Independent Review of the Criminal Courts

Bar Council response to the Review Part 1 recommendations

August 2025

Sir Brian's Recommendations	Bar Council response
1. In all appropriate cases, when making a charging decision, police forces and the Crown Prosecution Service consider whether an Out of Court Resolution should be offered, including cautions, conditional cautions and other mechanisms for disposal.	Agreed - In relation to Recommendations 1-5: - These will have a significant impact, if properly implemented (albeit it would greatly assist to know many cases the MoJ's modelling suggests might be diverted away from the Criminal Justice System (CJS)). - A core problem, post-pandemic, in addressing the backlog is that the new cases going into the CJS have consistently outstripped the rate at which the system concludes cases, even where that disposal rate has risen to the pre-pandemic point. Reducing the rate of receipts will have an immediate impact on the backlog, as it will prevent cases from going into the CJS upon implementation, and enable other cases to be listed quicker than they would otherwise be. - The Bar Council does stress the need for victims to be properly consulted, and for public confidence to be maintained in such decision-making (no doubt best achieved through transparency). - Related to this recommendation, it may be appropriate to permit charging out of time for assault of a police constable (PC). This would be for cases that are presently awaiting trial in the Crown Court for assault of an emergency worker (AEW) (to bring these in line with current Crown Prosecution Service (CPS)

	charging practice). The CPS could then offer no evidence on the AEW charge, the Crown Court could remit to the Magistrates Court, and a speedier trial could take place, as would have happened a few years ago before the new offence was brought in.
2. There be a standard approach to ensure better administration of Out of Court Resolutions with the standard set for training through the College of Policing and the Law Society. Better administration could be in the form of a scrutiny panel conducted by Local Criminal Justice Boards overseen by the Criminal Justice Board.	Agreed See response in 1 above
3. The police and Crown Prosecution Service be encouraged to review appropriate cases in the open caseload to identify whether any of those cases could be suitable for the use of an Out of Court Resolution.	Agreed See response in 1 above
4. Government undertakes an evaluation study in order to consider the use of digital tools that would help streamline effective use of Out of Court Resolutions across England and Wales.	Agreed See response in 1 above
5. Endorse the decision of the Home Office to amend Outcome 22 (police counting tool for Out of Court Resolutions) so	Agreed See response in 1 above

that Out of Court Resolutions are recognised in the same way as other outcomes.	
6. Further investment in and greater use of rehabilitation programmes for drug and alcohol misuse and other health intervention programmes. This must adhere to a national framework to ensure consistent provision across the country.	Agreed
7. Government reviews the Rehabilitation of Offenders Act 1974 in order to simplify and clarify the system to encourage the recognition of rehabilitation.	Agreed
8. Implement Out of Court Resolutions alongside restorative justice for low-tier offences such as some thefts, public order offences and drug misuse.	Agreed See response in 1 above **Plus:** Remove low level possession with intent to supply to another (PWITS) by deferring prosecutions (many are from 2020/2021 and the defendant has not offended since – sentencing becomes equivalent of dealing with a deferred prosecution in any event
9. Expansion of the Deferred Prosecution Scheme should be introduced by a legislative amendment to the Criminal Justice Act 2003.	Agreed See response in 1 above
10. CPS and MOJ agree eligible offences and criteria for Out of Court Resolutions	Agreed See response in 1 above

in consultation with the National Police Chiefs' Council.	
11. College of Policing makes clear that Release Under Investigation (RUI) is no longer appropriate and that the only mechanism for releasing a suspect from the police station while an investigation continues should be bail (unconditional or subject to conditions). Alternatively, the Policing and Crime Act 2017 should be amended to include statutory provisions in relation to the use of RUI, identical to those in force on bail. Additionally, applications to the magistrates' court to extend bail (or RUI if it remains) should be heard by the magistrates' court as soon as possible, provided they are served in good time and that, pending such a hearing, bail conditions in place can continue.	Agreed
12. Police and CPS must consistently follow established guidance to guarantee accurate and fair charging decisions. To do so, I would encourage the police and CPS to establish better communication channels to facilitate collaborative	Agreed

