



Briefing for Peers
Wednesday 08 January 2020

Debate on the Humble Address on home affairs, justice, constitutional affairs and devolved affairs

About us

The Bar Council is the representative body for the Bar of England and Wales, representing approximately 16,500 barristers. The independent Bar plays a crucial role in upholding and realising the constitutional principles of government accountability under law and vindication of legal rights through the courts. It provides a pool of talent, from increasingly diverse backgrounds, from which a significant proportion of the judiciary is drawn, and on whose independence the rule of law and our democratic way of life depends.

Queen's Speech – key Bills at a glance:

- Counter Terrorism (Sentencing and Release)
- Divorce, Dissolution and Separation Bill
- Domestic Abuse Bill (carried over from last session)
- Environment Bill
- EU (Withdrawal Agreement) Bill
- Extradition (Provisional Arrest) Bill
- Police Powers and Protections Bill
- Prisoners (Disclosure of Information About Victims) Bill
- Private International Law (Implementation of Agreements) Bill
- Sentencing Bill
- Sentencing (Pre-consolidation Amendments) (carried over from last session)
- Serious Violence Bill

Key facts and figures

- Since 2008, the Ministry of Justice saw its overall budget cut by 27% as of the end of 2018. A 2019 settlement led to a 4.9% increase, but this cut is still among the deepest of any Whitehall department.
- The total Ministry of Justice budget is just 1.3% of total public spending.
- Prosecutions and penalties for crimes are at an all-time low: 1.58m in 2019, 29% lower than 10 years ago (2.25m in 2009)
- Crime reported in England and Wales rose by 6% to 5.3 million offences (excluding fraud) in year to June 2019

- Around 258 courts and tribunals in England and Wales have been closed down since 2010.
- Court sitting days have been cut by almost 15%, from 97,400 in 2018-19 to 82,300 in 2019-20, despite a backlog of cases already in the system.
- There has been a 25% cut in frontline prison operational staff between 2010 and 2017.
- Legal aid expenditure dropped by 39% over the last 13 years.
- Barristers, solicitors and the wider legal services sector contributed £26.8 billion to the UK economy in 2017 and produced a trade surplus of £6.5bn in 2018.

Background

Today's justice system is widely acknowledged to be suffering from years of under-investment, affecting victims of crime, families, businesses, employees and local communities. The Bar Council has published its [manifesto](#) which sets out six recommendations for the new government which include:

A strong and effective justice system

1. A properly funded justice system that underpins our society, democracy and economy.
2. A court system that places accessible justice for all at its heart.

Ensuring everyone has fair access to justice

3. Properly funding legal aid.
4. Abolishing the 'innocence tax'.

Recognising the value of legal services

5. Recognising the value of legal services - to society and the economy.
6. Promoting the Bar's position as an internationally respected world leader and promoter of democracy and the rule of law.

The recent political focus particularly on the state of the criminal justice system is welcome. The modest increase in funding in the 2019 Spending Round for the MoJ and Crown Prosecution Service to tackle crime and support the criminal justice system is a step in the right direction and an acknowledgement that cuts made to the justice budget by previous governments went too far. However, following a decade of underinvestment, there is an urgent need for focus, attention and investment to be given to *every* part of the justice system including:

- Legal aid
- access to legal representation
- prosecution
- the state and efficiency of courts
- forensic science
- probation
- police
- prisons

Criminal Justice

Cuts to one area of justice have a ripple effect on other areas. If crime is going undetected, it is unreported and therefore not investigated or prosecuted. The Metropolitan Police Commissioner Dame Cressida Dick stated last summer that 'Overall police detection rates nationally are low, woefully low I would say in some instances, and the courts are emptying, not filling.'¹

Significant cuts to legal aid and access to legal representation has meant that many people are unable to have access to justice. The criminal justice system is on the brink of collapse. For victims and the accused, a journey through the system is shocking and disturbing.

Poor legal aid rates are devastating the criminal defence profession. Until this year, criminal legal aid fees had not increased since the 1990s and had been cut several times in cash terms. The small increases in 2018 are merely a step in the right direction. An MoJ review of criminal defence fees is currently underway. Contrary to popular opinion, criminal defence lawyers often earn less than nurses and teachers and are overworked, underpaid and subject to a climate of hostility. This is not sustainable. We need a longer-term vision of how public confidence in tackling crime can be restored and proper investment in the justice system is the first place to start.

The following PQs illustrate the pressure the system is under showing that the number of defendants' subject to a trial has fallen year-on-year since 2010 and that the time taken from referral to finalisation has increased for all crime types:

Steve McCabe Q: *To ask the Attorney General, what estimate he has made of the number of people brought to trial for all categories of offences by the Crown Prosecution Service in each year since 2010.*

Michael Ellis A: *The Crown Prosecution Service (CPS) maintains a central record of the number of defendants subject to a trial hearing and collates the data collected in financial years. The table below shows the number of defendants subject to a trial hearing during each year from 2010-11 to 2018-19 in the magistrates' courts and the Crown Court.*

Trial Defendants	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Crown Court (CC)	19177	18710	18133	16601	17356	17950	17636	16005	13597
Magistrates' Court (MC)	62281	58460	53902	54200	54580	60309	55598	48522	42322
National	81458	77170	72035	70801	71936	78259	73234	64527	55919

¹ Cressida Dick, John Harris lecture for the Police Foundation, 25 June 2019.

