The Bar Council

Courts and Tribunals Bill
Public Bill Committee
Written Evidence
Supplementary submissions and observations on behalf of the Bar Council, Criminal Bar Association and Circuit Leaders

About us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

The Criminal Bar Association represents the views and interest of practising barristers who practise in criminal law in England and Wales, including both employed and self-employed barristers.

The Bar in England and Wales is divided into six geographical regions, known as 'circuits'. The circuits provide important sources of support, advice and representation for barristers practising in those areas and maintain lines of communication with all parts of the legal system.

Introduction

We are writing as a follow up to address some issues that arose during our evidence sessions on 25 March 2026 before the Public Bill Committee. We request that this letter is circulated and considered alongside our oral evidence.

We remain ready and willing to work with the government, the judiciary, the CPS, defence solicitors, and all other agencies to reduce the backlog of cases. Priority must be given to efficiency measures that can be implemented now as these will impact on cases waiting to be heard. This then will change modelling and impact assessments at different stages.

Accordingly, the removal and or limitation of juries should not be the focus. It is uncontroversial that systemic underfunding into the criminal justice system for over a decade, including inconsistent policy and reduced days that a Crown Court can sit, have caused the issue– not juries.

Outline of our position on the Bill

The Bill is a document in two halves, both wholly independent of each other. We firmly maintain our opposition to Clauses 1 to 7, which deal with the proposed reduction of jury trials, including with no appeal on allocation.[1]

We largely support Clauses 8-16, which relate to improving the experience of victim/complainants in the criminal process. We continue to strive to make the system better for all participants, with a fair and just outcome for all.

The Question on Barrister Earnings in the Magistrates' vs. Crown Court

During the course of questions, there was an inference in a question that our objection to the proposed restrictions to jury trial is founded on our fees – in other words that we have a 'vested interest' in opposing Clauses 1-7. We were asked *"Will you confirm to the Committee that your members would get less in fees for magistrate cases than in a Crown Court case?"*.[2] The answer to that question was "yes", but it is a qualified "yes", and we were prevented from continuing to address the underlying suggestion, which is not only wrong but demonstrates a deep misunderstanding of the work that we do.

i. the majority of Magistrates' court cases are currently dealt with by employed solicitors and in-house CPS employed advocates;
ii. the very junior end of the criminal bar who appear in the Magistrates' court are generally too junior and too inexperienced to take up Crown Court work of an equivalent level;
iii. an influx of cases into the Magistrates' court will provide them with more work, not less, and as a result their incomes may well increase;
iv. if more serious cases were to come into the Magistrates' court, and more senior counsel be required to deal with it, we would anticipate that the additional complexities would necessarily result in the fees being increased.

To be clear, the current level of our remuneration in either court is completely irrelevant. Our objection is not because of fees, but because in practice and principle we believe the proposals will only worsen the crisis facing our system. Juries play an important role in ensuring fairness and public trust in our system. The criminal justice system is not only for a narrow band of society.

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[1] See Note dated 20 April 2026 sent to Public Bill Committee and judicial review appeared to be asserted as an appeal mechanism by the government. Bar Council Written Evidence Judicial Review and Clause 3 20 April 2026

[2] Alex McIntyre MP Courts and Tribunals Bill Committee (Second Sitting) 25 March 2026

The reason that barristers do not support the removal of jury trial for serious criminal offences is not based on money. There are countless more lucrative areas of law.

Legal Aid

It was raised by the Courts and Legal Services Minister that there was a depletion of barristers at the Criminal Bar and that this would take years to address. The Chair of the Bar disagreed and pointed to figures showing an increase of barristers after the increase in legal aid in 2022.[3] The government has been invited to expedite increasing legal aid per the announcement on 2 December 2025.[4] To date there has been little or no progress to implement the overdue increase to legal aid needed to retain criminal barristers in the Crown Courts. This is essential to address the issue with the workforce that is keeping the system functioning at all.

