Public Bill Committee
Courts and Tribunals Bill
Bar Council Written Evidence

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.

Executive Summary

1. The current Crown Court backlog is the result of decades of under-investment, and failure to properly manage both the court estate and the human resource required to operate the criminal justice system at anything close to its optimal level. It has not been caused by the availability of trial by jury for serious criminal offences, nor by the limited number of appeals against conviction or sentence in the magistrates' courts that are heard by the Crown Court.
2. The Bar Council, Bar leaders from across the country (Circuits), and the Criminal Bar Association fundamentally disagree with many aspects of the Courts and Tribunals Bill (the Bill), particularly the plan to restrict the deeply entrenched constitutional principle of a jury trial and to remove the right to appeals from the magistrates' courts. We support the vast majority of the Independent Review of the Criminal Courts Parts I and II (Leveson Review Part I and Part II) in reforming and improving the criminal justice system.
3. The criminal justice system is a delicate ecosystem that has evolved over time. Improvements are always possible, and the Bar Council is supportive of – and has regularly suggested – measures which will reduce the current backlog without adversely impacting upon the quality of justice administered in the criminal courts.
4. Barristers give voice to victims, defendants and witnesses and put their lives into public service. It is important that this is acknowledged. It is unfortunate that rhetoric appears to be placing barristers against victims. Barristers include the prosecutors who enable victims and complainants and witnesses to give evidence, to give their account with their rights safeguarded by legal applications and arguments by barristers.
5. We refer to the letter from Rights of Women and around 30 NGOs around the VAWG sector who oppose reducing jury trials:

   "Jury trials are an important constitutional safeguard which help ensure fairness, legitimacy and public confidence in the criminal justice process."[1]
6. They also point to the disproportionate impact on victims from minoritised communities who already distrust the criminal justice system:

[1] Rights of Women "Violence Against Women and Girls sector calls for the preservation of access to jury trials" 16 March 2026

"Restricting jury trials could decrease public confidence"[2]

7. Many of Sir Brian Leveson's proposals reflect the Bar Council's longstanding ideas. We welcome that many of our proposals have been adopted, including the recent announcement of the lifting of the cap on sitting days.[3] However, urgent implementation remains critical.
8. Radical changes to the availability of jury trials such as proposed in the Courts and Tribunals Bill are unnecessary and will consume resources without bearing down on the backlog. The retrospective provisions may also be subject to numerous legal challenges.

The Courts and Tribunals Bill – Creation of a New Court

9. Instead of introducing a court without a jury, the Bar Council proposes the creation of a new **sexual offences/domestic abuse court**, together with other reforms.
10. These would reduce delays without any need to reduce jury trials. They impact directly on vulnerable witnesses waiting for their case to be completed (for example, expedited trial scheme at Preston Crown Court).

Bar Council Reforms

11. These recommendations will have a significant and immediate effect and can and should be implemented now.
12. These changes include:
    - **Implementing efficiency measures** from Part II of the Independent Review of the Criminal Courts Part II (Leveson Part II).[4]
    - **Creation of a sexual offences/domestic abuse court (see annex 1) – with a jury, instead of the CCBD/Swift Court. It is working operationally and reducing delays and supported by national work on domestic abuse case listing (e.g. Preston Crown Court and CCIG listing reform) without the need to reduce jury trial.**
    - **Reclassification of certain offences to summary only (see table)** – moving the threshold of cases heard in the magistrates' court e.g. make assault emergency worker summary only.[5]
    - **Prisoner Escort Custody Services (PECS)/Prison reform** – hours are lost each day due to delays caused by PECS and prisons failing to produce defendants to court on time and/or into the dock on time. A contract that fits court requirements is needed together with greater prison efficiency.[6]
    - **Remove cases from the backlog** – this requires the CPS to proactively remove cases that no longer are in the public interest to prosecute, lesser charges

[2] Rights of Women "Violence Against Women and Girls sector calls for the preservation of access to jury trials" 16 March 2026
[3] MoJ "Highest ever courts funding deal agreed to deliver faster, fairer justice for victims" 24 February 2026
[4] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 2" 4 February 2026
[5] Bar Council "Bar Council response to the Independent Review of the Criminal Courts" January 2025
[6] Penalties into contracts/disclosure of times of vans at prisons and leaving prisons/requirement to give a time estimate to the court when late.

should be accepted or no evidence offered for other reasons (in consultation with complainants/victims). There has been successful reduction of the backlog in courts where there is pro-active management of cases between police, CPS and judge. This happened in the South West during Covid[7], and has been successful in courts such as Woolwich Crown Court, Liverpool Crown Court and Preston Crown Court. It requires a specific case progression court which can be accommodated in existing structures (no need for primary legislation).

- **Invest in the Court estate** – time is lost due to poor maintenance in courts (loss of power, floods, technology failure). Immediate investment is required in the court estate, including sufficient technology assistants.
- **Implement more out of court resolutions** – divert prosecutions following the implementation of the Sentencing Act 2026.
- **Amend *Goodyear*** (currently empowers a judge to indicate the maximum sentence that would be imposed) – to enable judges to give a realistic indication of sentence at an early stage (it requires only a Practice Direction) and so incentivise guilty pleas.
- **Allow incentivisation of 40% reduction for guilty pleas to take effect and expand "first opportunity"** – apply guilty plea sentence credit before a retrial.
- **Reintroduce Old Style Committal (see Annex 1)**.
- **Urgently implement the increase in legal aid** (Government announced up to £34 million including VAT[8]) – as a step to recover barristers back into criminal law and tackle adjournments due to lack of barristers.

