The Bar Council

Courts and Tribunals Bill

Briefing for Lords Second Reading – Tuesday 27 October 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 Bar Council welcomed the Government's amendment to remove Clause 3[1] at Report stage of the Courts and Tribunals Bill which we strongly opposed.[2]

The Government is right to listen to the strength of feeling from across the legal profession regarding the proposal. Barristers prosecute and defend and speak daily with victims and complainants as well as defendants. We bring expert and practitioner perspective.

We also welcome the Government's commitment to establish specialist courts for rape and sexual offences.[3] We point to our previous recommendation of including domestic abuse cases in these courts as they often comprise offences on sexual offences indictments. The courts would reduce delays, without any need for changes in the magistrates' courts, and deliver swifter justice for victims, complainants and defendants.

Unworkability

However, the Bar remains concerned and against the remaining provisions (Clauses 1-6) in the Courts and Tribunals Bill which would restrict availability of jury trials and transfer more work to the already overstretched Magistrates' Court without sufficient resources and safeguards.[4]

The latest Criminal Court statistics show only a small increase in the Crown Court backlog (80,829 as of June 2026)[5] following the Government's decision to uncap sitting days to make proper use of judicial capacity (a 9% increase to the previous year[6]). However, the Magistrates' Court backlog has reached a record level peak at 380,230 open cases. Importantly, the actual

[1] As was when the Bill was introduced to the Commons Courts and Tribunals Bill as introduced 25 February 2026
[2] Ministry of Justice (MoJ), "Justice reforms to be rolled out faster as Justice Secretary sets out changes to Courts Bill", 4 October 2026
[3] MoJ "Specialist rape courts rolled out across the country" 21 September 2026
[4] Bar Council ''Justice prevails': Bar Council hails government decision to scrap jury trial plans", 4 October 2026
[5] MoJ "Criminal court statistics quarterly: April to June 2026" 24 September 2026
[6] Ibid.

figure of backlog of cases before a bench of magistrates or a District Judge is 195,969 cases – an increase of 16% in the year.[7]

The Chair of the Justice Select Committee, Catherine Atkinson MP, said *"Ministers must demonstrate in more detail how the proposal to expand capacity in the magistrates' court is deliverable. We are seeing backlogs in the magistrates' courts already rising even before reforms are implemented. A clear plan to ensure there is capacity to meet increased demand is vital."*[8] The Government's own calculation is that its proposals will move 25,000 cases a year into the magistrates' courts, with some 5,500 of them being jury trials.[9]

Dangerous Experiment - Volunteer Magistrates and Sentencing Powers

The Bar Council is against further increase in magistrates' sentencing powers. They used to be six months' imprisonment. Magistrates are members of the public who are volunteers and the magistrates' courts are set up to deliver summary justice, an important public service, but one that relates to less legally or factually complex cases.

It also is a dangerous experiment to increase sentencing powers of magistrates and remove the right to elect from defendants at a time when prisons are at capacity and the backlog of cases is accelerating in the magistrates' courts.

The Bar Council also is against removing the mitigating safeguard of removing automatic right to appeal, even under a permission basis. The need is not made out.

Exception to Jury Trials

The Bar Council remains opposed to providing a power to the Crown Court to try complex and lengthy cases without a jury. The Bill sets out that this will apply initially to fraud cases but there will be a power to expand to other types of cases within this category.

These provisions would come into force as an amendment to the Criminal Justice Act 2003, inserting new provisions allowing judge-only trials into the existing Act. The power to amend the list of offences would be by statutory instrument subject only to the negative resolution procedure. This means that fraud cases would be the thin edge of the complex trials wedge. It could be that misconduct in public office would come within this power – exactly the type of allegation that should be tried by a jury.

The Independent Reviewer of Fraud, Jonathan Fisher KC is detailed in his conclusion that there is no justification for removing juries from fraud cases (Chapter 16)[10] – published in July 2026 after the Public Bill Committee scrutiny. In addition, the former Resident Judge of

[7] This excludes the Single Justice Procedure cases which comprise non-imprisonable offences such as railway fare evasion.

[8] Justice Select Committee "Justice Committee welcomes Government response on jury trial reform but warns plan to expand magistrates' court capacity must be deliverable" 8 October 2026

[9] MoJ, 'Impact Assessment: Courts and Tribunals Bill (Structural Criminal Court Reform)', 24 February 2026 p16

[10] Jonathan Fisher KC, Independent Review of Disclosure and Fraud Offences Part 2, 31 December 2025

Southwark Crown Court, HH Rivlin KC, where the majority of complex fraud cases are tried, has written in favour of retaining juries in these cases.[11][12]

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 (see below). We continue to support high-quality justice and flag the dangers that can accompany a focus on speed and cost saving.