Wales

We have stated previously that Wales has a manageable backlog. It is pointed out by the Wales and Chester Circuit that there is no electoral mandate to introduce a constitutional change to the criminal justice system to address an issue that does not exist in Wales and on the basis of an Independent Review that does not consider Wales separately from "England and Wales" save for the recommendation that Crown Court hearings should take place in any courtroom.

The lack of a significant backlog is due to the close co-operation between the bench and bar, in particular listing cases to ensure the instructed advocate is available for trial. As a result, there are not many cases where a trial cannot proceed due to lack of counsel. In addition, in category 4 RASSO cases where there are limited numbers of suitably qualified prosecutors, the CPS will instruct KCs if no panel advocate can be found. This ensures the RASSO case takes place.

A remote sentencing court has been introduced. This has assisted in reducing the backlog. All parties appear remotely so there is no delay in producing defendants from prison. Advocates are able to attend remotely so they can continue with other work in different court centres. The volume of cases that could be heard would be increased significantly if advocates were paid to prepare sentencing notes in advance of the hearing. This would reduce preparation time per case for the sentencing judge and allow each case to proceed faster during the hearing.

Crown court cases are also being listed in Magistrates' courts in Cardiff and Swansea. This has increased capacity and is making significant inroads into the already diminished backlog.

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[3] Sarah Sackman KC MP Courts and Tribunals Bill Committee (Second Sitting) 25 March 2026

[4] MoJ "Deputy Prime Minister to Announce 'Swift and Fair Justice'" 2 December 2025

Progress

We welcome the work that has already begun which is primarily lifting the cap on sitting days so that courts are not restricted from functioning to their full capacity. Whilst we applaud this move, it is an obvious step that we have been calling for for some time. It also is reducing the backlog of cases.

In less than 5 days since the cap was lifted (1st April), there has been a reduction in the backlog figures.[5] Furthermore, the 'Blitz Courts' are effective, established by Crown Courts such as Preston, Liverpool, Nottingham and others. Preston Crown Court's listing of domestic abuse cases, from the Autumn of 2024 until this year has reduced time between PTPH listing and trial by 16%.[6] Ipswich Crown Court's backlog is down 28% since January 2024.[7] Derby Crown Court's, "fast track" courts are being run with a specific focus on cases with allegation of domestic abuse. This scheme has been successful, and such cases are being listed for trial (if a trial is necessary) sooner than they might otherwise have been. At Liverpool Crown Court, its short (fewer than 3 days) domestic abuse cases (as well as short drug trials) are expedited, and are given a trial date within 20 weeks of the PTPH.[8]

Of course, these courts are showing that they can reduce delays whilst they have been working with some of their courts closed. Evidence was given as to other *immediate* improvements with the opening of a single additional courtroom in other court centres. This cannot and should not be ignored.

To move immediately to the step of removing the entitlement to a jury trial, in a large number of cases, including serious sexual offences by the three years sentence benchmark as proposed, is shortsighted. There is a lack of rigour in these proposals as well as questionable legal certainty. To fail to allow the implementation of the increment in sitting days together with courts approaching backlog issues directly, does not allow for the "stress testing" of the increment where informed decisions can be made. The system must be given an opportunity to continue this work before the draconian structural changes – which go further than the Independent Review, were not in the manifesto and have not been subject to a consultation- are pursued.

Specialist Sexual and Domestic Abuse Courts

We submitted proposals for amendments to the Bill in a separate schedule.[9] We replied to the Independent Review – including with proposals that will make a

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[5] Sunday Times "Data shows court backlogs falling, so why aren't ministers talking about it?" 5 April 2026

[6] Bar Council "Barristers urge government to deliver specialist courts for sexual and domestic abuse cases, instead of restricting jury trials" 31 March 2026

[7] MoJ Criminal court statistics quarterly: October to December 2025 26 March 2026

[8] Liverpool Crown Court, Consolidated Guidance Note October 2025, Chapter 5, p28

[9] Bar Council Courts and Tribunals Bill Written Evidence 25 March 2026

positive impact on the backlog.[10] Any suggestion that the Bar Council, Criminal Bar Association, or Circuit Leader are against change and have not proposed alternatives that will make an impact upon the backlog is simply wrong.