HoC Written Answer: Attorney General: Trials

Yasmin Qureshi Q: (294695) *To ask the Attorney General, pursuant to the Answer of 4 October 2019 to Question 290946, what the average time taken was from referral to finalisation in each year from 2008-09 to 2018-19 where the CPS made a decision to charge and where a trial outcome was recorded in England for cases (a) relating to sexual violence or rape, (b) focusing on actual bodily harm charges, (c) focusing on grievous bodily harm charges and (d) focusing on burglary.*

Michael Ellis A: *The Crown Prosecution Service (CPS) maintains a central record of the average time to charge and the average time to prosecute in days by Principal Offence Category and for cases flagged as rape.*

The tables below show the total average time, in days, from referral to finalisation for each year from 2008/10 to 2018/19 where the CPS made a decision to charge and where a trial outcome was recorded in England.

The data provided above is for the more serious cases in which the CPS has been required to authorise charge and in which there has been a trial. MoJ data for all cases in 2018 report figures of between 185 days and 193 days for offence to completion.

(a)(i) Sexual Offences excluding Rape Flagged

2008-2009	294.50
2009-2010	299.69
2010-2011	300.12
2011-2012	304.01
2012-2013	306.78
2013-2014	285.63
2014-2015	320.44
2015-2016	343.78
2016-2017	347.83
2017-2018	363.74
2018-2019	390.79

**Total average time (days)
from referral to finalisation**

(a)(ii) Rape Flagged

2008-2009	321.52
2009-2010	336.94
2010-2011	346.95
2011-2012	344.40
2012-2013	351.50
2013-2014	338.36
2014-2015	383.54
2015-2016	381.20
2016-2017	412.84
2017-2018	460.59
2018-2019	495.24

**Total average time (days)
from referral to finalisation**

(b) & (c) Offences against the Person

(d) Burglary

2008-2009	192.73
2009-2010	191.06
2010-2011	192.09
2011-2012	194.67
2012-2013	193.29
2013-2014	183.23
2014-2015	194.20
2015-2016	198.22
2016-2017	192.32
2017-2018	191.95
2018-2019	209.96

**Total average time (days)
from referral to finalisation**

2008-2009	200.99
2009-2010	213.21
2010-2011	195.38
2011-2012	190.24
2012-2013	206.28
2013-2014	202.05
2014-2015	226.71
2015-2016	246.06
2016-2017	231.99
2017-2018	246.76
2018-2019	244.81

**Total average time (days)
from referral to finalisation**

Data Source: CPS Case Management Information System

Court reform

The National Audit Office (NAO) published a report on 13 September 2019 entitled [Transforming courts and tribunals: a progress update](#) on Her Majesty's Court & Tribunal Service (HMCTS) £1b court modernisation programme. Key findings include²:

- **HMCTS has again had to reduce the scope of the reform portfolio and extend the timetable, which has decreased risk but also cut expected savings.** Lifetime savings for the portfolio (to 2028-29) have decreased by £172 million to £2,112 million, with annual steady state savings now £21 million lower per year at £244 million and coming a year later in 2024-25. Overall portfolio costs have reduced by £58 million following the removal of The Transforming Compliance and Enforcement Programme (TCEP) and HMCTS is keeping within its allocated budget for reform, using contingency funding to address new cost pressures of £64 million. These pressures are partly because HMCTS's forecasts are now more realistic, and partly because the delays mean some projects will take longer to finish.
- **HMCTS needs to better understand the impact of its reforms, including how they are affecting users of the justice system.**

The Bar Council agree with many of the NAO's findings and has continually expressed the need for an impact assessment to measure the impact of these reforms on access to justice and costs to court users. We remain concerned that insufficient attention is being paid to the implications that digitising legal processes, and the widespread use of video technology, may have for justice and fairness in every case. This must include ensuring that

² <https://www.nao.org.uk/wp-content/uploads/2019/09/Transforming-Courts-and-Tribunals-Summary.pdf>

independent legal advice is received when it is needed most, especially before individuals make decisions that may have important implications, such as before indicating a likely plea when you are charged with a criminal offence.

Given the number of court closures (around 258 courts and tribunals in England and Wales have been closed down) we have expressed considerable concern about the lack of access to justice for people who find that they live many miles from their nearest court, and we remain concerned over the future. HMCTS must ensure that it does not put justice beyond the reach of many, or that costs rise and negate any supposed benefits from the proposed court closures.

Conclusion

Justice and the rule of law are core British values. Crime will affect nearly everyone at some point in their lives, and so a properly funded justice system is necessary to ensure all our rights are protected. We need a longer-term vision of how public confidence in tackling crime can be restored and urgent and proper investment is needed to reinstate a world-renowned, sustainable and properly funded justice system for the future; one that is valued by all.