The Bar Council welcomes the Government's announcement that it will make a statutory commitment to consider any impacts of the structural reforms on ethnic minorities and people of different backgrounds, led by an independent reviewer.[13]

Summary of the Bill

The Bar supports:

- **Specialist courts for rape and sexual offences** (and consider adding in domestic violence offences).
- **Restrictions on the admissibility of evidence of 'sexual behaviour', compensation claims, and purported previous false allegations by complainants (Clauses 7-10)**
- **New measures in respect of special measures directions (Clauses 11-15)**
- **Repealing the presumption of parental involvement (Clause 16)**
- **An independent review on exacerbated differences in treatment or in outcomes (Clause 20)**

The Bar opposes:

- **Removing a defendant's right to elect Crown Court trial for all cases which are triable either way (Clause 1-2)**
- **Introduction of judge-alone trials for fraud and related offences (Clause 3-4 and Schedule 1 (as amended)**
- **Increasing magistrates' courts sentencing power (Clause 5)**
- **Reforms to appeals from the magistrates' court (Clause 6)**

What can be done now – and will make an immediate difference

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

- **Implementing efficiency measures** from Part II of the Independent Review of the Criminal Courts (Leveson Part II).[14]
- **Reclassification of certain offences to summary only (see Annex 1)** – moving the threshold of cases heard in the magistrates' court e.g. make assault emergency worker summary only.[15]

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[11] HHJ Rivlin KC, written evidence to the Courts and Tribunals Public Bill Committee, March 2026
[12] HHJ Rivlin KC "Judge-Alone Trials: The Latest Proposals" 23 October 2026
[13] Cf. Rights of Women "Rights of Women and JUSTICE write to the Lord Chancellor on jury trial reforms" 25 September 2026
[14] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 2" 4 February 2026
[15] Bar Council "Bar Council response to the Independent Review of the Criminal Courts" January 2025

- **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.[16]
- **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 and has been successful in Crown courts such as Woolwich, Liverpool and Preston. 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.**
- **Urgently implement the announced increase in criminal legal aid** (Government announced up to £34 million including VAT[17]) – as a step to recover barristers back into criminal law and tackle adjournments due to lack of barristers.

Part 1 – Procedure in the Criminal Courts

Clause 1-2: Determining mode of trial

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 result in more serious cases being tried in the Magistrates' Court, particularly when combined with the proposed increase in magistrates sentencing powers under Clause 6.

[16] Penalties into contracts/disclosure of times of vans at prisons and leaving prisons/requirement to give a time estimate to the court when late. Bar Council, "Delays are now endemic: Barristers' observations on the late delivery of prisoners to court", July 2026

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

The MoJ's impact assessment states that removal of the right to elect and increasing of magistrates sentencing powers would reduce Crown Court receipts by 25,000 a year, and that of these 5,500 would have gone to jury trial should the reforms not be pursued.[18]
The Justice Select Committee raised concerns that there has been insufficient evidence to show that this proposal will deliver the intended benefits. It would also "make the allocation process less flexible."[19]

Clauses 3 and 4 – Trial on indictment without a jury: complex or lengthy cases

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 also 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.

Jonathan Fisher KC in his Independent Review of Disclosure and Fraud Offences, *Fraud in the Digital Age*, concluded that the efficiency case for judge-only trials is unproven. Juries are capable of dealing with serious and complex fraud when cases are properly managed and presented.

Removing juries risks creating additional appeals, undermining public confidence and weakening the legitimacy of criminal proceedings.[20] Fisher summarises the importance of juries:

> *"Public confidence matters. Trying fraud without a jury risks the perception of opacity or special treatment, particularly in high-profile economic cases of political interest. Jury trial keeps proceedings intelligible in open court to defendants, victims, the media and the public. Remove the jury, and that civic ownership of criminal justice is undermined. Also, it would feed the narrative that powerful defendants are judged behind closed professional doors."*[21]

The proposal also significantly deviates from the safeguards put forward by Sir Brian Leveson, who specifically suggested that:[22]

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),

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[18] MoJ, 'Impact Assessment: Courts and Tribunals Bill (Structural Criminal Court Reform)', 24 February 2026 p16
[19] Justice Committee, 'Legislative scrutiny Courts and Tribunals Bill' 10 June 2026 p12
[20] Jonathan Fisher KC, Independent Review of Disclosure and Fraud Offences Part 2, 31 December 2025 para 852
[21] Ibid. para 852
[22] Sir Brian Leveson "Independent Review of the Criminal Courts: Part 1" 9 July 2025

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).

Clause 5: Increase in maximum custodial sentence in magistrates' court

Proposed change: A power to extend magistrates' court sentencing powers from 12 months to 18- or 24-months 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.[23]

The backlog in the magistrates' courts stands at record level of 380,230 with an increase of 9% in the last year.[24] This change will move pressure from one stretched part of the criminal justice system to another.