In respect of Clauses 8 to 16, we consider that the government should go further than the Bill currently aspires to. Working together, we can further improve the criminal justice system for complainants and victims by strengthening training, practices and processes in the court system. These do not fall to legislation, but rather the implementation of Practice Directions, Criminal Procedure Rules, including an agreed criteria regarding qualification for instruction in both prosecution and defence cases, judicial and other training, delivering across the board consistency from the various educational institutions involved in its delivery. To achieve the desired aim of a scheme that is workable it is essential that all parties cooperate but importantly the practical hands-on experience of the criminal bar must be embraced and not ignored. Previous government reviews and consultations have omitted the very barristers who practise in the courts and relied heavily on academics who have an excellent skillset but a different one to practitioner expertise.

Amongst the work that we consider will improve the process for complainants and victims of sexual and domestic abuse are:

- Creating **Specialist Sexual offences / Domestic Abuse Courts**;
- Trial by specialist judge, together with a jury
- Additional training for judges;
- Specialist accredited training for prosecution AND defence advocates;
- Introductory information being provided to jurors – dealing with dispelling both common mythology about both victims and accused. This might be achieved through reviewing the judicial directions given before a case begins, and / or a balanced video presentation, created in consultation with victim and defendant groups and the Bar Council and Criminal Bar Association;
- Specialist court facilities aimed at comfort and safety of complainants, and accommodating special measures
- More active case management including stricter time limits on case preparation;
- Streamlined national protocol on approach to third party material review and disclosure with strict time limits applicable to mirror service of the case.
- Fixed trial dates
- **Prioritisation for Sexual Offences / Domestic Abuse cases** - a provision (possibly with a sunset clause) that allows for cases that qualify (sexual and domestic abuse) where the accused is on bail to be given priority and heard

[10] Bar Council "Bar Council response to the Review Part 1 recommendations" August 2025

by the Specialist Court (sitting with a jury) before custody cases (this could possibly be an amendment to s.22 of the Prosecution of Offences Act 1985).
- In non-custody cases, there should be consideration of using other suitable venues, where the separation of the complainant victim and the accused can be assured.

The creation of such specialist courts was part of the government's 2024 manifesto, and in our view, focussing on the proposal above would meet that manifesto promise.[11] The removal of jury trials was not in the Labour manifesto.

What Alternative Steps Should be Taken to Deal with the Backlog?

The focus should be on efficiency, structural reform in mending the crumbling court estate and investment. We have welcomed the uncapping of sitting days, which began on the 1st of April. We are already seeing a positive effect, and a clear downward trend in the backlog.

It should be noted that the average sitting hours in the Crown Court have declined from 3.8 hours 10 years ago to 3.2 hours in 2024.[12] That is approaching a 20% decline, due to cases being ineffective, PECS delays, technological breakdown, staffing problems, etc.

What can we do?

- **Blitz** courts – it can be seen from the work of Courts like Preston, Teesside that these work;
- Specialist **sexual offences and domestic abuse courts with jury –** these would begin to clear a complete a significant category of the backlog case load;
- **Robust decision making**, to resolve cases which clearly have no merit going to trial. This requires a pro-active approach by the Crown Prosecution Service;
- **Efficiency in investigation and charge –** currently the wait time is weighted at this stage. There is little scrutiny of the police and CPS as to why these delays have increased.
- **CPS and police need to take ownership** of the backlog cases – they need to conduct realistic reviews, with evidence collated and ready. There can be a default position of continuing.
- **Better use of out of court disposals -** Cases do not always have to be prosecuted to the fullest extent. Sometimes it is in the best interests of both a victim and accused for an alternative method of disposal to be deployed.

