data gaps are particularly problematic in the magistrates’ courts.
- 2. Performance data:** HM Courts and Tribunals Service (HMCTS) and the Ministry of Justice (MoJ) lack sufficient performance data on a range of areas. This has caused failures to evaluate the interventions of both public services and external suppliers. Patchy performance data limits public scrutiny of services and means that lessons on best and worst practice are often missed.
- 3. The needs of individuals:** The failure to collect data on certain groups within the justice system leads to the needs of individuals being under-addressed. For example, within the prison population, there is a lack of reliable data on mental health and neurodiversity needs, and the gender-specific health and social needs of women. Data is also limited on children separated in young offender institutions, a highly vulnerable population.

These significant and well-documented gaps affect the experience of justice system users, access to justice and the efficient operation of the justice system. In this report, we lay out the evidence on these gaps and their impact.

## 2. Background and context

This interim report is part of a longer-term research project on mapping data gaps in the justice system within England and Wales. We believe that data gaps - defined as questions from justice system stakeholders that cannot be answered due a lack of official data - matter because they restrict public scrutiny where services may be failing.

This research, which began in August 2022, has two ambitions. First, we intend to highlight the most pressing data gaps within the justice system. Second, we seek to establish a robust, efficient methodology to identify major data gaps that can be reused across multiple

policy areas. We hope others will build on this methodology, and that it will support the UK statistical system's obligations to deliver relevant data and statistics.<sup>1</sup>

The role and function of official data is an area of increasing research interest<sup>2</sup>, but we are not aware of other literature reviews to identify unmet needs for data. The Office for Statistics Regulation (OSR), the UK's statistics regulator, conducts 'systemic reviews' when it believes there is a need for additional statistics in an area, but these tend to be based on round tables and interviews.<sup>3</sup> Full Fact, an independent fact-checking organisation, ran the 'Need to Know' programme ran in 2016-17 with the ESRC, UK Statistics Authority and the House of Commons Library, which again involved meeting with stakeholders to discuss future information needs<sup>4</sup>.

### 3. Methodology

We began by identifying major justice system stakeholders and relevant research they have published. The sources we have studied to date are:

- **Select Committee reports:** We studied all reports published by the Justice Select Committee,<sup>5</sup> the Justice and Home Affairs Committee (House of Lords)<sup>6</sup> and the Public Accounts Committee<sup>7</sup> (only reports relating to the justice system) in the past five years - producing more than 50 candidate reports in total.
- **Major independent reports:** We studied major independent reports published in the past five years either commissioned by the Government, or published by independent bodies with a statutory role. Reports commissioned by the Government were selected by using the Ministry of Justice's publication website and choosing reports filtered by 'All research and statistics' with documents categorised as 'Independent report'.<sup>8</sup> Reports by independent bodies were limited to include the five Criminal Justice Inspectorates,<sup>9</sup> the National Audit Office (NAO) and the OSR. NAO reports were selected by filtering publications by 'Reports' and 'Crime, justice and law',<sup>10</sup> and OSR reports and commentary were selected by filtering publications by 'Systemic/Monitoring Reviews' with the 'Crime and Security' theme.<sup>11</sup> This produced 43 candidate reports in total.

<sup>1</sup> Office for Statistics Regulation, Code of Practice for Statistics, ['V1: Relevance to users'](#)

<sup>2</sup> For a current survey and bibliography, see e.g. Data & Society, [A Primer on Powerful Numbers](#).

<sup>3</sup> Office for Statistics Regulation, [Systemic Reviews](#).

<sup>4</sup> Full Fact, [Need to Know](#).