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. As of 1 April 2026, there were 15,259 magistrates in post across England and Wales.[25] In September 2026, the Government launched a magistrate recruitment drive with the aim to reach 21,000 magistrates by 2028/29[26] which the Justice Committee flagged as an unrealistic proposal given the decline in the numbers over the years.[27]

Magistrates, as with criminal lawyers, are insufficient in number. Indeed, a report from Transform Justice found that around 15% of observed magistrate benches in London sat with two magistrates rather than three. [28] The Justice Select Committee noted in its statement of 8 October 2026:

> *"MPs were 'not convinced' the magistrates' court will be able to cope with the potential increase in caseload the reforms could generate adding it required 'significant additional support'."*
> *"MPs described the target of reaching 21,000 magistrates by 2029 as 'unrealistic', cautioning, previous recruitment campaigns have 'fallen far short', retention remains a 'persistent challenge' and there is a 'chronic shortage' of suitably qualified legal advisers. Numbers stood at approximately 15,000 in 2025. It was also recommended that the Government put forward*

[23] 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.
[24] MoJ "Criminal court statistics quarterly: April to June 2026" 24 September 2026
[25] MoJ Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2026 Statistics - GOV.UK 9 July 2026
[26] MoJ, "Justice Minister launches magistrate recruitment drive", 24 September 2026
[27] Justice Committee, 'Legislative scrutiny Courts and Tribunals Bill' 10 June 2026
[28] Transform Justice, 'The slow road to the bench: reforming magistrate recruitment' 26 September 2026

a plan to significantly increase the number of salaried district judges in the magistrates' court." [29]

The Committee also noted that, though the changes to sentencing powers "might be attractive to government", that "frequent changes to these powers is unlikely to assist magistrates in making consistent and effective allocation decisions".[30]

Clause 6: Appeals from magistrates' courts

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.

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. According to the Justice Committee, "appeals from the magistrates' court represent a small and declining proportion of overall Crown Court receipts, with only 0.4% of magistrates' court decisions appealed in 2025."[31]

In 2025, Sir Brian Leveson stated 'the total number of defendants appealing against their conviction was 2,487, of which 1,009 were allowed (41%).[32] It has since increased by 15%, with the latest statistics as of June 2026 showing a success rate of 56%.[33] 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 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.

A proposed permission stage, like that of appeals from the Crown Court to the Court of Appeal, is similarly unnecessary (it won't reduce delays) and does not recognise the distinction between verdicts obtained where a judge has presided over the trial and where lay magistrates have presided over a trial (evidence is unlikely to be managed with the same admissibility rigour).[34] Hence, it is important for there to be a rehearing of the evidence – see Transform Justice research:

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[29] Justice Select Committee "Justice Committee welcomes Government response on jury trial reform but warns plan to expand magistrates' court capacity must be deliverable" 8 October 2026

[30] Justice Committee, 'Legislative scrutiny Courts and Tribunals Bill' 10 June 2026

[31] MoJ Criminal court statistics quarterly: October to December 2025 - GOV.UK 26 March 2026

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

[33] MoJ "Criminal court statistics quarterly: April to June 2026" 24 September 2026

[34] Transform Justice, Beyond reasonable delay: efficiency in London magistrates' courts, 23 January 2026

"Speed for speed's sake was also felt to undermine trust and confidence in the criminal justice system, with concerns that over-efficiency jeopardised fairness for both victims and defendants. One courtwatcher commented that "it felt like another conveyor-belt day, with people being rushed through their hearings […] I wish the courts had more time to engage with each defendant…" (Dr. Lucy Welsh)[35]

Clause 7-10: Admissibility of evidence

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. 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.

Clause 11 to 15: Special measures directions

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 16: Welfare of the child: repeal of presumption of parental involvement

Proposed change: 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:

In favour: There is support for the provision to remove the statutory presumption of parental involvement from the Children Act 1989. There is evidence 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[36].

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[35] Transform Justice, Beyond reasonable delay: efficiency in London magistrates' courts, 23 January 2026

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

Part 3 – Supplementary and final provisions

Clause 20: Independent Review

Proposed change: This would introduce a requirement for the Lord Chancellor to commission an independent review into whether clauses 1 to 6 have created or exacerbated differences in treatment or outcomes between defendants of different racial groups or socio-economic status. It would require an interim report within two years, and a final report within five years.

The Bar's position:

In favour: The Bar Council welcomes the introduction of a new Clause requiring an independent reviewer to assess the impact of structural reforms on ethnic minorities and people from different backgrounds. We know that women, Black people, mixed race people and older people elect jury trials more often than other groups. The requirement for an interim report within two years of the implementation of the first measure will be particularly valuable in reviewing the reforms impact and identifying any necessary changes.

Bar Council
October 2026

Annex 1

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

A more expansive list as drafted by the Bar Council also is referred to in Leveson Part 2.[37]

[37] Bar Council "Bar Council response to the Independent Review of the Criminal Courts" February 2025. Annex 1