[11] Labour Party Manifesto 2024, p67

[12] Institute for Government "Performance Tracker 2025: Criminal courts" 23 October 2025

- More **out of court disposals for minor offences**, to take pressure off the Magistrates' courts. There is an acceleration of 17% in the backlog at the Magistrates' courts over the last year.[13]
- **Initiatives** like Liverpool Crown's focus on drugs (Op Expedite) and Preston on Domestic Abuse. Allow the national listing for domestic abuse cases to complete its work (working group led by Knowles J)
- **Reclassification of less serious offences as summary only**. In recent years some offences have migrated into the Crown Court – we consider they should be re-classified as summary only and tried in the Magistrates' court, retaining a maximum sentence of 12 months. We provided a list of cases. The Bar Council always has supported moving the threshold where appropriate.
- Consideration, and at least a pilot of a return to **old style committals** where a case has to be ready before committed up / or delayed PTPH – one of Sir Brian's recommendations
- **Increase incentives for Guilty Pleas** – increase the incentive to 40%. Allow this credit to be available for longer than "the first opportunity". This is vital as often the full file of evidence is not available at those initial hearings.
- Include a guilty plea incentive before a retrial;

Magistrates' courts

The problems and the backlog in the Magistrates' courts mirrors those in the Crown Courts. The current proposal to transfer Crown Court cases to the Magistrates' court is a stark example of "*robbing Peter to pay Paul*".

Most of the cases currently within the scope of the Bill are not minor. The consequences of conviction are life changing. They should therefore be tried with the utmost care and consequently these proposals should not be rushed, without the constitutional safeguards that would have occurred with a consultation.

In summary:

- **There are currently 725 either-way offences, and they include serious violence and sexual assaults.** Many involve copious amounts of witness, electronic, and documentary evidence to examine. Sarah Sackman MP, when speaking on Radio 4 on 10th March 2026, said "*We know that those equivalent cases when they are heard in the Magistrates' are heard considerably faster than when they are before a jury.*"[14] However, there is absolutely no evidence to support this statement. Plus see the report from Transform Justice Court Watch.[15]

[13] MoJ Criminal court statistics quarterly: October to December 2025 26 March 2026
[14] BBC Radio 4 The Law Show "The plans to limit jury trials in England and Wales" 10 March 2026
[15] Transform Justice "Beyond reasonable delay: efficiency in London magistrates' courts" January 2026

- **Among the 20,000 ineffective Magistrates' court trials for the 12 months to 2025, approx. 10000 were cancelled for reasons** that were to do with poor case preparation, over listing, overrunning, PECS failings, problems with court accommodation – cells etc. equipment failures, lack of interpreter, no magistrate available, no law clerk available, no counsel available.
    - 315 because prosecution failed to produce unused evidence
    - 1,236 because prosecution was not ready
    - 2,141 because another case overran
    - 4,267 because of over-listing (insufficient cases drop out/floater/backer not reached)
    - 880 because defendant not produced by prisoner escort custody services
    - 740 because there was no interpreter
    - 172 because of court "accommodation" (cells to courtrooms) or equipment failures
    - 136 because no magistrate available
    - 650 because of lack of available advocates (227 prosecution, 423 defence)[16]

Further, the Magistrates' courts are not in a position to absorb tens of thousands of more complex, more serious cases.

- The backlog in these courts is much worse than in the Crown Court, and also rising at a far greater rate than in Crown Court[17];
- There are not enough Magistrates;
- There are not enough legal advisors
- The Magistrates' system is not structured to accommodate an influx of far more serious work. The cases within scope would include trials that are evidentially complex, legally complex and potentially involving multiple defendants together with advocates / counsel;
- Magistrates' court rooms have not been designed to accommodate multiple defendants in their docks, or multiple advocates / counsel in the court;
- Magistrates are volunteers, who are employed in other lines of work. They fit their sitting days around that employment, generally only sitting for a very limited time every year and will be required to sit for more than two consecutive days.

