INDEPENDENT REVIEW of the Criminal Courts

Part I

Justice delayed is justice denied.

William E. Gladstone, 1868

When justice sleeps, justice is cancelled.

Talmud 200 – 400 CE

To delay justice is injustice.

William Penn, 1682

Justice too long delayed is justice denied.

Martin Luther King, 1963

To no one will we sell, to no one will we deny, or delay right or justice.

Magna Carta, Clause 40, 1215

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Foreword

1. On 12 December 2024, the Lord Chancellor announced an Independent Review of the Criminal Courts. I was appointed to conduct the Review allowing me to draw on what I have learned from my 50-year career, very substantially involving criminal work, starting in 1970 as a barrister, then later as Queen's Counsel, Judge, President of the Queen's Bench Division and Head of Criminal Justice.[1]

2. To assist with the Review, with the consent of the Lord Chancellor, I appointed three advisers. Professor David Ormerod CBE, KC (Hon.) chaired one of the sub-committees of my 2015 Review and, as a Professor of Criminal Law, an observer attending the Criminal Procedure Rule Committee and former Criminal Law Commissioner, he has extensive knowledge about criminal law and procedure. Chris Mayer CBE is a former Chief Executive of HM Courts Service (as it then was) and Shaun McNally CBE is a former Director of Crime at HM Courts & Tribunals Service and Chief Executive of the Legal Aid Agency. I have known them both for over 20 years; they have an in-depth knowledge of the way in which the courts operate and the detailed interaction between different agencies which make up the collective criminal justice systems. All three have engaged on aspects of the Review although Professor Ormerod has focused on policy issues and Ms Mayer and Mr McNally (who have been engaged on numerous court visits speaking to those at the coalface) on operational efficiency.

3. In addition, the Ministry of Justice has been extremely supportive of this Review. It has provided me with a substantial team of civil servants (including those with policy, engagement and analytical expertise) headed by a Senior Civil Servant, Clare Toogood, who also has considerable experience of operating in the field of criminal

1 In addition to my responsibilities as President of the Queen's Bench Division and then Head of Criminal Justice, throughout my judicial career, I have also been very substantially involved in criminal justice management from a judicial perspective. This was as a Presiding Judge of the Northern Circuit, Deputy, then Senior Presiding Judge for England and Wales and Chair of the Sentencing Council of England and Wales. I also conducted a Review of Efficiency in Criminal Proceedings which reported in January 2015.

justice.[2] Working as members of the independent review, the task of the team has been to coordinate the Review, to analyse the evidence and the responses which the Review has received, and to help compile the report.

4. To ensure I heard from as many perspectives as possible, the Review launched a request for evidence. I welcomed views from all who had an interest in any aspect of the Review. This was followed with full and wide-ranging meetings with those who responded and with others to whom the Review reached out. To all those I have engaged with, I have reported fully on my thinking. I thank them for their repeated engagement throughout the course of the Review.

5. At the same time, literature reviews in relation to the UK and other jurisdictions have been undertaken by academic criminal lawyers, pressed into service by Professor Ormerod. I am extremely grateful to all those who have taken the time and effort to respond and allowed me to form as rounded a view of the problems and potential solutions from as wide a range of jurisdictions as has been possible. Their work has been invaluable. Ultimately this is not an academic treatise but a policy review and, for that reason, I have not sought to include extensive footnoting.

6. I have also engaged with the government and other politicians. They have emphasised and respected the fact that this Review is entirely independent of government but have offered views in relation to their various areas of responsibility, which I have found of real assistance. I similarly express my gratitude to all of them.

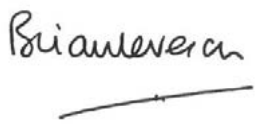
7. My work is, of course, not complete as I am conducting the Review in two parts: Part I (the Policy Review), handed to the Lord Chancellor today, and Part II (the Efficiency Review), which will be published later in 2025. I express my gratitude in advance to those who will continue to contribute to Part II over the coming months. Throughout I have tried to be faithful to the distinction between the two Reviews but there is inevitably some crossover in what I recommend here and what I will go on to recommend in the Efficiency Review.