Opposition and support for elements of the Bill

The Bar Council opposes:

13. **Removing a defendant's right to elect Crown Court trial for all cases which are triable either way (Clause 1-2)**
    i. *Reason*: that would compound the impact of the measures below.
14. **Introduction of judge-alone trials for offences which may result in sentences of up to 3 years' imprisonment (Clause 3-5)**
    i. *Reason*: while the time savings are extremely uncertain (and have been overestimated by Government), the adverse impact on the quality of justice administered by the courts and the public perception of the criminal justice system would be severe and disproportionate. It simply moves the backlog from one court jurisdiction to another.
15. **Introduction of judge-alone trials for fraud and related offences (Clause 4)**
    i. *Reason*: such offences often turn on questions (such as dishonesty) which a jury is better placed to answer than a single judge. There is a real prospect that any time savings would be cancelled out by the time by judges spent writing reasoned judgments.
16. **Increasing magistrates' courts sentencing powers (Clause 6)**

[7] MoJ data from these successes driven by one CPS prosecutor on the Western Circuit should be considered.
[8] MoJ "Deputy Prime Minister to Announce 'Swift and Fair Justice" 2 December 2025

i. *Reason*: this would merely transfer the burden from one over-stretched part of the system to another.[9]

17. **Reforms to appeals from the magistrates' court (Clause 7)**
    i. *Reason*: this would remove a vital safeguard against the well documented deficiencies of summary justice. At present around 40% of such appeals are successful.[10]

18. However, the Bar does support:
    1. **Restrictions on the admissibility of evidence of 'sexual behaviour', compensation claims, and purported previous false allegations by complainants (Clauses 8-11)**
    2. **New measures in respect of special measures directions (Clauses 12-16)**
    3. **Repealing the presumption of parental involvement (Clause 17)**

Reforms that will work now

19. In January 2025 in our submission to the Leveson Review[11],we set out a range of reform measures to reduce the current backlog without adversely impacting upon the quality of justice administered in the criminal courts.[12]

20. In particular, we support:
    1. Opening all the courts so they can hear cases (the recent Government announcement of removing the cap on sitting days is welcome[13])
    2. Intense court listing and Crown Prosecution Service (CPS) proactive case ownership (shown to reduce the backlog)
    3. Revising the contract with Prisoner Escort and Custody Service (PECS) to ensure that defendants are delivered to the dock on time
    4. Better use of technology
    5. Properly resourcing the courts and legal aid
    6. A new sexual offences/domestic abuse court

21. An Institute for Government (IfG) report highlighted that *"the potential benefits of returning Crown Court productivity to 2016 levels substantially outweigh the likely demand savings from the structural reforms the government is proposing. That is where the government should start."*[14]

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[9] Magistrates' Court backlog July-September 2025 peak at 373,084 cases. MoJ "Criminal court statistics quarterly: July to September 2025" 18 December 2025
[10] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 1" 9 July 2025, p188.
[11] Bar Council "Bar Council Leveson Review submission – executive summary" January 2025
[12] Bar Council "Leveson Review Submission Executive Summary"
and Bar Council response to the Independent Review of the Criminal Courts
[13] Bar Council "Bar Council welcomes courts sitting at maximum capacity but warns against reducing jury trial" February 2026
[14] Institute for Government "Trial and error?: The impact of restricting jury trials on court demand" 21 January 2026

22. The report also states that there is a serious risk that the Government's proposed structural reforms *"could backfire and cause further decline in both productivity and performance. The reforms remove various safeguards for defendants, including the right to choose a jury trial and the automatic right of appeal from magistrates' courts."*[15]

23. The Bar Council continues to lead change and modernisation both within the Bar and wider justice system. In our Remote Justice report[16], we analysed remote hearings (decreasing since the pandemic). Barristers led the change and generally considered increasing remote hearings to be a broadly positive step (with appropriate caveats around access to justice issues e.g. interpreters).

24. This report was cited in Leveson Part II Vol 2, where Sir Brian concluded *"there is potential to increase remote participation across criminal courts in the future, bringing efficiency gains by reducing PECS transfer delays and freeing up courtrooms for hearings and trials which continue to be heard in person."*[17] The efficiencies in Leveson Part II and investment in the criminal justice system are immediate remedies and should be allowed to take effect.

25. We agree with the IfG and consider that radical changes to the availability of jury trials as proposed in the Bill will produce serious adverse consequences that have not properly been considered by the Government. There has been no pilot and the estimates of court saving are disputed by the IFG and based on vague qualitative analysis.[18] At best, the IfG agrees that the Government modelling is sound, but that relies on several assumptions – "some of which are highly uncertain".[19]

26. Instead of draining valuable time and resources attempting to force through an unpopular, untested and poorly evidenced change to our jury system – and one that will only have effect, if any, in 2028/2029.[20] We urge the Government to focus on the changes we know will make a difference now – see detail in Leveson Part 2.[21]

Part 1 – Procedure in the Criminal Courts
(To be read alongside Table of Amendments, Annex 1)

Clause 1-2: Determining mode of trial

Proposed change

27. This would abolish the right of election for all triable either-way offences, so the decision on jurisdiction will be made solely by the magistrates' courts.