decision-making and improvement of their decision-making process.	
13. The statutory threshold for the Independent Office for Police Conduct (IOPC) investigation where an officer has made a decision regarding bail should remain, but I recommend that the Home Office and IOPC guidance should be amended to make it clear that, in the context of bail, only serious failings of judgement falling far below the standards to be expected of an officer when assessing risk would ever trigger a misconduct investigation.	Agreed
14. MOJ considers removing the right to elect for certain low level offences. The removal should, in my view, apply to offences with a maximum sentence length of less than or equal to two years and which could be expanded to other either way offences by the inclusion of offences on a statutory list (which would facilitate ready amendment).	Opposed Removing the right to elect in the Magistrates court does not consider the impact a conviction can have upon someone, if the right to elect was met with caveats, for example, if someone had two previous convictions for the same offences, but removal without caveat, whilst simultaneously removing an automatic right of appeal causes us great concern.
15. Ability to amend magistrates' sentencing powers by Statutory Instrument should be repealed and that	Neutral We would be assisted by knowing what the modelling suggests the number of cases affected will be, as it impacts on the necessity/proportionality of other, more radical, steps.

the 12-month maximum should be made permanent.	We note the issues with Single Justice Procedure.
16. For either way offences for which the right to elect is to remain, the order of decisions made on allocation should be reversed. Where a defendant indicates a not guilty plea, they should next be invited to elect for Crown Court trial. If the defendant chooses not to elect, only then would the magistrates' court make its decision on allocation: to retain jurisdiction and try summarily or direct to the Crown Court.	Neutral
17. To reflect inflation, the existing threshold for criminal damage being tried as a summary only offence be increased from £5,000 to £10,000, as set by section 46 of the Criminal Justice and Public Order Act 1994.	Agreed It is a straightforward and sensible reform that could be implemented with a minimum of delay.
18. Government reclassifies a list of either way offences to summary only (as set out in Annex G) and that the maximum custodial sentence length for these be set at 12 months. The maximum custodial sentence lengths prescribed for existing summary only offences	As per recommendation 15, this is within the normal scope of legislation, capable of being achieved quickly and cheaply, and will have an immediate impact on the number of cases entering the Crown Court backlog. We do not believe that sexual offences such as exposure/voyeurism, or offences involving a dishonesty element, should be included due to the ancillary consequences/reliance on independent ('man in the street') assessment of dishonesty, and we would be assisted by indication of the numbers of jury trials for each offence.

should remain. Consideration should be given to retaining present police powers and existing time limits for the commencement of a prosecution in relation to these reclassified offences.	
19. Trial and sentencing proceedings in the magistrates' court be audio recorded and, if necessary for the purpose of appeals, appropriate parts transcribed.	Agreed
20. Endorse the recommendation made by Sir Christopher Bellamy KC in the 'Independent Review of Criminal Legal Aid' in relation to legal aid that committals for sentence should not be remunerated at less than the equivalent remuneration for a guilty plea in the Crown Court.	Agreed
21. The automatic right to appeal is replaced with a requirement for permission to appeal, with grounds to appeal similar to those available from the Crown Court to the Court of Appeal (Criminal Division).	Opposed - This will place a further strain on the system. - There is no evidence that the backlog includes many appeals – which are an important test of fairness of the Magistrates especially if their sentencing powers are to be increased. - We suggest that the Government waits for the outcome of the Law Commission on Criminal Appeals before considering making such a significant change.
22. The requirement for a full re-hearing in the Crown Court should be replaced	Opposed

with a hearing on issues for which leave to appeal has been granted.	
23. A Criminal Practice Direction is introduced as a matter of urgency to set an expectation on the judiciary to apply Goodyear (advance sentence indications) in all trials, irrespective of a request from the defence, in the Crown Court, preferably at the Plea and Trial Preparation Hearing (PTPH), unless good reasons are given not to provide an indication.	Agreed If this reform were combined with more active judicial case management and leadership/case ownership from senior Crown Prosecution Lawyers, as seen in the Woolwich and Liverpool, as well as an increased use of Goodyear indications (as proposed in Recommendation 23), then the benefits would be further increased. Goodyear requires only a Practice Direction to make it effective and results in removing cases from the backlog can be seen in courts which links Chief Prosecutor with Chief Police and Resident Judge to list cases that can resolve (lesser plea or offer no evidence).
24. The Plea and Trial Preparation Hearing (PTPH) form should be updated immediately to include a requirement for the defendant's legal representative to confirm that they have asked their client whether they wish to seek an advance indication of sentence at the PTPH.	Agreed Maintaining quality is crucial and a lowering of quality/experience bring their own delays.
25. Any future reform of the legal aid scheme should be adjusted to recognise the work advocates do in order to prepare for the Plea and Trial Preparation Hearing.	Agreed A recycled recommendation if the need to frontload payment. This will reduce the number of hearings and reduce the backlog (linked to 26). The dire underfunding of legal