2 See Annex D (Independent Review Team).

8. Two other comments. First, I recognise that there is a degree of repetition between chapters in the Review. This is so that each topic can be read in isolation or out of order and is intended to assist those only interested in part of my analysis of the problems and the recommendations that seek to address them.

9. Second, this Review is aimed at a number of different audiences who will have different familiarity with the language of criminal justice processes. Rather than include explanations of the terms used in the text of the Review, each is defined in the Glossary (Annex A).

10. A full list of those who have contributed can be found in Annex C. I thank them once more and, in particular, express my gratitude to my advisers and the team who have assisted me from first to last and whose efforts have extended far above and beyond the call of duty: the names of the team are set out in Annex D. Any errors are my responsibility and my responsibility alone.



The Rt Hon. Sir Brian Leveson

18 June 2025

Executive Summary

Purpose and Context

1. Criminal justice is in crisis. The open caseload in the Crown Court has now reached a record high. As of December 2024, there were over 75,000 outstanding cases in the Crown Court.[3] That is more than double the numbers in 2019, and trials are being listed as far ahead as 2029.[4] The aphorism 'justice delayed is justice denied' is entirely apt. Delayed justice results in a host of problems: devastating impacts on the lives of victims and witnesses, a number of whom may withdraw from proceedings; defendants left in limbo for years; and knock-on effects on the rest of the justice system, such as a rising remand population taking up scarce prison places. The scale of the problem requires a solution of equal magnitude – and, indeed, whilst my primary focus is on the Crown Court, the problems spread much wider and touch every aspect of criminal justice: the solution must therefore do so too.

2. There are many causes for the problems that we are facing. The first is that long-term constraints and reductions in funding and investment in criminal justice over many years have resulted in fewer available courts, a considerable maintenance backlog in the court estate and a smaller and less experienced workforce. This has been exacerbated by the disconnect between different agencies within the criminal justice system.[5]

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3 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025).

4 HM Courts & Tribunals Service (HMCTS), Unpublished Management Information.

5 No one body is capable of directing or mandating collaboration between those engaged in the delivery of criminal justice. Each has its own budgetary pressures and its own lines of accountability. Thus, the police (funded by the Home Office) have operational independence, but each Chief Constable is answerable to their Police and Crime Commissioner. The Crown Prosecution Service (CPS) (and the Serious Fraud Office) are accountable to the Attorney General. The legal professionals – the bar, solicitors and legal executives – have their own professional bodies but are rightly entirely independent of government. HMCTS is organised under a framework agreement initially agreed in 2008 such that the Chief Executive is answerable jointly and severally to the Lord Chancellor, the Lady Chief Justice and the Chairman and members of the HMCTS Board. Legal aid and criminal justice policy are managed by the MoJ as is His Majesty's Prison and Probation Service (HMPPS). Each body has its own strategic objectives and its own financial challenges and none is constrained to deploy resources to help any of the others.

3. The second is the increasing complexity of criminal law, both its procedures and the advent of new forms of evidence (whether extracted from mobile phones, computers or in the form of DNA analysis). These developments have all been designed to improve the delivery of justice and the fairness of proceedings, but have increased the time that jury trials in particular take, so that they are now twice as long as in 2000.[6]

4. Many of these challenges were foreshadowed in my 'Review of Efficiency in Criminal Proceedings' published in January 2015.[7] In the few years thereafter, perhaps because of financial constraints on the police and CPS, fewer cases entered the system and funding was further reduced as a consequence. However, since 2019, there has been a rapid increase in the number of cases entering the Crown Court. There is no doubt that this, at least in part, has been driven by the focus of successive governments on more proactive policing, a greater focus on the most serious crime, including serious sexual offences and exploitation, knife crime, and violence against women and girls. This was not accompanied by sufficient increases in funding for other parts of the system and pressures on the system were greatly exacerbated by the COVID-19 pandemic and industrial action by the criminal bar in 2022.

