



Criminal Law Solicitors' Association – Submission to the Justice Committee on the Courts and Tribunals Bill 2026

Introduction

The Criminal Law Solicitors' Association (CLSA) represents solicitors in more than 500 criminal defence firms in England and Wales. As practitioners who advise clients at the police station, in the Magistrates' Courts and in the Crown Court, we have a whole system view of the mechanics of criminal justice.

We share the Government's concern about delays. The backlog in the courts is unacceptable for complainants, witnesses and defendants. How to reduce this backlog is the right question, restriction on jury trial is the wrong answer.

This submission sets out why the CLSA opposes specific proposals in the Bill.

Background: why the backlog exists

The Crown Court backlog – now over 80,000 cases – is not caused by juries, indeed severe backlogs exist in the civil courts where there are no juries. Causes are multi-factorial and include:

- Years of under-investment across the system.
- Court closures, for example Chichester in Sussex, a perfectly good, longstanding and well-respected court.
- Reduced sitting days.
- Significant variation in legal aid eligibility as between the Magistrates' Court and Crown Court. This leads to some Defendants electing Crown Court trial just to be able to have a lawyer that they otherwise could not afford
- Magistrates/District Judges accepting jurisdiction for trial in "straightforward" cases but then committing for sentence after conviction. This practice is encouraged by

the allocation guidelines. Defendants see it as the worst of both worlds, trial without a jury and yet sentence by a Crown Court Judge. Therefore, many elect. Magistrates Courts should not be permitted to commit for sentence having accepted jurisdiction unless the evidence shows a significant change in the assessment of seriousness as between allocation and conviction. More defendants would then see the advantage of a Magistrates Court trial - with its limit on sentencing powers.

- An increase in Police numbers and investment in the CPS - not matched by increased resources further downstream. Home office statistics show that in 2018 there were 117,456 FTE police officers. By September 2025 that number had risen to 145,550. More Police = more arrests = more charges = more Crown Court cases.
- The impact of the pandemic – including “catch up” in the police and courts services.
- Limited availability of Counsel – the National Audit Office reported that in 2023: 1,441 Crown Court trials did not go ahead on the day because either a prosecution or defence advocate was unavailable. If these measures are unpopular then this will lead to a further exodus of defence lawyers.
- Delays with prisoner transport from HMP & HMYOI causing cases to last additional days.

The use of juries has not been a cause of delay.

Delays before Court

There has been a good deal of commentary about cases such as rape taking five years from the date of complaint to trial. These cases have a debilitating impact upon complainants, witnesses and defendants. Powerful testimony was given to this by a rape victim at the second reading of the bill in the House.

This is not uncommon, but the delay is most marked before the case gets to Court.

Real case example involving serious sexual assault against a child

- First complaint to police – 17th February 2020
- Arrest and interview of defendant – 21st February 2020
- Defendant charged – 29th November 2024
- First hearing in Crown Court – 12th February 2025
- Crown Court trial – 13th April 2026

14-months between first hearing and trial in the Crown Court is too long but the real delay here was the four years and nine months that the case was under investigation by the police.

There is a danger of conflation between delays in the police station and delays in the Crown Court. The complainant or victim is understandably only concerned with the whole time, but it is not always the Crown Court that is the cause of the significant delay.

This case is not untypical, and our members have many examples where delay at the investigation stage is 3 or 4 times longer than that in the Crown Court.

The Leveson Report

Sir Brian Leveson produced two extensive reports with 180 recommendations. It includes the first review of improving efficiency in the criminal justice system since ...Sir Brian Leveson's 2015 report entitled *Review of Efficiency in Criminal Proceedings*.

It is certain that the Government of the day did not take sufficient heed of Sir Brian's 2015 recommendations. It is systemic inefficiencies that is the greatest cause of delays in the Crown Court, not juries.

Leveson firstly with reform and only secondly with efficiency measures. It is our submission that this is the wrong way round and that efficiency measures should be implemented first, and allowed to work their way through, before any consideration of jury reform.

There are across the 180 proposals some excellent suggestions, many of which will improve the efficiency of the system and both speed up Crown Court work and reduce the demand for it. These include:

- Greater use of out of court disposals after arrest (Recommendations 1 – 5)
- Increased use of rehabilitation programs for addicts (6)
- Reclassification of some cases to summary only (17 and 18)
- Greater use of Goodyear directions (23)
- Increasing credit for a guilty plea to 40% from 33% (27)
- More effective listing at courts (92 - 97)
- Use of "blitz courts" (116)
- Better use of remote hearings (119)
- Prison vans can use bus lanes (129)
- Annual reviews of legal aid rates to ensure a sustainable supply of solicitors and barristers (154)
- Legal aid eligibility reform to prevent unrepresented defendants (155 – 156)
- Fee structure changes to encourage early engagement and resolution of cases (157 – 161)

Keeping cases out of Court - lessons from Youths

Over the last decade or so there has been a marked attempt to keep children and young people out of the criminal justice system using out-of-court disposals and diversion schemes. Youth Courts hear a fraction of the cases that they did 15 years ago.