	aid is critical to address, including the implementation of the Criminal Legal Aid Advisory Board (CLAAB) report which refers to the ongoing lack of increase.
26. There should be a pilot scheme to test whether the Plea and Trial Preparation Hearing should be delayed to ensure proper engagement between the parties. Further, I recommend this pilot is implemented forthwith and before my other recommendations have been added to the statute book.	Agreed Immediate pilot to take place to monitor the effect of delaying the Plea and Trial Preparation Hearing (PTPH). This will likely have some immediate impact on the backlog, in order to enable better quality advice to be given at the PTPH stage, and more informed decisions made, particularly if combined with a more gradual decline in the available credit between first appearance in the Magistrates Court and the first hearing in the Crown Court
27. Maximum reduction for entering a guilty plea be increased to 40% if the plea is made (or indicated) at the first available opportunity. Further, I suggest it should decrease to one third at the Plea and Trial Preparation Hearing and, thereafter, be at the discretion of the judge as the case proceeds to trial. This should also apply to magistrates' courts.	Agree to a regime of reducing sentence according to timing of entering guilty plea. We would suggest the following regime: Increase for credit to rise from 33.3% to 40% at first opportunity, and 25% to 33.3% at PTPH stage, and thereafter at discretion of judge), plus judge management of cases. - This will have some impact by increasing the incentive on guilty defendants to plead guilty. It does not require resources, and in fact would likely lead to a saving of money, given impact on prison sentence lengths. - Also, of significant importance and effect would be the restoration of the ability of the court to adopt a flexible approach – at present the near-mandatory loss of credit between Magistrates Court and Crown Court means that the incentive to plead guilty at PTPH is not as significant as it might otherwise be
28. The Litigators' Graduated Fee Scheme should be reformed into a banded scheme with most cases in standard	Agreed - Reform of litigators fees/legal aid thresholds

fees. The reliance on the number of Pages of Prosecution Evidence as a proxy for the complexity of a case and assessment of fees should cease.	- Any potential 'perverse incentives' against the early resolution of cases should be eliminated.
29. A Statutory Instrument be laid in Parliament to increase income thresholds for legal aid in the magistrates' court in line with the current Crown Court criteria for sentencing in either way cases.	Agreed See response to 28 above
30. The creation of a new Division of the Crown Court: the Crown Court Bench Division. All either way offences would be eligible to be tried in the Crown Court Bench Division. Whether the defendant exercises their right to elect a Crown Court hearing or is sent by the magistrates, in every case, at the Plea and Trial Preparation Hearing (PTPH), a judge should make a decision to allocate the case to the Crown Court Bench Division or to the Crown Court with a jury. There would be a presumption of a bench trial for any case which carries a prospective sentence of three years or less. Parliament should set a framework	Opposed I. It would take some considerable time to establish (both in terms of the legislative timetable and the administrative aspects of the process). II. Cases in the backlog are those where defendants already have elected. There would be legal challenges under public law principles of legislation applying retrospectively. III. Likely to be increase in interlocutory and final appeals (jury verdicts themselves are virtually impossible to appeal). IV. Its success it depends on additional judicial resource, and an increase in the number of court staff / advocates etc, probation and Prison Escort Custody Services (PECS) delivering on time and in the dock – but if such increased resource were available and PECS delivered, then jury trials could be disposed of at a faster rate than they are at present, so any savings may be illusory V. The additional resource in terms of lay magistrates is unlikely to be found (as the Magistrates Association notes – suggesting that its numbers would need to increase by around a third if a CCBD were introduced).

within which the PTPH judge would be required to operate.	
31. Sentencing Council creates Crown Court Division Allocation guidelines following its required consultation process.	Opposed
32. The Crown Court Bench Division would, as part of the Crown Court, have the same sentencing powers as the Crown Court in its current form.	Opposed
33. Any judge authorised to sit in the Crown Court in its current form would be eligible to sit in the new Crown Court Bench Division, as part of the Crown Court.	Opposed
34. when it is possible (bearing in mind funding, alongside capacity across the Criminal Justice System) the allocation of sitting days in the Crown Court should be increased to 130,000 per year. This will cover both jury trials and the Crown Court Bench Division. His Majesty's Courts and Tribunals Service should build towards this goal over time, through a range of 110,000 sitting	Greater sitting days and range of judicial office holders to sit in Crown Court): - This will have immediate and significant effect - There are plenty of cases that are listed for trial, and ready, with available counsel in attendance, that are adjourned due to lack of court space having been listed as floaters or backers. - As noted by the Institute for Fiscal Studies in its report on Productivity in the Crown Court[1], the biggest single (absolute) contributor to the doubling of the number of ineffective trials (compared with 2019) has been the rise of ineffective trials due to over-listing or another case over-running (from 947 in 2019 to 1,881 in 2024).