The Bar's position

28. **Opposed**: The proposal would compound the problems caused by other measures in this Bill, which would result from the transfer of a large number of relatively serious cases from the Crown Court to the magistrates' courts.

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[15] Institute for Government "Beyond reasonable doubt?: Reviewing proposed reforms to jury trials" 9 March 2026
[16] The Bar Council "A lens on justice: The move to remote justice 2020-2024" May 2024
[17] Sir Brian Leveson "Independent Review of the Criminal Courts – Part II: Volume 2" 4 February 2026, p457
[18] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p34
[19] Institute for Government "Beyond reasonable doubt?: Reviewing proposed reforms to jury trials" 9 March 2026
[20] Rt Hon Mr David Lammy MP "Courts and Tribunals Bill, Second Reading" 10 March 2026
[21] Sir Brian Leveson, "Independent Review of the Criminal Courts: Part 2", 4 February 2026

29. The choice to elect works well and maintains a balance between magistrates' court and Crown Court and means that the magistrates' courts are not entirely overwhelmed.

Context

30. There has been chronic underinvestment in the magistrates' courts. Justice in the magistrates' courts is often criticised for poorly serving people within the system.[22]
31. Magistrates' courts are not the holy grail of efficiency and fairness[23] and in the 12 months up to September 2025 there were 19,998 ineffective trials.[24] Their backlog is substantial and currently stands at 373,084.[25] The government's Impact Assessment (IA) assumes that magistrates court trials require 4 hours, and guilty plea cases require 30 minutes. It also states if planned recruitment is not successful, "*there may be insufficient magistrates to deliver the additional 8,500 sitting days required*".[26]
32. The IfG analysis assesses the likely saving of court time under the new measures to be enacted in the Courts and Tribunals Bill to be in the region of 1-2%.[27] It refers to a net saving time as 9-13%[28] but the timeline is uncertain as reduction to juries will not take effect for years and so will not impact on ongoing delays. The IfG also doubts that magistrates will actually hear such a high proportion of cases as projected.
33. The IA states, "*overall the reforms will reduce demand on Crown Court time by almost 20%*".[29] However, it is based on "highly uncertain" assumptions.[30]
34. The IfG report suggests improving court productivity as a more effective way to reduce the backlog. It states "*The Crown Court is hearing almost 20% fewer hours per sitting day so far in 2025/26 than it was in 2016/17. If it had got through an equivalent number of cases per day in 2024 as in 2016, the case backlog would have fallen by at least a few thousand*".[31] The IfG also note that "*the potential benefits of returning Crown Court productivity to 2016 levels substantially outweigh the likely demand savings from structural reforms proposed in the Bill*".[32]
35. We agree with the IfG. Productivity improvements can also be actioned right away with targeted, localised, and potentially low-cost interventions.

Clause 3-5: Trial on indictment without a jury

Proposed change

[22] Transform Justice "Magistrates' courts – an opaque and underexamined world" 22 May 2024
[23] See Transform Justice "Beyond reasonable delay: efficiency in London magistrates' courts" 23 January 2026
[24] Criminal Bar Association "Monday Message 09.03.26" 9 March 2026
[25] MoJ "Criminal court statistics quarterly: July to September 2025" 18 December 2025
[26] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p34
[27] Institute for Government "Trial and error?: The impact of restricting jury trials on court demand" 21 January 2026
[28] Institute for Government "Beyond reasonable doubt?: Reviewing proposed reforms to jury trials" 9 March 2026
[29] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p18.
[30] Institute for Government "Beyond reasonable doubt?: Reviewing proposed reforms to jury trials" 9 March 2026
[31] Institute for Government "Trial and error?: The impact of restricting jury trials on court demand" 21 January 2026
[32] Ibid.

36. Where the likely sentence is up to 3 years' imprisonment the person will lose a trial by jury[33] and will be tried by one judge.

The Bar's position

37. **Opposed:** The Bar is fundamentally against the removal of the right to trial by jury (as established in statute) for defendants facing likely sentences of up to three years. These are not low-level offences. It will make no difference, even on the Government's estimate, to the backlog for many years, if at all. It will affect under 2% of cases but with a potentially devastating impact on the perception of fairness of the proceedings for those involved in those cases and likely will increase appeals.[34] It is overlooked that much of the criminal justice system runs on confidence, trust and cooperation. Adverse impact on child defendants has not been considered.

Crown Court Bench Division – Flawed Modelling and Court Time

38. The proposed Crown Court Bench Division[35] introduces an extra layer of hearings and complication, including ability to return to the submissions on appropriate jurisdiction – with a Single Judge or Jury. It does not take into account how cases often evolve with defendants being arrested at different times. It could result in further litigation at an interlocutory stage.

