



Courts and Tribunals Bill – Part 1 only

Briefing for Second Reading – Tuesday 10 March 2026

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.

Overall position of the Bar

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.

The Bar Council, Bar leaders from across the country (Circuits), and the Criminal Bar Association fundamentally disagree with the plan to restrict the deeply entrenched constitutional principle of a jury trial. We support the vast majority of the Leveson proposals on reforming and improving the criminal justice system, and we want them to work.

Many Leveson proposals are what the Bar Council has been pioneering for some considerable time, for the benefit of victims, complainants and defendants. We welcome that some of our proposals have been adopted, including the recent announcement of the lifting of the cap on sitting days.¹ Urgent implementation remains critical.

In **January 2025**², we set out reform measures to reduce the current backlog without adversely impacting upon the quality of justice administered in the criminal courts.³ In particular, we support:

- Opening all the courts so they can hear cases (the recent Government announcement of removing the cap on sitting days is welcome⁴)
- Intense court listing and Crown Prosecution Service (CPS) proactive case ownership (shown to reduce the backlog)
- Revising the contract with Prisoner Escort and Custody Service (PECS) to ensure that defendants are delivered to the dock on time
- Better use of technology
- Investment in the courts and legal aid

¹ MoJ "[Highest ever courts funding deal agreed to deliver faster, fairer justice for victims](#)" 24 February 2026

² Bar Council "[Bar Council Leveson Review submission – executive summary](#)" January 2025

³ Bar Council "[Leveson Review Submission Executive Summary](#)" and [Bar Council response to the Independent Review of the Criminal Courts](#)

⁴ Bar Council "[Bar Council welcomes courts sitting at maximum capacity but warns against reducing jury trial](#)" February 2026

Radical changes to the availability of jury trials such as proposed in the Courts and Tribunals Bill (the Bill) are unnecessary and will consume resources without bearing down on the backlog. The retrospective provisions may also be subject to numerous legal challenges.

Summary

In relation to part 1 of the Bill, the Bar opposes:

- **Removing a defendant’s right to elect Crown Court trial for all cases which are triable either way**

Reason: that would compound the impact of the measures below.

- **Introduction of judge-alone trials for offences which may result in sentences of up to 3 years’ imprisonment**

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.

- **Introduction of judge-alone trials for fraud and related offences**

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 spent writing reasoned judgments.

- **Increasing magistrates’ courts sentencing powers**

Reason: this would merely transfer the burden from one over-stretched part of the system to another.⁵

- **Reforms to appeals from the magistrates’ court**

Reason: this would remove a vital safeguard against the well documented deficiencies of summary justice. At present around 40% of such appeals are successful.⁶

Reforms that will have a significant and immediate effect, can and should be implemented now. These changes include:

- **Implementing efficiency measures** from Part 2 of the Independent Review of the Criminal Courts Part 2 (Leveson Part 2).⁷
- **Reclassification of certain offences to summary only** – the Bar Council suggested moving the threshold of cases heard in the magistrates’ court e.g. make assault emergency worker summary only.⁸

⁵ Magistrates’ Court backlog July-September 2025 peak at 373,084 cases. MoJ “[Criminal court statistics quarterly: July to September 2025](#)” 18 December 2025

⁶ Sir Brian Leveson “[Independent Review of the Criminal Courts: Part 1](#)” 9 July 2025, p188.

⁷ Sir Brian Leveson “[Independent Review of the Criminal Courts: Part 2](#)” 4 February 2026

⁸ Bar Council “[Bar Council response to the Independent Review of the Criminal Courts](#)” January 2025

- **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.⁹
- **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 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 Covid¹⁰, 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 Bill 2025.
- **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** – apply guilty plea sentence credit before a retrial.
- **Urgently implement the announced increase in legal aid** (up to £34 million including VAT) – as a step to recover barristers back into criminal law and tackle adjournments due to lack of barristers.

Removing a defendant's right to elect Crown Court trial in cases for all cases which are triable either way

Proposed change

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

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.

Fact

There has been chronic underinvestment in the magistrates' courts. Justice in the magistrates' courts is criticised for poorly serving people within the system.¹¹

⁹ Penalties into contracts/disclosure of times of vans at prisons and leaving prisons/requirement to give a time estimate to the court when late.

¹⁰ MoJ data from these successes driven by one CPS prosecutor on the Western Circuit should be considered.