5. All this severely limited capacity for jury trials, resulting in rising inefficiency across the system, including much higher numbers of 'vacated' and 'ineffective' trials, and rapidly rising caseloads. In particular, it has increased the proportion of complex cases in the open caseload. Although there are courts which have been able to manage the challenge, many others have not: the consequence is a real risk of collapse of the system.

6. In December 2024, the Lord Chancellor asked me to conduct this Independent Review of the Criminal Courts ('the Review') to look afresh at the problems we are currently facing. The Terms of Reference were announced on 12 December 2024, and set out the Review's purpose: to produce options and recommendations for a) how the

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6 These include, for example, the reforms introduced by the Police and Criminal Evidence Act (PACE) 1984, the disclosure of much greater amounts of unused material prescribed by the Criminal Procedure and Investigations Act 1996, the provision of special measures (and pre-recorded evidence) for vulnerable witnesses and, in addition, the availability of new categories of evidence. Please see Footnote 26 for source.

7 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015).

criminal courts could be reformed to ensure cases are dealt with proportionately, in light of the current pressures on the Crown Court; and b) how they could operate as efficiently as possible.[8]

7. The Terms of Reference further set out that the Review should consider:

   a. longer-term options for criminal court reform, with the aim of reducing demand on the Crown Court by retaining more cases in the lower courts; and

   b. the efficiency and timeliness of processes through charge to conviction/acquittal.[9]

8. The Terms of Reference also stipulate that the options and recommendations provided 'should take account of the likely operational and financial context at the time that they may be considered and implemented'. I have had due regard to this requirement in what I am aware is a challenging fiscal context, but I am conscious that recommendations which do not carry with them the necessary financial support are unlikely to have any significant impact on the open caseload. I have proceeded on the basis, first, that the government recognises the dire financial position facing criminal justice and, second, having regard to the fact that the full impact of the recommendations will take some time to bring into effect, let alone realise. As a result, the government needs to find a way to finance the start of the process and commit to improvements over a longer period when it is to be hoped that the operational and financial conditions permit more to be done. This will include an increase in sitting day capacity in order to maximise the effectiveness of my recommendations.

9. Having said that, it is important to underline that greater financial investment on its own, without systemic reform, cannot solve this crisis. The analytical evidence I have received is unanimous in confirming that fact. Furthermore, although there is an urgent need to tackle rising inefficiency in the criminal courts, and the interlocking issues across criminal justice agencies, even with increased sitting capacity, no amount of efficiency gains alone could solve all the problems. The system is too broken. A radical and essential package of measures is therefore required to prevent total collapse of the

8 The full Terms of Reference are set out in Annex B.

9 As outlined in para. 13, the Review will be delivered in two parts. This report addresses the points set out in bullet point a). Further detail can be found in Annex B and paras 12 to 14 of this Executive Summary.

system. Although I cannot guarantee success, I have no doubt that less dramatic change will not alter the current picture.

10. My recommendations interact and are designed not only to improve the systems engaged in criminal justice but also to affect the behaviour of those involved and, in particular, to persuade those who always intended to plead guilty to do so at an earlier stage in proceedings thereby avoiding congestion in the outstanding caseload and wasted court time. I believe that only through the combined impact of these recommendations can steps be taken to address the challenges that are being faced. In other words, this package needs to be looked at as a whole: it is an across-the-board series of recommendations and should not be approached as providing a 'pick-n-mix' series of options.

Principled Approach

11. My aim has been, and remains, to make recommendations which, taken together, would seek to restabilise the criminal justice system in the short term, and also to provide a solid foundation for a sustainable system in the long term.[10] In developing my recommendations in the Review, I have been guided by five overarching principles. Throughout, I will endeavour to show the link between my recommendations and the principles. These are to:

    a. Provide appropriate and fair decision-making. Specifically, the time and form that the decision-making process takes must reflect the nature of the offence and the potential impact on those involved, and must meet the high expectations of defendants, victims and witnesses as to a fair and prompt hearing of allegations by an independent court in a forum proportionate to the allegations.

    b. Maximise participation, maintaining the principles of open justice (other than in exceptional circumstances) and promoting effective participation from defendants, victims and witnesses.