39. At Leeds Crown Court, as well as in other courts across England and Wales, some trials last 2-3 hours enabling two juries to be in retirement whilst a judge sits with a jury on a third trial.[36] Additionally, the time required for judges to write (for both a conviction and an acquittal) has been significantly understated. It is not akin to the time taken to write a summing up where no decisions are required about *why* a piece of evidence is to be preferred or discounted. No account has been taken of time saved by a judge able to continue with other work whilst one or two juries are in retirement.

40. Analysis by the IfG has shown that these proposals will make an overall difference only of 1% or 2% to the speed at which cases are heard in the Crown Court.[37] The proposed changes will only have an effect, if they have any at all, in 2028/2029.[38] There are other measures which can be implemented now and will make a difference much earlier.

41. A fundamental issue is the binary choice presented. Do nothing or do the proposed reforms. Presenting the costs, timeframes and benefits of a range of policy options would be logical and sensible, particularly when considering liberty of a person.

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[33] The Explanatory Notes and supporting documents to the Bill provide no schedule or annex. They state that, "*a Crown Court judge will assess whether the offence or offences to be tried are likely to attract a custodial sentence of three years or less*", implying that there will not be a definite list of offence categories but rather an assessment of each case.

[34] Institute for Government "Trial and error?: The impact of restricting jury trials on court demand" 21 January 2026

[35] No longer called a "swift court"

[36] See also, His Honour Geoffrey Rivlin KC, Submission to the Justice Committee: Reform of the Criminal Court, January 2026

[37] Institute for Government "Trial and error?: The impact of restricting jury trials on court demand" 21 January 2026

[38] Justice Committee, Work of the Lord Chancellor, 16 December 2025

42. The Treasury Green Book[39] recommends that a short list should generally include around five options as this means decision makers are presented with genuine choices rather than a single pre-determined outcome.

43. Also, according to a YouGov poll following the Government's announcement in December 2025, 60% of Britons said they feel positively about the jury service.[40] The Government's proposals go further than Sir Brian Leveson's recommendations in that they do not include two magistrates sitting with the judge.[41]

44. There is no information on assessment of the number of magistrates, judges, criminal barristers or solicitors required to support increased productivity or the planned shift in responsibilities.

Example scenario (if reforms go ahead)

45. Consider a 19-year-old student living in a house with other students. A small amount of 'spice' is found in their room, and they are charged with possession with intent to supply. They are of good character. Under the sentencing guidelines, they would be facing up to 26 weeks in custody. It is lifechanging. Their career would be over before it began. They want a jury to hear their defence that another student had the drugs and had stashed them in their room. They will no longer have the right to elect jury trial. A person with previous convictions for drugs will be entitled to a jury trial due to the risk of a sentence exceeding three years' imprisonment.

Clause 4 – Trial on indictment without a jury: complex or lengthy cases

Proposed change

46. This would give the Crown Court the power to direct that certain types of complex and/or lengthy cases be heard by a judge alone if it is in the public interest to do so.

The Bar's position

47. **Opposed:** Juries should be retained for serious and complex fraud cases. There is a real prospect that time would not be saved because of the time required to write adequately reasoned judgments. While the process of (a) considering the evidence, (b) reaching a decision, and (c) writing up the judgment is being undertaken the judge will not be free to sit on another trial or take other work in court. That will result in a reduction of court sitting days when compared with the current position, which allows judges to remain active dealing with case management hearings - and even conducting short trials - while a jury is in retirement.

Context

48. In most fraud trials the case will turn on whether the prosecution can prove that the defendant was dishonest which will be judged against the standards of ordinary reasonable people. It will result in a decision that is representative of the views of the public, compared to by an individual alone. Many of the cases in scope have potential sentences of over 10 years in prison.

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[39] The Green Book (2026), p26

[40] YouGov "Jury service leaves Britons with positive opinion of justice system" 3 December 2025

[41] Courts and Tribunals Bill (as introduced)

49. This proposal also significantly deviates from the safeguards put forward by Sir Brian Leveson, who specifically suggested that:[42]
    1. Any such proposal could properly be piloted first (Part 1, Chapter 9, para.86),
    2. The definition of serious and complexity should be clear and based on existing legal definitions that would provide the correct framework for identifying the pool of cases that would be better tried without a jury (para. 91),
    3. The guiding principle should be the 'interests of justice' (para. 94) and,
    4. Fundamentally, that the decision should be capable of being subject to interlocutory appeal (para. 95).
50. Further, the Independent Review of Disclosure and Fraud Offences[43] (report by Jonathan Fisher KC[44]), which examines juries in fraud cases is awaited and should be considered. What is the position if it reaches a different conclusion to Sir Brian Leveson?

Clause 6: Increase in maximum custodial sentence in magistrates' court

Proposed change

51. A power to extend magistrates' court sentencing powers up to 2 years' imprisonment for single and multiple triable either-way offences.

The Bar's position

52. **Opposed:** Summary trial is designed for the purpose of dispensing swift justice in low-level cases. The extension of summary justice to cases in which a defendant could receive up to 2 years' imprisonment – particularly when combined with the removal of a right to elect Crown Court trial, and the removal of a right of automatic appeal against summary conviction – is a comprehensive rolling back of safeguards.[45]
53. The introduction of a presumption against custodial sentences under 1 year and the extension of suspended sentences for terms of imprisonment up to 3 years is a provision expressly not applying to children. It may lead to adverse outcomes for children.