This has been a welcome development, and lessons can be learned for dealing with adults. The use of conditional cautions, restorative justice and other such divergence plans can stop some offenders becoming defendants. Keeping people out of the court system and looking at the causes of their offending has a better chance of reducing recidivism.

Leveson versus the Courts and Tribunals Bill

Leveson Recommended:

- Magistrates' maximum sentence to stay at 12 months imprisonment.
- Defendants retain the right of election to the Crown Court on "either way" offences.
- Once in the Crown Court, cases likely to attract a sentence of 3 years or less would be directed to a "Bench Division" court consisting of a judge + **2 lay justices**.

The Courts and Tribunals Bill proposals are:

- Magistrates' maximum sentencing powers to be increased to 18 months or 2 years.
- No right of election.
- Those cases that do go to the Crown Court will be allocated to the Bench Court if the likely sentence will be less than 3 years on conviction – but trial by **judge alone**, no lay justices.

Bench Division – a flawed concept

There are practical issues with the Bench Court – a few of which are:

- Written reasons for conviction/acquittal will have to be provided by judges – fertile new ground for appeals.
- Judges will need additional time to draft those reasons, clawing back some of the time anticipated to be saved by dispensing with juries. They can no longer move seamlessly from sending the jury out in one case to starting the next trial.
- If, mid-trial, it emerges that the appropriate sentence might exceed three years, the trial Judge must consider whether to re-allocate the case and restart before a jury (S74(B)(2) etc). Criminal practitioners know all too well that the true seriousness of a case can become clear only once evidence unfolds.

How many cases will be captured?

The Government has already indicated its desire to increase Magistrates Court powers to 18 months, and we consider it likely that they will be unable to resist raising that further to 24 months by the time the Bench Court is implemented.

The work for this court may be limited to cases where the likely sentence is between 2 and 3 years.

Even that sentence span is likely to be narrowed in two ways:

1. Magistrates Courts may retain cases where the sentence might exceed two years whilst reserving their right to commit for sentence.
2. Judges, mindful of the prospect of re allocation by the Bench Court after a trial has started, will err on the side of caution and may direct jury trial in cases at the top end of the 2 – 3-year bracket.

The Bill in detail

Clause 1 – Removal of the right to elect trial on indictment

Why the proposal is opposed

1. **Erosion of constitutional principles.** Trial by jury has long been viewed as a fundamental safeguard against the arbitrary exercise of state power. Juries have not caused the current crisis, and the evidence is that curtailing them will only have a limited impact on reducing delays.
2. **Democratic participation.** Jurors, drawn from all elements of society, take jury service very seriously. Our Vice-Chair sat on a jury last year and saw his fellow jurors, without exception, treat the process with the gravity and respect that it deserves. Limiting jury trials reduces public engagement in the process and weakens democratic participation in criminal justice.
3. **Equity and diversity.** The Lammy Review found that juries produce consistent verdicts across ethnic groups, while judges and magistrates exhibit greater disparities in conviction rates. Juries deliberate collectively and can check individual prejudice; judge-only trials concentrate power in one person.
4. **Defendant choice matters for reasons beyond juries.** Defendants often elect Crown Court trial because the Crown Court has powers to dismiss weak cases pre-trial, disclosure is more robust and cases are more likely to be reviewed by the CPS.

Clause 3 – Trial on indictment without a jury (Sections 74A–74D SCA 1981)

Why the proposal is opposed

1. **Judge-only trials for serious offences.** Cases where a likely sentence is up to three years are not insignificant and can be life changing. They can lead to the loss of employment, relationships and housing.
2. **A penalty for being of good character.** In some cases, defendants with previous convictions might obtain a jury trial because their sentence is likely to exceed three years, while first-time offenders facing identical facts (and yet a greater consequence if convicted) would not.
3. **Minimal impact on backlog.** The Impact Assessment suggests that removing juries would save about 3.5 % of Crown Court sitting days; the Institute for Government estimates the saving is only 1–2 %. Rape complainants, who currently wait about a year for trial, would see delays reduced by about a week. Whilst there is disagreement as to the likely time savings, such uncertainty and potentially minimal gains do not justify sacrificing a centuries-old safeguard.
4. **Procedural complexity, appeals and delay.** The Bill creates a two-stage allocation process. Allocation at the PTPH will take additional court time and if mid-trial the evidence shows that the likely sentence should exceed three years then the judge must consider whether to halt the trial and start again with a jury.
5. **Written reasons and appeal burden.** Section 74D requires the judge to give a reasoned judgment at or soon after verdicts in judge-only trials. Judges will need to produce “appeal-proof” judgments. This will consume at least some of the time supposedly saved by eliminating juries and will undoubtedly increase the work of the Court of Appeal as a new avenue of appeal is opened.
6. **Absence of a lay element.** Leveson proposed that the bench division comprise a judge and two lay justices to maintain community participation. The Bill discards lay input. We oppose the Bench Court in any form, but the Leveson format at least included some check on Judge alone.
7. **Risk of bias and misperception.** Judge-only trials concentrate decision-making in one individual, magnifying unconscious bias. The Lammy Review highlighted mistrust among Black and minority ethnic communities due to the lack of diversity in the judiciary. Juries are more representative of society; they deliberate collectively and can challenge biases. A single judge sitting alone cannot offer the same assurance.
8. **Public confidence/involvement.** Jury trial is an important democratic right and jury service a public duty.