    c. Provide a proportionate approach to trial processes, giving the public confidence, while balancing the rights of all involved.

    d. Deliver fair proceedings that safeguard against disproportionate

10 I have seen no value in making recommendations intended to be short term and seeking to deal with the outstanding caseload on a pragmatic basis. Such an approach would not remove the problem: for what I believe would be a short time only, it would simply postpone it.

outcomes for some sections of society and are consistent with the right to fair trial and other rights guaranteed by common law and reflected in the European Convention of Human Rights (ECHR).

e. Ensure that timeliness, from arrest through to resolution, is considered and given appropriate weight in the administration of justice, for the benefit of all involved – defendants, victims and witnesses.

Scope

12. I am conducting the Review in two parts, broadly in line with the division set out in the Terms of Reference (see paragraph 7 above). In Part I (the Policy Review), I consider long-term reforms to the set-up of the criminal courts which, on the whole, would require primary legislation to implement. Part II (the Efficiency Review) will be published later in 2025. My hope and expectation is that the recommendations set out in the Policy Review will provide a starting point for a long-term solution to this crisis. However, the Efficiency Review will provide recommendations focused on technology, leadership, people and infrastructure, to drive greater efficiency in both the immediate and long term. Throughout this Review I have tried to be faithful to the distinction between the two but there is inevitably some crossover in what I recommend here and what I will go on to recommend in the Efficiency Review.

13. In summary, the Efficiency Review will consider improvements to end-to-end case progression, incentivising more effective inter-agency collaboration and local leadership to improve performance outcomes, developing an experienced workforce, using the court estate more effectively and encouraging integration of new technologies, including artificial intelligence (AI). AI will be approached as the starting point for a long-term vision for criminal justice beyond the immediate crisis. The pace of change in technology is such that, within ten years, the landscape within which any criminal justice system will operate is beyond our ability to visualise. The Times Justice Commission described the opportunities available to the criminal justice system through AI and other developing technologies.[11] Similarly, Professor Richard Susskind CBE, KC (Hon) has described the need for a vision for criminal justice in 2035, recognising the transformational potential of

11 A Report into the state of the criminal justice system (Times Crime and Justice Commission, 2025).

technology.[12] I agree with this and have no doubt that AI can improve aspects of the system and timeliness when I turn to it in the Efficiency Review.

14. Many aspects of the overall system are under scrutiny and there are many interdependencies. In this Review, broadly, I have not considered areas which are in scope of other independent reviews, such as the Independent Sentencing Review, the Independent Review of Disclosure and Fraud Offences, and the Prison Capacity Review. Given that it is necessary to adopt a system-wide approach, however, there are recommendations from these, other options under consideration in live consultations (such as the current consultation on Criminal Legal Aid) and projects currently being taken forward, on which I offer my views.

Methodology

15. In conducting this Review, I sought to engage with representatives from all parties interested in the criminal courts. I began by meeting those who had experience working in or with the systems that make up the criminal justice system. Their contributions were essential in helping to understand the nature and scale of the current crisis and the impact of this, developing recommendations and in helping evaluate their likely effectiveness.

16. To ensure that I heard as many perspectives as possible, the Review launched a request for evidence on GOV.UK. I welcomed views from all who had an interest in any aspect of the Review, as set out in the Terms of Reference, and encouraged those responding to this request to be ambitious. I particularly welcomed ideas which recognised the difficulties that criminal justice faces, and which were therefore prepared to challenge the current approach, or which highlighted best practice and demonstrated how it could be extended. A total of 238 responses were received from academics, criminal justice system partners, frontline court and criminal justice staff, and members of the public, amongst others. In addition, the Times Crime and Justice Commission shared its open evidence with me.[13] I am very grateful to all who have assisted in preparing and providing evidence, views and submissions.

12 With thanks to Professor Richard Susskind for his submission to this Review.

13 A Report into the state of the criminal justice system (2025).

17. Many of the contributions to the request for evidence outlined proposals for long-term reform, which have informed this Policy Review, and efficiency management, which will provide a basis for the Efficiency Review. The most frequently raised topics referenced the defendant's right to elect trial by jury, the formation of an intermediate court and the use of technology and AI.