<sup>5</sup> Justice Select Committee reports from the past five years are found at two sources: UK Parliament, ['Reports, special reports and government responses: Justice Committee'](#); UK Parliament, ['Publications - Justice Committee'](#)

<sup>6</sup> UK Parliament, ['Reports, special reports and government responses: Justice and Home Affairs Committee'](#)

<sup>7</sup> UK Parliament, ['Reports, special reports and government responses: Public Accounts Committee'](#)

<sup>8</sup> GOV.UK, ['Research and statistics'](#)

<sup>9</sup> GOV.UK, ['Criminal Justice Inspectorates'](#)

<sup>10</sup> National Audit Office, ['Reports'](#)

<sup>11</sup> Office for Statistics Regulation, ['Publications: Systemic/Monitoring Reviews'](#)

- **Major civil society reports:** To identify relevant civil society stakeholders, we compiled a list of all civil society organisations that provided oral evidence to the Justice Select Committee since August 2020 (eventually we hope to extend this to the past five years). We then compiled relevant research publications from each organisation, producing 74 candidate reports in total.<sup>12</sup>

In time we plan to extend this to include Parliamentary written questions, academic research and media reporting among other sources (see ‘Conclusions and next steps’, below).

Once we identified relevant sources, we read the recommendations in each report and searched for relevant phrases including ‘data’, ‘information’, ‘gaps’, ‘lack’, ‘limited’ and others. Fully referenced findings were compiled in an online spreadsheet.<sup>13</sup> We are publishing all our research (which remains a work in progress) under an open licence, so that others may draw freely on our findings.

The findings in this interim report are only a handful of those that have emerged from our research. Over the coming months, we intend to add to our findings by studying written sources from other important stakeholders.

## Limitations of our methodology

Our methodology has the following limitations:

- We have not researched whether these data gaps have been filled (via the publication of relevant data or statistics) since they were identified by stakeholders, due to time constraints. We intend to audit the Government’s response to official recommendations further in the next stage of our research.
- These sources represent only the concerns of certain stakeholders. We assume that these stakeholders are broadly representative of justice system users more broadly. However, over the coming months, we intend to extend our research to include more sources, as above.
- We have based our research on published material, rather than interviewing stakeholders. This is because we want our methodology to scale.
- Our research is limited to the justice system in England & Wales.

## 4. Major data gaps

In this section, we present data gaps identified by multiple justice system stakeholders over the period we studied, and discuss the impact of each. This list presents only the most

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<sup>12</sup> The Centre for Public Data, [‘List of Relevant Civil Society Organisations’](#) (2022) [Work in Progress]

<sup>13</sup> The Centre for Public Data, [‘Thematic Findings from Sources’](#) (2022) [Work in Progress]

common themes: full details of all gaps identified in our research can be found in our online spreadsheets.<sup>14</sup>

## 4.1 Court operations

### Management data on court operations

Multiple stakeholders identified that HMCTS and the MoJ lack basic management information on court operations, and therefore struggle to predict future court demand and allocate resources effectively, particularly during the Covid-19 pandemic.

In May 2020, the Lord Chief Justice, the head of the Judiciary of England and Wales, claimed to be unable to access basic information on the state of the court backlog, including data on how many ongoing trials there were and the number of defendants awaiting trial in custody or on bail.<sup>15</sup> The Police, Fire & Crime Commissioner for Essex, in September 2020, noted that “it has been difficult to gain a true understanding of the backlog and its make-up”.

<sup>16</sup>

In October 2021, the NAO reported that long-standing data challenges, exacerbated by the pandemic, have obscured understanding of court demand.<sup>17</sup> The challenges mentioned include data not being collected systematically from the judiciary, and fragmented datasets across the justice system.

The Justice Select Committee states that ensuring courts can meet demand is one of the “core functions” of the MoJ<sup>18</sup>. Without reliable information on the pressures facing courts, however, the MoJ is hampered in its ability to forecast demand and distribute resources to tackle the backlog effectively.

### The operation and impact of remote hearings

Several stakeholders reported that court services in England and Wales appear to have a poor understanding of how remote hearings have impacted the delivery of justice and the experiences of users within the justice system.