There are additional consequences which will give rise to greater delays in the Magistrates' court:

[16] Criminal Bar Association "Monday Message" 9 March 2026

[17] MoJ Criminal court statistics quarterly: October to December 2025 26 March 2026

Legal aid eligibility is harder to get in the Magistrates court. Because the current sentencing threshold is so low. There has been no suggestion made that this will be increased – and to increase it will be an extremely costly exercise for the government;

- Many ordinary working families exceed the threshold. [For representation in the Magistrate's Court, there is a cut off where 'adjusted income' is £22,325 or more (and that can include a spouse or partner's income).][18]
- By contrast, in the Crown Court most people qualify for Legal Aid, but depending on means they may have to pay a contribution.
- Put simply, far more defendants in the Magistrates' courts will not have legal aid. Litigants in person require assistance from the court and this is a dramatic increment in time on a trial timetable
- Even if they qualify for legal aid, the fees which are paid in the Magistrates' court are not designed to attract experienced lawyers required to deal with the cases efficiently.

We also note that Sir Alan Moses in his recent comment in the Guardian wrote that the proposals for a Single Judge court completely underestimate the time it takes for judges to write and deliver their judgements. Simon Moore KC, recently retired New Zealand HC Judge and Chief Crown prosecutor for Aukland has said it can take weeks and even months to do so. [19]

This also applies to magistrates – the time they take to hear cases, when more complex as well as recorded, will be much longer than the government's estimate.

Finally, the overall impact on recruitment and retention for criminal barristers and solicitors should not be underestimated. It takes many years to learn the skills of an accomplished advocate. This new system will not allow those to progress so easily into the higher courts, they will not have gained the same practical advocacy experience. We expect to lose experienced practitioners. This will impact upon the selection process for the future judiciary.

Parallels drawn with the Canadian System

It is inappropriate to select aspects of another country's Criminal Justice System piecemeal. On 12th March 2026, Professor Laura Hoyano[20] provided evidence to the

[18] MoJ Criminal legal aid means testing updated February 2025

[19] Guardian "Why axe so many juries? My plan would solve the courts crisis without harming justice" 23 March 2026

[20] Prof Laura Hoyano, Written Evidence to the Justice Select Committee, published 24 March 2026 Prof Hoyano was called to the Alberta, Canada Bar 1983, called to the Bar of England & Wales 2015, is a practising Barrister, Red Lion Chambers, London, Emeritus Professor of Law, University of Oxford, and Emeritus Fellow, Wadham College, Oxford,

Justice Select Committee considering the Bill. That evidence has been published and should be considered by this Parliamentary Committee.

There are significant differences between the Canadian System and the system in England and Wales. It is of note that the Supreme Court of Canada in July 2025 in *R v. Varennes*, pointedly stated that that criminal jury trial is "flourishing" in Canada, whilst endorsing juror unanimity as a Canadian constitutional value.[21]

In summary, Canadian criminal law is underpinned by its constitution, The Canadian Charter of Rights and Freedoms. It has different court structures and mechanisms of case management, including defence constitutional rights of election of mode and venue of trial, and judicially prescribed time limits to fulfil the constitutional guarantees of a fair trial in accordance with the principles of fundamental justice within a reasonable time.[22] It operates a federal system, with the Provinces enjoying constitutional sovereignty over stipulated areas including the administration of criminal and civil justice. Thus, there are differences as to how certain features operate even as between the provinces. There are no lay magistrates in Canada, they having been dispensed with in the 1980's as deemed unreliable – rather all judges are professional.

Fundamentally, Canadian defendants have the right to choose trial by jury or trial by judge-alone for all offences charged on indictment (including hybrid offences) whereas the Bill proposes the opposite, depriving defendants of jury trial in either way offences where the sentence is estimated before trial to be more than three years' imprisonment.

Fundamentally, there is a time limitation on how long a case waits for trial before it is dismissed. This incentivises both prosecution and police.

These are amongst many differences that are distinctive drivers throughout the Canadian criminal justice system, which do not feature in the criminal justice of England and Wales. Professor Hoyano has drawn up a table to demonstrate some of the key differences: This is annexed to this document.[23]

Conclusion

Do not run to these proposals. Give proper regard to the opinions of those actually working within the criminal justice system. If rigour or even logic is applied to the rationale behind these proposals, it is found wanting. Invest in the system, apply

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[21] *R. v. Varennes* 2025 SCC 22

[22] Canadian Charter of Rights and Freedoms (1982) s. 7 and s. 11(b).