Context

54. The backlog in the magistrates' courts is 373,084 and is accelerating. It increased by 17% in the last year[46]. This change will move pressure from one stretched part of the criminal justice system to another.
55. The price of summary justice is most fundamentally reflected in the inequality of outcome between different ethnicities. The Lammy Review of 2017 explained that, compared with the *"success story"* of juries, who did not discriminate between Black, Asian and Minority Ethnic (BAME) and white defendants when returning verdicts,

[42] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 1" 9 July 2025
[43] Home Office "Independent Review of Disclosure and Fraud Offences" 20 March 2025
[44] Home Office Independent Review of Disclosure and Fraud Offences: second report submitted January 2026
[45] At present: proceedings are not recorded; the availability of legal aid is limited so that defendants are often unrepresented (or are represented by very junior practitioners); individual prosecutors handle large volumes of cases (often conducting several trials in one day); and a defendant has an automatic right of appeal to the Crown Court by way of re-hearing.
[46] MoJ "Criminal court statistics quarterly: July to September 2025" 18 December 2025

those tried in the magistrates' courts were not so fortunate. In particular, the report noted "*some worrying disparities for BAME women*".[47] Black, Asian, mixed ethnic and Chinese/Other women were all more likely to be convicted than White women.

56. *Eroding access to legal representation:* A significant cohort of defendants who would have received the benefit of legal aid in the Crown Court would now, under these reforms, be ineligible for legal aid in the magistrates' courts. This is due to the lower threshold for eligibility in the magistrates' Court (those whose annual disposable income is between £22,325 and £37,500).[48] Many will therefore be required to represent themselves which will add to the length of proceedings.

57. *Lack of available magistrates:* The obvious (and intended) effect of this proposed reform, particularly if coupled with the abolition of a defendant's right to elect Crown Court trial, will be to increase the workload of the magistrates' court. However, presently, there are not sufficient magistrates to accommodate this. In January 2022, the largest magistrate recruitment campaign in the 650-year history of magistrates was launched to recruit an additional 4,000 magistrates.[49] As of 1 April 2025 there were 14,636 magistrates in post across England and Wales.[50] This is around 2,000 more than in April 2022.[51] This shows some progress, but a significant shortfall against the target.

58. The IfG in its 2025 performance tracker report identified that *"[the number of] magistrates fell dramatically from 2010/11 to 2021/22, more than halving (down 54%). They have since begun to recover, but in 2024/25 were still 46% below the number in 2010/11."* [52] The Government's own impact assessment concedes that the proposed reforms could not be accommodated within the existing cohort: one of the identified *"risks and uncertainties"* in the Impact Assessment[53] is that if planned recruitment was not successful, *"there may be insufficient magistrates to deliver the additional 8,500 sitting days required"*. The dearth of magistrates is of course in contrast to the limitless pool of willing and available jurors.

Clause 7: Appeals from magistrates' courts

Proposed change

59. To replace to the automatic right of appeal from magistrates' court to the Crown Court with a permission stage.

The Bar's position

60. **Opposed:** The Bar is fundamentally against this change. The proposed change would remove a vital safeguard against wrongful summary conviction and excessive (or unlawful) sentences imposed by magistrates. The consequence risks adding to the burden on the criminal courts rather than reducing it.

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[47] David Lammy MP "Lammy Review" 2017. p.32

[48] Legal Aid Agency "Criminal legal aid: means testing" updated 3 February 2025

[49] MoJ "Magistrate recruitment campaign launched" 24 January 2022

[50] MoJ Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2025 Statistics 23 July 2025

[51] There were 12, 506 magistrates in post as at 1 April 2022. See Table 3.5 Diversity of the judiciary: 2022 statistics - GOV.UK

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

[53] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p34.

Context

61. At present, there is no restriction on a defendant's right to appeal a conviction or sentence imposed in a magistrates' court, and the defendant will receive a re-hearing of their case in the Crown Court. The right does not appear to be exercised frivolously or vexatiously.

62. In Part 1 of the Leveson Review, Sir Brian Leveson stated *"that in 2024 the proportion of magistrates' court decisions that were appealed stood at approximately 0.4%"* and *"the total number of defendants appealing against their conviction was 2,487, of which 1,009 were allowed (41%). The total number of defendants pursuing an appeal against their sentence was 2,459, of which 1,088 were allowed (44%)."*[54]

63. The success rates of appeals under the present system do not suggest that reform is necessary – rather, they suggest that the existing right of appeal is of real practical importance and safeguards justice.

64. The removal of the safeguard of automatic right of appeal to the Crown Court from the Youth Court will impact adversely on children charged with very serious offences such as rape, robbery and grievous bodily harm and tried in the Youth Court.

Clause 8-11: Admissibility of evidence

Proposed change

65. These concern restrictions on the admissibility of evidence of 'sexual behaviour', compensation claims, and purported previous false allegations by complainants.