In July 2020, the Justice Select Committee expressed concerns that no judicially or government-commissioned review of remote hearings had taken place.<sup>19</sup> Their report suggested that it would be difficult to perform systemic evaluation without collecting basic

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<sup>14</sup> *Ibid*

<sup>15</sup> Justice Committee, [‘Coronavirus \(COVID-19\): The impact on courts’](#) (2020)

<sup>16</sup> UK Parliament, [‘Written evidence from Police Fire & Crime Commissioner for Essex’](#) (2020), cited in: Justice Committee, [‘Court Capacity’](#) (2022)

<sup>17</sup> National Audit Office, [‘Reducing the backlog in criminal courts’](#) (2021)

<sup>18</sup> Justice Committee, [‘Court Capacity’](#) (2022), p. 4

<sup>19</sup> Justice Committee, [‘Coronavirus \(COVID-19\)...’](#) (2020)

information such as the mode of hearing (remote, hybrid or in-person), the types of remote technology used and a record of any technical issues.

A joint briefing by the charities Transform Justice, Fair Trials and Just for Kids Law, published in October 2021, outlined evidence suggesting that remote hearings can lead to disproportionately severe justice outcomes, including higher levels of custodial sentencing, reduced rates of legal representation and increased rates of guilty pleas.<sup>20</sup> However, without availability to higher-quality data, the extent to which remote hearings may have contributed to more severe outcomes will remain largely unknown.

Sources also identified that a lack of data was available on how the increased use of remote hearings have affected lay users and vulnerable groups. In July 2020, the Justice Select Committee concluded that “the use of technology in courts and tribunals may not always be tailored to the needs of the most vulnerable users” and pointed toward evidence to suggest that remote hearings can reduce the engagement of vulnerable users.<sup>21</sup>

The NAO, writing in October 2021, argued that the MoJ’s “slow progress” on collecting data on the experiences of vulnerable users will undermine its objective to ‘build back fairer’ as part of its pandemic recovery programme in courts.<sup>22</sup>

## Basic information about magistrates’ courts

A recurring theme was that data gaps appeared to occur more frequently in magistrates’ courts than Crown Courts. Around 95% of criminal court cases are handled by magistrates’ courts but, as argued in the independent Lammy Review, the absence of reliable data hinders robust public scrutiny.<sup>23</sup> The following examples outline gaps where data is collected for Crown Courts, but not for magistrates’ courts.

### Example: Guilty pleas

In September 2017, the Lammy Review noted that magistrates’ courts keep no systematic data on whether defendants plead guilty or not guilty.<sup>24</sup> The report outlines the importance of collecting data on the rates of guilty pleas in courts. BAME defendants are more likely to plead not guilty than White defendants and therefore, if ultimately found guilty, are more likely to face punitive sentences. This is in part due to the “trust deficit in many BAME communities” where the belief is that those from ethnic minorities will not receive a fair hearing from magistrates.<sup>25</sup> The report calls for the MoJ to address this data gap to enable greater transparency and scrutiny of disparities within magistrates’ courts.

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<sup>20</sup> Transform Justice, Fair Trials and Just for Kids Law, [‘Police, Crime, Sentencing and Courts Bill: Video and Audio Links in Criminal Proceedings’](#) (2021)

<sup>21</sup> Justice Committee, [‘Coronavirus \(COVID-19\)...’](#) (2020), p. 17

<sup>22</sup> National Audit Office, [‘Reducing the backlog in criminal courts’](#) (2021), p. 8

<sup>23</sup> David Lammy, [‘The Lammy Review: An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System’](#) (2017)

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*, p. 29

**Example: Unrepresented defendants**

In July 2021, the Justice Select Committee reported that no data was collected on the number of unrepresented defendants in magistrates' courts, despite hearing evidence that unrepresented defendants have a negative impact on the effectiveness of the court process and thus have an unfair disadvantage during hearings.<sup>26</sup> Due to the decrease in legal aid grants in magistrates' courts, it is likely that the number of unrepresented defendants has increased. In November 2021, the Sentencing Academy called for more data to be collected on whether a (lack of) representation in magistrates' courts impacted a defendant's understanding of and use of charge bargaining (when a defendant pleads guilty in exchange for reduced charges).<sup>27</sup>

**Example: Sentencing disparities**

According to research by the Sentencing Academy in May 2022, the vast majority of information on ethnicity-related sentencing differentials relates to the Crown Court, with little data available on magistrates' courts.<sup>28</sup> For example, the report cites the MoJ's *Statistics on Race and the Criminal Justice System* which reported on sentencing outcomes for BAME groups in both the magistrates' courts and the Crown Court on data collected before 2009, but more recently only provides detailed information on the latter.<sup>29</sup>

The Academy's report notes that there is long-standing evidence that ethnicity impacts upon the two key measures of imprisonment: custody rates and average custodial sentence lengths.<sup>30</sup> Yet this data gap affects our ability to understand and tackle the specific dimensions of ethnicity-based sentencing differentials in magistrates' courts.