[1] IFS Report Productivity in the Crown Court

days (the current allocation) to the new target and this sitting day level should be regularly reviewed. **35.** A vacancy request be addressed to the Judicial Appointments Commission so as to generate a specific 'Circuit Judge – crime' and 'Recorder – crime' recruitment competition. **36.** The Lord Chancellor makes greater use of the powers under section 94 of the Constitutional Reform Act 2005 to appoint suitably qualified candidates to conduct criminal work both in the magistrates' court and the Crown Court over and above the previously agreed vacancy request. **37.** HMCTS maximise sitting days for Recorders, and for Circuit Judges and Recorders sitting-in-retirement. **38.** The Judiciary considers making greater use of flexible deployment into the Crown Court. This could start with the deployment of a greater number of District Judges (Magistrates' Courts) and Deputy District Judges (Magistrates' Courts). Deputy High Court Judges who have not been	- That being so, it seems clear that increasing the number of sitting days is the single most-impactful means by which the disposal rate (which has remained below receipt rate throughout, and has therefore prevented inroads into the backlog) can be increased. - It is resource-intensive but absolutely necessary and will work. Further judges and staff are of course required to achieve this, but standards of training and personnel should nevertheless remain high for these demanding, vital public roles. - Where more court space is required to accommodate an increase in trial listing, this could be secured by any number of mechanisms, (not least as a number of existing courtrooms regularly sit empty, so the problem is not primarily one of building capacity). - We suggest that existing court capacity could be maximised by permitting judges to conduct Cloud Video Platform (CVP) hearings from their chambers or other convenient rooms in court buildings (most courts have a judicial dining room / library, that could perhaps be repurposed for the specific task of enabling a judge to case manage on CVP) thereby making the courtrooms that are needed for trials / in person cases / custody cases available (similar to hearings in Admin court where Judges use their rooms). - Separately, fixing and then maintaining the court estate as a matter of urgency so that no (or fewer) sitting days / hours are lost due to e.g. floods, or a breakdown of heating or cooling systems - Investing properly in tech and training

appointed Recorders could also gain criminal experience sitting in the Crown Court Bench Division.	
39. Crown Court Bench Division hearings should be heard in any available courtroom, provided it has (a) has appropriate access, and (b) recording facilities can be made available. It will also provide for the possibility that Crown Court cases could be heard in buildings in which magistrates' courts also sit.	Opposed
40. Only those eligible to appear in the Crown Court would have rights of audience in the Crown Court Bench Division.	Agreed
41. MOJ implements a match funding scheme for Criminal Barrister pupillages to start immediately to address the shortage of criminal advocates.	Agreed
42. Appeals from the Crown Court Bench Division be on the same basis as appeals from the Crown Court as currently constituted.	Opposed

43. Defendants in the Crown Court should be allowed to elect to be tried by judge alone, subject to the trial judge's consent. The judge would make that decision based on the facts and circumstances of the individual case. This decision to elect trial by judge alone should be entered at the Plea and Trial Preparation Hearing. The trial judge's decision would be final and there would be no new route to appeal that allocation.	Agreed
44. Serious and complex fraud cases should be tried by judge alone. Eligible cases should be defined by their hidden dishonesty or complexity that is outside the understanding of the general public. The allocation decision should be made at a Preparatory Hearing. The limits of and process for these powers should be set out in a Practice Direction by the Lady Chief Justice.	Opposed - No evidence they are required - Result of Part 2 of the Fisher review should be awaited - Jonathan Fisher KC hopes to submit his final report by the end of the year
45. In cases of anticipated exceptional length or complexity (within section 29 of the Criminal Procedure and Investigation Act 1996), a judge should	Opposed

be able to direct trial by judge alone. The allocation decision would be made at a preparatory hearing. The limits of and process for these powers should be set out in a Practice Direction.	