¹¹ Transform Justice "[Magistrates' courts – an opaque and underexamined world](#)" 22 May 2024

Introduction of judge-alone trials for offences which may result in sentences of up to 3 years' imprisonment

Proposed change

Where the likely sentence is up to 3 years' imprisonment the person will lose a trial by jury¹² and will be tried by one judge.

The Bar's position

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.¹³ It is overlooked that much of the criminal justice system runs on confidence, trust and cooperation.

Analysis by the Institute for Government (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.¹⁴ The proposed changes will only have an effect, if they have any at all, in 2028/2029.¹⁵ There are other measures which can be implemented now and will make a difference much earlier.

According to a YouGov poll following the Government's announcement in December 2025, 60% of Britons said they feel positively about the jury service.¹⁶ The Government's proposals go further than Sir Brian Leveson's recommendations in that they do not include two magistrates sitting with the judge.¹⁷

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.

Facts

In Leeds Crown Court some trials last 2-3 hours enabling two juries to be in retirement whilst a judge sits with a jury on a third trial.¹⁸

¹² 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.

¹³ Institute for Government "[Trial and error?: The impact of restricting jury trials on court demand](#)" 21 January 2026

¹⁴ Ibid.

¹⁵ Justice Committee, [Work of the Lord Chancellor](#), 16 December 2025

¹⁶ YouGov "[Jury service leaves Britons with positive opinion of justice system](#)" 3 December 2025

¹⁷ [Courts and Tribunals Bill](#) (as introduced)

¹⁸ See also, His Honour Geoffrey Rivlin KC, [Submission to the Justice Committee: Reform of the Criminal Court](#), January 2026

Example

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.

Introduction of judge-alone trials for fraud and related offences

Proposed change

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

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.

Facts

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.

This proposal also significantly deviates from the safeguards put forward by Sir Brian Leveson, who specifically suggested that¹⁹:

- Any such proposal could properly be piloted first (Part 1, Chapter 9, para.86),
- 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),
- The guiding principle should be the 'interests of justice' (para. 94) and,
- Fundamentally, that the decision should be capable of being subject to interlocutory appeal (para. 95).

¹⁹ Sir Brian Leveson "[Independent Review of the Criminal Courts: Part 1](#)" 9 July 2025

Further, the Independent Review of Disclosure and Fraud Offences²⁰ (report by Jonathan Fisher KC²¹), 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?

Increasing magistrates' courts sentencing powers

Proposed change

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

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.²²

Facts

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, those tried in the magistrates' courts were not so fortunate. In particular, the report noted “*some worrying disparities for BAME women*”.²³ Black, Asian, mixed ethnic and Chinese/Other women were all more likely to be convicted than White women.

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).²⁴ Many will therefore be required to represent themselves which will add to the length of proceedings.

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.²⁵ As of 01 April 2025 there were 14,636 magistrates in post across

²⁰ Home Office “[Independent Review of Disclosure and Fraud Offences](#)” 20 March 2025

²¹ Home Office [Independent Review of Disclosure and Fraud Offences: second report submitted](#) January 2026

²² 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.

²³ David Lammy MP “[Lammy Review](#)” 2017. p.32

²⁴ Legal Aid Agency “[Criminal legal aid: means testing](#)” updated 3 February 2025

²⁵ MoJ “[Magistrate recruitment campaign launched](#)” 24 January 2022

England and Wales.²⁶ This is around 2,000 more than in April 2022.²⁷ This shows some progress, but a significant shortfall against the target

The IfG in its 2025 performance tracker report²⁸ 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.” 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 Assessment²⁹ 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.

Reforms to appeals from the magistrates’ court

Proposed change

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

The Bar’s position

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.

Facts

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.

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%).”³⁰

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.

The Bar Council
March 2026

²⁶ MoJ [Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2025 Statistics](#) 23 July 2025

²⁷ There were 12, 506 magistrates in post as at 1 April 2022. See Table 3.5 [Diversity of the judiciary: 2022 statistics - GOV.UK](#)

²⁸ Institute for Government [Performance Tracker 2025: Criminal courts](#) 23 October 2025

²⁹ MoJ “[Courts and Tribunals Bill \(Structural Criminal Court Reform\) Impact Assessment](#)” 24 February 2026, p34.

³⁰ Sir Brian Leveson “[Independent Review of the Criminal Courts: Part 1](#)” 9 July 2025, p188.