## 4.2 Performance data

### The performance of policy interventions

Several sources noted that the failure of justice authorities to set performance targets and collect performance data limited the ability to evaluate the implementation, impact and value for money of policy interventions. Generally, the reasons cited for this included disjointed data systems, unclear performance criteria and inconsistent data collection.

**Example: The Female Offender Strategy**

In April 2022, the Public Accounts Committee (PAC) reported that the MoJ was yet to establish performance metrics for the Female Offender Strategy, a programme aiming to improve outcomes for female offenders and tackling the underlying causes of offending.<sup>31</sup>

<sup>26</sup> Justice Committee, ['The Future of Legal Aid'](#) (2021)

<sup>27</sup> Sentencing Academy, ['Defendant's Understanding of Sentencing: A Review of Research'](#) (2021)

<sup>28</sup> Sentencing Academy, ['Sentencing Guidance, the Sentencing Council and Black and & Ethnic Minority Offenders'](#) (2022)

<sup>29</sup> See two examples: GOV.UK, ['Statistics on Race and the Criminal Justice System 2008/09'](#) (2010); GOV.UK, ['Ethnicity and the Criminal Justice System, 2020'](#) (2021)

<sup>30</sup> Sentencing Academy, ['Sentencing Guidance...'](#) (2022)

<sup>31</sup> Public Accounts Committee ['Improving outcomes for women in the criminal justice system'](#) (2022)



Despite the programme having been in place for several years, the MoJ told the Committee that data collection was “patchy” and that it was still building the necessary data.<sup>32</sup>

The NAO, in January 2022, argued that the failure to establish robust performance measures for the Strategy rendered the MoJ unable to assess its progress towards meeting its aims and evaluate whether the Strategy has represented value for money.<sup>33</sup>

### **Example: Electronic monitoring of prisoners**

HM Prison and Probation Service (HMPPS) lack data on its electronic monitoring programme and have therefore struggled to evaluate the programme’s impacts. A report by HM Inspectorate of Probation, published in January 2022, suggested that an evaluation of the programme was hindered by “inaccuracies in data recording at all levels and a lack of knowledge both about those subject to electronic monitoring and the ways it is being applied.”<sup>34</sup>

In June 2022, the NAO wrote that the programme’s case management system, Gemini, was not linked to other datasets across the justice system, making it challenging to gain insights on the journey of offenders throughout the system.<sup>35</sup>

### **Example: Outcomes from the ‘Duty to Refer’ scheme**

HM Inspectorate of Probation, in July 2020, outlined the failures of authorities to track the outcomes of individuals subject to a ‘Duty to Refer’, a system where probation services are obliged to refer individuals at risk of homelessness to local authorities.<sup>36</sup>

The report suggested that a lack of systematic recording and reporting on individuals passing through the system, their subsequent housing outcomes, or reoffending rates, has resulted in minimal evaluation of ‘Duty to Refer’. As a result, the Inspectorate claimed that an opportunity was being missed for probation providers to learn from best practice on the most effective ways of supporting individuals to secure and retain accommodation.

## **The performance of external suppliers**

Our sources also highlighted several examples of data gaps about private-sector suppliers within the justice system, which make it hard to evaluate value for money and effectiveness.