The Bar's position:

66. **In favour:** The Bar welcomes these provisions which provide appropriate safeguards for victims and for fairness of trials. They reflect proposals made by the Law Commission in its recent review of the admissibility of evidence in relation to sexual offences, which were informed by the Bar Council's response to the Commission's consultation. They also provide appropriate clarification in statute of some of the recent case-law in this complex area of law.

67. Clause 11 makes specific provision for the admissibility of previous domestic abuse offending. However, in practice such evidence is likely to be admitted in any event under current bad character provisions of the Criminal Justice Act 2003 and so is unnecessary.

68. Clause 8 - Add in a provision allowing admissibility of material if all parties agree.

69. Clause 8(5) (1A) – clarify the meaning in the proposed 1A of 'part of the event which is the subject matter of the charge' to include 'any behaviour or communication preceding the charge that is connected to the event itself) – encompasses messaging etc planning sex that currently does require a s41 application.

70. Clause 9 - change test to relevance rather than substantial probative value.

71. Insert amendment to make it clear that where a compensation claim has been made or an attempt to make claim has been made disclosure of the details of that claim is

[54] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 1" 9 July 2025, p188.

relevant notwithstanding an application for leave has not been made – an application cannot be made without proper disclosure first.

72. Clause 10 – is it necessary? Often the strength or weakness of the suggestion of falsity can only be determined after disclosure – introducing 'merely' could result in a refusal to even consider examining the material.

73. Clause 11 – does it really add anything to the existing provisions – is it wise to begin to bring in specific offence types as creating a presumption? Thin end of the wedge argument – i.e. will the next development be 'sexual offences' added?

Clause 12 to 16: Special measures directions

74. **In favour:** The new measures in respect of special measures directions are also to be welcomed. Our experience is that these provisions are likely to assist some complainants in giving their evidence in an environment that is as supportive and as safe as possible within an adversarial court system.

Part 2 – Other provision about courts and tribunals

Clause 17: Welfare of the child: repeal of presumption of parental involvement

Proposed change:

75. To repeal the presumption of parental involvement from the Children Act 1989 which, in its current form, states that, unless there is evidence to the contrary, the court must presume that the involvement of a parent (who can be involved without risk of harm) will further the child's welfare.

The Bar's position:

76. **In favour:** We welcome the provision to remove the statutory presumption of parental involvement from the Children Act 1989. Evidence has shown that the presumption can operate in ways that do not reflect the best interests of children, particularly in families affected by violence and abuse. However, legislative reform alone will not be sufficient to address these issues. Years of underfunding of the family courts and reductions in the scope and availability of legal aid have had a significant impact on the operation of the family justice system, resulting in large numbers of unrepresented parties, longer proceedings and sometimes unsafe outcomes for children. For the reform to be effective, this change must be supported by an adequately resourced and properly functioning family justice system.[55]

Delays

77. The backlog spiked by 23% in the year leading up to the pandemic and rose a further 48% after the onset of the pandemic.[56] Most recent figures show the Crown Court backlog to be 76,619.[57] Delays can, and often are, caused by factors completely unrelated to juries. Reasons for delay recurrently include prisoners failing to be delivered; court buildings being unfit for use; lack of advocates and judges.

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[55] Bar Council "Review of Civil Legal Aid" February 2024; and Bar Council "System Overload: a report on family legal aid" December 2025

[56] National Audit Office, Reducing the Backlog in Criminal Courts Session 2021-22, HC 732, 22 October 2021

[57] MoJ "Criminal court statistics quarterly: July to September 2025" 18 December 2025

78. It is important to have accurate consideration of delays and that not all courts have the same delays. For example, Wales has a backlog that is manageable. Further, the issues with longer and more complex trials relate to those that will continue to be tried with a jury.[58] This undermines further the focus on cases where the sentence might be up to three years' imprisonment.

Rape Cases/Domestic Abuse Cases

79. Tackling delays in rape cases requires looking at where the delays are occurring, including the substantial delay in investigation and charge, before the case gets to court.

80. The median time from receipt at Crown Court to completion for all rape cases in the third quarter (Q3) of 2025 was 365 days (one year) and for adult rape cases was 338 days (around 11.5 months).[59] This is lower than it was in Q3 2024. Substantial delays are at the pre-court stage and there should be a focus on delays in investigation by police and charge by the Crown Prosecution Service. It is understood not to be correct that rape cases are being listed in 2030; the majority are listed in 2027.[60]

81. Set up a new sexual offences/domestic abuse court.

Prisoner Escort Custody Services (PECS)

82. There is also the lack of modelling on the changes needed to be made to PECS. The Impact Assessment estimated that the proposed reforms will increase the number of journeys PECS suppliers required to complete. With the existing PECS delays, it is concerning that there are no further proposals on the changes needed for PECS beyond saying that it is a "normal part of procedure to meet changing operational needs"[61].

83. Penalties should be introduced into apparently poor-quality contracts to introduce efficiency and reduce delay.

Bar Council

25 March 2026

[58] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p22

[59] MoJ "Criminal court statistics quarterly: July to September 2025" 18 December 2025

[60] The Standard "Thousands of trials will not be heard until at least 2028, data reveals" 27 February 2026. The MoJ will have this data.

[61] MoJ "Courts and Tribunals Bill (Structural Criminal Court Reform) Impact Assessment" 24 February 2026, p26.