[23] Annex 1 Prof Laura Hoyano, Written Evidence to the Justice Select Committee, published 24 March 2026

efficiency measures at the evidence gathering stages of case preparation, reclassify offences, be consistent in the systems applicable at those early stages and stop capping and lifting caps on sitting days.

Support the courts to return to the productivity levels that they previously achieved by investing. Do not allow a separation of justice and its workings from the general public, from society. Justice is for all.

Signed
Kirsty Brimelow KC, Chair of the Bar
Riel Karmy-Jones KC, Chair of the Criminal Bar Association
Heidi Stonecliffe KC, Vice-Chair of the Bar
Andrew Thomas KC, Vice-Chair of the Criminal Bar Association
Caroline Goodwin KC, Leader of the North Eastern Circuit
Christopher Rees KC, Leader of the Wales and Chester Circuit
Claire Davies KC, Leader of the South Eastern Circuit
Harpreet Sandhu KC, Leader of the Midland Circuit
Samantha Hillas KC, Leader of the Northern Circuit
Sarah Jones KC, Leader of the Western Circuit

Bar Council, Criminal Bar Association, Circuit Leaders
24 April 2026

Annex 1 - Prof Laura Hoyano, Written Evidence to the Justice Select Committee, published 24 March 2026

Distinctive features of the Canadian criminal justice system compared to England & Wales (currently and under the Courts & Tribunals Bill 2026)

		CANADA	E&W
1.	*Comprehensively codified* and accessible criminal law; no common law offences.	☑	☒
2.	*Written national constitution* setting out court-enforceable criminal and civil rights for all.	☑	☒
3.	*Constitutional* defence right to jury trial on charges punishable by ***max***. 5 or more years.[1]	☑	☒
4.	But: wider defence *statutory right to jury trial when Crown charges on indictment* (including indicted hybrid offences - NO min. or max. sentence).[2] In practical terms much wider access to jury trial in Canada than under Bill as no equivalent of either-way charges.	☑	☒
5.	Jury trial is a defence right but can be *waived* by defence only, for all charges on indictment	☑	☒
6.	*Constitutional* right of defendants to trial within a reasonable time.	☑	☒
7.	*Constitutional* & *enforceable* pre-trial delay limits for *all offences* and *all circumstances*. Enforceable time limits also viewed as benefiting complainants and society as a whole.	☑	☒
8.	Meaningful *remedies* for constitutional breaches if administration of justice in disrepute.	☑	☒
9.	*No adverse inferences* from exercising right to silence before or at trial.	☑	☒
10.	Defence *right* to elect trial by jury or superior judge alone on indictment (murder requires A-G approval, rarely withheld)	☑	☒
11.	Defence *right* to elect trial by superior *or* provincial court judge alone except gravest indictable offences, eg murder, treason ➔ election only for jury/superior court judge alone).	☑	☒
12.	*Statutory rules govern mode of trial & defence rights* not judicial discretion.	☑	☒
13.	All judges apart from jurors are professional, legally trained public officers.	☑	☒
14.	*Preliminary hearings* in complex cases on indictment punishable by min. 14 years: provincial court judge determines sufficiency of evidence on each charge for trial; defence may cross-examine Crown witnesses. Judge may quash charge(s) or guilty plea(s) may result, potentially saving resources and time on remand.	☑	☒
15.	All jury verdicts required to be *unanimous* in all circumstances.	☑	☒
16.	Jurors must be laypeople with no connection with justice system.	☑	☒
17.	Miscarriages of justice are considered to include all *wrongful acquittals*.	☑	☒
18.	*Crown may appeal* from errors of law by TJ (sitting with jury or alone) including errors evaluating evidence.	☑	☒

Prepared 12/03/2026 for the Justice Select Committee, House of Commons by © **Prof. Laura Hoyano,** University of Oxford; Barrister, England & Wales, Called 2015); Alberta Bar, Canada (Called 1983, retired)

[1] Canadian Charter of Rights & Freedoms s. 11(f).
[2] Criminal Code of Canada s. 471.