### **Example: Community Rehabilitation Companies**

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<sup>32</sup> *Ibid*, p. 15

<sup>33</sup> National Audit Office, [‘Improving outcomes for women in the criminal justice system’](#) (2022)

<sup>34</sup> HM Inspectorate of Probation, [‘The use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk’](#) (2022), p. 7

<sup>35</sup> National Audit Office, [‘Electronic monitoring: a progress update’](#) (2022)

<sup>36</sup> HM Inspectorate of Probation, [‘Accommodation and support for adult offenders in the community and on release from prison in England’](#) (2020)

In March 2018, the PAC reported that the MoJ holds little performance data on Community Rehabilitation Companies (CRCs).<sup>37</sup> CRCs, private sector companies that supervise low- and medium-risk offenders who reintegrate back into the community, have generally underperformed where evaluated.<sup>38</sup> However, systemic evaluation of CRCs has been handicapped by “overcomplicated” performance criteria set by the MoJ.<sup>39</sup>

The PAC report suggests that this lack of robust performance information risks CRCs not being held to account, and make it difficult to establish the reasons for poor results.

### **Example: Education contracts in prisons**

In February 2022, the charity Prisoners’ Education Trust reported that no performance data has been published on the effectiveness of education contracts in prisons handed out under the Dynamic Purchasing System, an electronic procurement tool.<sup>40</sup>

Governors in individual prisons currently set their own outcome measures for such contracts. The Trust suggests that the lack of published data makes it difficult to scrutinise whether this system of governor autonomy has been effective.

## **4.3 The needs of individuals**

### **The mental health needs of the prison population**

Failures to collect information on the mental health, wellbeing and neurodiversity needs of those within the prison population were widely reported in the sources studied. In general, ineffective screening procedures were cited as the primary reason for poor data capture.

As noted by the PAC, in December 2017, the most commonly used estimate for the prevalence of mental health within prisons (that 90% of prisoners have mental health issues) was from data collected over 20 years ago.<sup>41</sup> In recent years, data is often not collected or, where collected, appears to be inconsistently recorded, particularly during screening processes. For example, according to the PAC’s research, prison staff did not record a prisoner’s ‘risk of suicide’ on 68% of screening records.

Information on mental health treatment in prison is also patchy. The PAC report that neither NHS England or MoJ hold reliable data on how many patients with mental health difficulties are waiting to be transferred from custody to hospital or secure units. The report noted that these delays can affect the wellbeing of prisoners and the consequences are not fully understood. Both Clinks, a charity, and the Justice Select Committee have suggested that

<sup>37</sup> Public Accounts Committee, [‘Government contracts for Community Rehabilitation Companies’](#) (2018)

<sup>38</sup> Advisory Council on the Misuse of Drugs, [‘Custody-Community Transitions’](#) (2019)

<sup>39</sup> Public Accounts Committee, [‘Government contracts...’](#) (2018), p. 7

<sup>40</sup> Prisoners’ Education Trust, [‘Prisoners’ Education Trust Response to the Prisons White Strategy Paper’](#) (2022)

<sup>41</sup> Public Accounts Committee, [‘Mental health in prisons’](#) (2017)

the failure to collect data on mental healthcare in prisons makes it challenging for authorities to evaluate whether these interventions represent value for money.<sup>42 43</sup>

The size of the prison population with neurodivergent conditions is also not known, according to the Criminal Justice Joint Inspectorate (CJJI).<sup>44</sup> In July 2021 it reported that half of those entering prison are expected to have some form of neurodivergent condition, but there is “no reliable, consistent or systematic” data collection on the scale and nature of these needs.<sup>45</sup> This means that assessing the resources required to ensure safeguarding will remain a challenge. The CJJI suggests that without effective screening procedures, it is left to prison and probation practitioners to identify neurodivergent needs, which they are typically not trained to do, meaning there is a reasonable chance that the needs of a neurodivergent person entering prison will not be identified.

## The health and social needs of women in prison

Several sources cited deficiencies in gender-specific data collection on the health and social needs of women in custody.

For example the Justice Select Committee, in July 2022, identified that the MoJ does not collect data on how many women in prison are primary carers.<sup>46</sup> This is primarily because the screening process for prisons does not include a question on parental status or primary care. The Committee reported that “without this data, it is not possible to assess the specific needs of mothers in prison, or how well these needs are being met”.<sup>47</sup>

The Committee also emphasised the complex health needs of female offenders, who are disproportionately affected by higher levels of suicide, self-harm, drug dependency and a range of other health issues. The lack of gender-specific data collected in prisons makes it challenging for authorities to understand and address such needs.