Public Bill Committee
Courts and Tribunals Bill
Bar Council Amendments

Clause	**Bar Council and Criminal Bar Association Position**	**Clauses Opposed** *** ***Amendment Proposals if Clauses retained***	**Explanatory Statement** *** ***Amendment proposal explanatory statement***
1, 2 and 3 *Removing the right to elect trial by jury/trial on indictment*	Delete Clauses 1, 2 and 3	**Clauses 1,2 and 3 are opposed.** **No amendments or substitutions are proposed to Clauses 1 and 2.** Page 1, line 4, remove Clause 1. Page 4, line 16, remove Clause 2 Page 5, line 12 remove Clause 3 *** ***Only if clause 3 is retained, which is opposed, then the following safeguards must be added:*** *Page 5, line 25 omit "condition" and substitute "conditions"* *Page 5, line 28 omit subsection (5) and substitute:*	Reasons for opposition: This is moving the burden of one over-stretched part of the criminal justice system to another (the magistrates' courts – backlog 373,000 – already drastically accelerating each year; 17% increase over the last year and the highest on record[1]), whilst potentially diminishing the quality of justice administered[2] *** Amendment proposed if clause retained as currently the perverse result is a person with previous convictions is more likely to

[1] Criminal Court Statistics quarterly: July – September 2025.
[2] https://www.transformjustice.org.uk/publications/

		(5) *The conditions in this subsection are met in relation to a defendant if:* *(a) the defendant, if convicted of the offence or offences for which the defendant is to be tried, would be likely to receive a sentence of imprisonment or detention of more than three years for the offence or offences (taken together) and* (b) *the defendant is of good character (never been convicted of an imprisonable offence and/or a person would be treated as a rehabilitated person, section 1 Rehabilitation of Offenders Act 1974) or* *(c) If convicted of the offence or offences for which the defendant is to be tried, would likely suffer significant reputational damage or their employment or professional qualifications would be adversely affected.* *(d) there are reasonable grounds to believe that the gravity and/or complexity of a case may increase.* *(e) exceptional circumstances exist."* *Page 5, line 30 after s.74A (6) add:* *(7) The above provisions on allocation for trial without a jury do not apply to cases where a defendant already has elected to be tried in the Crown Court.* *Page 8 line 21, at the end, add:* *(h) Fairness when considering the rights and circumstances of the defendant* *(i) Interests of justice* *Page 9, line 17 remove "no" and substitute "is a"* *Page 9 line 18 after "without a hearing" add "A hearing must be held to consider reallocation unless the prosecution and defence waive their right to the hearing."*	continue with a jury trial. A conviction can be life changing. Either way offences include offences that are serious and evidence may not be fully disclosed at this stage. An exceptional circumstances clause takes into account individuals rather than a blanket exclusion.

4 and 5 *Trial on indictment without a jury – lengthy and complex cases* *Consequential amendments relating to clause 3 and 4*	Delete Clauses 4 and 5	**Clauses 4 and 5 are opposed** Page 10 line 5 remove Clause 4 Page 14 line 7 remove Clause 5 *** ***If these clauses are retained, which is opposed, there must be minimum safeguards:*** *Substitutions and AdditionsmS42A* *Page 10 line 11 -S42A (3)(a) – remove the 'or' and change to "and" – so it reads 'length and complexity'* *Page 10 line 35 add (d) the length of the trial is agreed by both defence and prosecution to be a minimum of 5 months* *Page 11 line 1 remove "no" and add "a" so it reads "there is a right of appeal"* *s42B Page 11 line 39 add:* *(k) Causing death by careless or inconsiderate driving s2B RTA 1988* *(l) Causing serious injury by dangerous driving s1A RTA 1988* *(m) Causing serious injury by careless or inconsiderate driving s2C RTA 1988* *(n) Health and safety offences resulting in a fatality or offences connected to a fatality* *(o) Offences contrary to the Dangerous Dogs Act where a death arises* *(p) All sexual offences and those which lead to notification requirements upon the Sexual Offences Register.*	Appeal is a fundamental safeguard and should be included against an allocation decision. Increasing the scope of reallocation will avoid last minute change of allocation decisions based on prosecution offering no evidence on counts just before a jury is sworn. This is essential to safeguard against tactical decisions by prosecutors. Those who have elected have elected in the expectation of a jury trial. If the case is allocated on the basis that the sentence will not exceed three years' imprisonment, unfairness will result if the Judge can then impose any sentence, after they have convicted. It may lead to abuse of process. *** Section 42A(3)(a) amendment as cases will be rare and sentence could still be very high (unlike the 3yr limit for other cases) The list of excluded offences is incomplete and illogical
6	Delete Clause 6	**Opposed**	The summary justice procedures are structured to address cases that result in