9. **A shield for Judges.** Juries are anonymous. They make the ultimate decision on guilt. This protects judges who might be the subject of hostility, aggression and harassment if they are seen to be making the decision that leads to someone's incarceration.
10. **Lack of capacity and a siphon on resources.** The Criminal Justice System lacks the capacity to meet the increased demand that the 'Swift Court' will introduce. In some areas of the country, 1 in 9 cases cannot proceed due to a lack of counsel. There is a real risk that matters in the new Division simply 'jump the queue' and force more serious matters even further into the backlog.

Clause 6 – Increase in magistrates' sentencing powers

Clause 6 empowers the Secretary of State to increase the maximum custodial sentence that magistrates can impose for a single either-way offence to **18 months** or **24 months**.

1. We are wholly opposed to any increase in Magistrates' Court sentencing powers if the right to election is removed.
2. If the right to election is retained (and a jury trial guaranteed in the Crown Court) then we can see some merit in increasing Magistrates' Court sentencing powers to remove some cases from the Crown Court.
3. We suggest that if Magistrates Court sentencing powers are increased then lay magistrates should be restrained to a 12-month maximum, but district judges could have the power to sentence to up to 18 (or 24) months.
4. This must be accompanied by an unfettered right of appeal against conviction and sentence to the Crown Court and, we repeat, only if the right to elect on all either-way matters is preserved, particularly given that appeals from the Magistrates Court are successful in 42% of the cases for conviction and 47% for sentence

Legal Aid in the Magistrates Court

Legal aid eligibility is significantly lower in the Magistrates' courts than in the Crown Court and so if cases are moved into the Magistrates Court, then Legal Aid eligibility must be reviewed to avoid unrepresented defendants. We can say from our experience that at present some defendants elect Crown Court trial simply to get legal aid.

At present, even defendants on minimum wage may not be eligible for legal aid. The rules are:

1. Earn more than £22,325 – no legal aid
2. £12,475 - £22,325 – An assessment of income and outgoings, if "disposable" income exceeds £3,398 then no legal aid.

Financial sustainability for Solicitors firms

The latest data on duty solicitors shows that as of October 2025 there are 3,743 duty solicitors compared to 6,907 in July 2014, representing a fall of 45%. The cohort is ageing and this will lead to a huge gap in provision, particularly if cases are pushed down from the Crown Court to the Magistrates' Court. Our members tell us that they are already triaging cases and declining to act in those matters that are perceived to be loss making or where obtaining legal aid is complex.

Any reform must be accompanied by serious investment in legal aid for defence solicitors and a commitment to an annual increase at least in line with inflation. Recent fee increases did no more than leave firms in the same "parlous" state as reported by Sir Christopher Bellamy in 2021 once inflation is factored in.

It is vital that the Government implements recommendation 154 of Sir Brian Leveson's report - that the Ministry of Justice and Legal Aid Agency commit to an annual review of legal aid fees. Indeed, they must commit to increasing fees annually, at least in line with inflation.

Clause 7 - Appeals from magistrates' courts

Clause 7 and Schedule 1 replace the automatic right of appeal against conviction or sentence from the magistrates' court with a permission test. If allowed, the appeal would be heard by a judge sitting alone, not by a judge and two magistrates.

Why the proposal is opposed

1. **Removal of an important safeguard.** Appeals against conviction in summary trials are an essential check on errors. Current statistics show that about 42 % of appeals from magistrates' courts against conviction and 47% of appeals against sentence are successful. Magistrates Court are found to have returned the wrong decision in almost half of cases that are currently appealed, which shows (1) that there are not presently overwhelming numbers of meritless appeals; and (2) that the safeguard of an appeal as of right is essential to avoiding miscarriages of justice.
2. **Increased complexity and delay.** The new procedure introduces multiple stages: application, permission decision, appeal on legal grounds and potential remittal for retrial. This is more burdensome than the existing rehearing before a judge and two magistrates, which is swift and efficient. Cases remitted for rehearing would further delay resolution.
3. **Access to justice and legal aid.** The current fixed fee for a solicitor to prepare an appeal against conviction is £368.40 + VAT and this would be wholly inadequate to carry out the work envisaged.
4. **Loss of lay participation.** The existing system allows magistrates to sit with a Crown Court judge on appeals, providing valuable training and promoting consistency. The Bill removes this opportunity.

Importance of jury equity

Juries play a vital constitutional role in protecting civil liberties. Cases such as the **Suffragette cases** (1912 etc), **Clive Ponting** trial (1985), the **Colston Four** (2022), **Palestine Action Filton case** (2026) show juries' ability to reflect community conscience and/or a disapproval of the law and acquit defendants where the strict law might otherwise compel conviction. Judge-only trials would not deliver the same outcomes. The Bench Division would remove this safeguard from many public protest and political cases.

Andrew Bishop, Vice Chair, for the Criminal Law Solicitors' Association

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