## Children separated in young offender institutions

The sources identified several data gaps regarding children in young offender institutions (YOIs) placed in separation, when a child is prevented from mixing with their peers to either prevent harm to themselves or others or to maintain order within a secure estate.

A review published by HM Inspectorate of Prisons in January 2020, found that no reliable data was collected locally or nationally on metrics including the number of children in separation, the duration of separation and the time children in separation spend inside their cell.<sup>48</sup> In February 2021, the Justice Committee called these data gaps “unacceptable”,

<sup>42</sup> Clinks, [‘Clinks response to the Prison Strategy White Paper’](#) (2022)

<sup>43</sup> Justice Committee, [‘Mental health in prison’](#) (2021)

<sup>44</sup> Criminal Justice Joint Inspection, [‘Neurodiversity in the Criminal Justice System: A review of evidence’](#) (2021)

<sup>45</sup> *Ibid*, p. 8

<sup>46</sup> Justice Committee, [‘Women in Prison’](#) (2022)

<sup>47</sup> *Ibid*, p. 59

<sup>48</sup> HM Inspectorate of Prisons, [‘Separation of children in young offender institutions’](#) (2020)

particularly in light of concerns that the practice of separating children is potentially inhumane and degrading.<sup>49</sup>

The Inspectorate’s report concluded that poor data collection resulted in minimal shared understanding across YOIs about the needs of children in separation, and that, ultimately, “failures of oversight” meant that “the current arrangements for separating children in YOIs do not safeguard children’s well-being”.<sup>50</sup>

## 5. Conclusion and next steps

The findings of this interim report represent only a snapshot of the data gaps identified by stakeholders. Due to time constraints, several key themes have been omitted. For example, stakeholders regularly expressed concern about the lack of disaggregated justice data. The sources identified that all too often justice data is not broken down by protected characteristics or localities, limiting insights into demographic biases and geographical variation.

Equally, this report makes no mention of sentencing practices. Here stakeholders pointed toward data gaps relating to the practices of individual courts, the use of out-of-court disposals and the number of deferred sentences granted annually. We hope to be able to report on these findings, and more, in the months ahead. For now, our wider findings can be viewed in our publicly available work in progress spreadsheet.<sup>51</sup>

As mentioned above, this report is the first step in a broader project to map justice data gaps, identify their causes and provide recommendations for change. The next stages of our research include the following:

1. **More sources:** Repeating a similar research exercise for a wider range of source types. These sources will likely include academic reports, Parliamentary written questions, media reports and more.
2. **Researching Government actions:** Auditing the Government’s actions in response to recommendations made in the sources studied.
3. **Identifying the causes of gaps:** Identifying the underlying causes of key data gaps via interviews and desk research.
4. **Recommendations:** Setting out recommendations for areas where data and statistics producers can most efficiently act to reduce these gaps, which affect the experience of justice system users, access to justice and the efficient operation of the justice system.

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<sup>49</sup> Justice Committee, [‘Children and Young People in Custody \(part 2\): The Youth Secure Estate and Resettlement’](#) (2021), p. 12

<sup>50</sup> HM Inspectorate of Prisons, [‘Separation of children...’](#) (2020)

<sup>51</sup> The Centre for Public Data, [‘Thematic Findings from Sources’](#) (2022) [Work in Progress]

We plan to report on our full findings in early 2023. In the meantime, we will continue to share our research publicly and engage with stakeholders on our findings and methodology, which we hope others will build upon.

## About us

The Centre for Public Data (CFPD) is a non-partisan organisation with a mission to strengthen the UK's public data. We aim to reduce gaps in data that harm civil society and business. We support legislators and policymakers to improve data coverage and quality, via practical interventions in legislation, codes of practice and governance. We are happy to discuss any of these issues further: [contact@centreforpublicdata.org](mailto:contact@centreforpublicdata.org)

Our work on this project is funded by the Justice Lab, an initiative of the Legal Education Foundation, as part of their ongoing programme of research and advocacy to improve the quality and availability of justice system data. We are grateful for their support.