Increase in maximum custodial sentence in magistrates court		*** *Only if this clause is retained, which is opposed, amend:* *Page 15, line 36, section(1A) omit (c) and (d)* *Page 15, line 28, after "regulations" insert "made by affirmative resolution"*	shorter and less complicated periods of imprisonment The limit of 12 months fits with the presumption of a suspended sentence under the Sentencing Act 2025. *** Parliament should retain oversight of increasing the powers of magistrates.
7 and Schedule 2 *Restricting appeals from the magistrates' court (schedule 2)*	Delete Clause 7	**Opposed** Page 17, line 13 remove clause 7 *** Only if clause 7 is retained, which is opposed, amend: *Page 38 line 33 add "against sentence" after "grant permission to appeal"* *Page 39 line 1 add "and (5)" after "subject to subsection (3)"* *Page 39 line 11 add (5) There shall be a right to renew the permission to appeal orally".* *Page 39 line at the end add (6) Grounds of appeal may raise issues of procedure and fact arising in the trial as well as law.*	It is not necessary. *** Where a decision is made "on paper" there should be a safeguard of a right to renew the appeal orally without permission. Clarify the level of Judge as a Judge the level of Circuit Judge or "ticketed" Recorder who determines the appeal.
8-11 *Restricting admissibility of evidence of 'sexual' behaviour,*	Support with amendments	Support with amendments: Delete page 21 line 33 onwards Clause 10 Page 17 line 20 onwards • Add in a provision makes material admissible upon agreement of all parties.	Opposed bringing in specific offence types as creating a presumption. ***

compensation claims and purported false allegations by complainants		• Page 19 line 12–add to *'part of the event which is the subject matter of the charge'* the amendment '*including any behaviour or communication preceding the charge that is connected to the event itself'* • *Page 20 line 12 remove "substantial probative value" and substitute "relevance"* • *Page 20 line 32 add "where a compensation claim has been made or an attempt to make a claim has been made, disclosure of the details of that claim is relevant notwithstanding an application for leave has not been made."*	The amendment to clause 8 (5) encompasses messaging etc in relation to sex that currently does require a s41 application. Clause 10 – unnecessary. Often the strength or weakness of the suggestion of falsity can only be determined after disclosure – introducing 'merely' could result in a refusal to even consider examining the material An application cannot be made without proper disclosure first. Clause 11 – it doesn't add anything to the existing provisions.
12-16 *Special Measures directions*	Support with amendments	Support with amendments: *Page 27 line 38 add (7) Disclosure of the details of the connection between the 'supporter' and the complainant are required prior to seeking the court's agreement of the witness supporter*	
17 *Welfare of the Child: removal of the presumption of parental involvement*	Support	Support	

Bar Council New Clauses

Clause	**Alternative / Amendment Proposals**	**Explanatory Statement**
Bar Council NC1 A reintroduction of the old-style committal	Magistrates can only commit to the Crown Court when the case is evidentially ready	This would save considerable time in the Crown Court
Bar Council NC2 Create Specialist Sexual Offences / Domestic Abuse Courts with jury.	Trial by specialist judge, and jury Additional training for jurors Specialist accredited training required for defence and prosecution advocates Specialist court facilities aimed at comfort and safety of complainants, and accommodating special measures Stricter time limits on case preparation, more active case management 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	These courts will directly impact in reducing the waiting of vulnerable victims/complainants and obviate any need (which has not been shown) to remove a jury and set up the Crown Bench Division Court.
Bar Council NC3 Prioritisation for such Sexual / Domestic Abuse cases	A provision (possibly with a sunset clause) For qualified cases (RASSO / Domestic Abuse) - where defendant is on bail -to be given priority and heard by the Specialist Court (sitting with a jury) before custody cases (this could be an	These courts will directly impact in reducing the waiting of vulnerable victims/complainants and obviate any need (which has not been shown) to remove a jury and set up the Crown Bench Division Court.

	amendment to s.22 of the Pros of Offenders Act 1985)	
Bar Council NC4 Increasing incentives for guilty plea	Increase the incentive to 40%. This credit to be available for longer than "the first opportunity" – to align with the proposal on committals. Include a guilty plea incentive before a retrial.	Incentivises and reduces trials. Crown prosecution service also is required to take ownership of cases and review overcharged indictments. Addresses those cases where the prosecution need to start a second (or third) time. Reclassify offences and move the threshold of offences that are in the Crown Court to summary offences – see below.
Bar Council NC5	Reclassify offences and move the threshold of some either way offences to summary offences – see page below.	

Potential Offences to Re-Classify

1. Criminal damage – increase value to £10k s1 Criminal damage Act 1971
2. Assault emergency worker – s29 Assaults on Emergency Workers Act 2018
3. Simple Possession of Class A, B and C drugs s5(3) Misuse of Drugs Act 1971
4. Racially aggravated s4 Public Order Act
5. Racially/religiously aggravated assault - s29 Crime and Disorder act 1998
6. Racially/religious aggravated harassment - S31 Crime and Disorder Act 1971
7. Racially/religiously aggravated stalking without violence – s32 Crime and Disorder Act 1998
8. Breach of ASBOs or CBOS s1 Crime and Disorder Act 1988
9. Breach of Restraining Orders/ Harassment injunctions (possibly up to 3rd breach) - s5 Protection from Harassment Act 1997
10. Breach of non-molestation orders – Family law Act 1996
11. Malicious Communications offences – s1 malicious Communications Act 1988
12. Dangerous Dog Act offences (where no injury to a person is caused) – s3 Dangerous Dogs Act 1991