18. Following the request for evidence, I tested early thinking with organisations including HMCTS, the CPS, the Bar Council, the Law Society and the National Police Chief's Council (NPCC). In total, I held 76 meetings personally, with the Review team conducting 118 further meetings on my behalf. I also shared emerging thinking at various boards and forums including the Criminal Justice Board, the Criminal Justice Action Group, the Council of Circuit Judges and with Resident Judges. I would like to thank all those who took time to meet with the Review team.

19. While refining recommendations, I also regularly met senior members of the judiciary. A Judicial Response Group was established to help formally represent their views. I distributed a national survey among the magistracy which engaged a substantial number of respondents. The findings of this survey can be found in Chapter 8 (Crown Court Structure).

20. To ensure that this Review heard from those with real experience of the system, the charity JUSTICE facilitated a series of roundtables on the Review's behalf, to hear from defendants, victims, witnesses and legal practitioners. Their views helped ensure that the recommendations I am making are inclusive and mindful of users' experiences. I am grateful to JUSTICE and those who attended the roundtables for their contributions.

21. The Review has also sought to examine various international comparators, including common and civil law jurisdictions. I am particularly grateful to the many academic contributors who were able to provide valuable information about the approach in other jurisdictions. Having said that, any reference to other jurisdictions in this Review should not be considered a comprehensive comparison; through pressure of time, the analysis has had to be focused and selective.

22. Operationally, the Review visited 16 magistrates' and Crown Court centres across the country, with plans to visit additional courts throughout the summer to help inform the Efficiency Review later this year.

23. The programme of engagement the Review has undertaken has provided an invaluable picture of the criminal justice system today, and helped form the basis of my recommendations. Where there are references to anecdotal evidence, this has been extracted from meetings with partners and submissions received from contributors to the request for evidence.

24. In addition to the engagement above, I have considered academic texts and other sources, including published data. I would note, however, that in the time available, I have been unable to engage as comprehensibly with academic research as I would have liked. One thing, however, is clear: at every step, this Review has confirmed the importance of a package of radical reform and, furthermore, the extent to which that fact has been recognised by all those with a deep understanding and knowledge of the ways in which the criminal justice system now operates.

25. I look forward to further engagement with criminal justice agencies to help implement these reforms and to inform the Efficiency Review.

Modelling

26. The MoJ provided me with an experienced analytical team and has given me access to large amounts of data, for which I must state my gratitude. This has enabled the Review to analyse and understand the causes of the crisis and carry out some modelling to support my consideration of recommendations.

27. The Terms of Reference asked me to consider the impacts any changes could have on how demand flows through the criminal courts. Modelling does not, however, provide all the answers. First, owing to the significant time pressures under which the Review has been conducted, it has not been possible to provide a quantitative assessment of impact across the criminal justice system for every recommendation outlined in this Review, let alone how they might work in combination and interact with the recommendations of other independent reviews. Instead, my Review provides the next best option: a narrative assessment of impacts throughout the chapters – based on my extensive engagement with experts, literature reviews and qualitative evidence – and, where available, quantitative estimates for the recommendations that I expect to have the greatest structural impact on the criminal courts. The findings of this modelling can be found alongside the corresponding recommendations in Chapters 5 (The Magistrates' Court Process) and 8 (Crown Court Structure).

28. I have provided estimates of the amount of work in days expected to be diverted away from the Crown Court sitting with a jury ('sitting days'), and the corresponding costs to the system under those reforms. There are limitations, not least that it is difficult (if not impossible) to model the real-world behavioural response to certain recommendations. The methodology, limitations and assumptions underpinning the modelling are provided in Annex F (Technical Annex). I have also provided a projection over time of the growing workload (in sitting days) in its current state, and how much it is estimated that this would reduce if specific recommendations are accepted.[14] The MoJ will, of course, want, and need, to carry out more detailed modelling on the operational and financial impact of the recommendations and their interaction with the recommendations of other independent reviews, not least to inform impact assessments of any recommendations taken forward. It will also, of course, want to consider the potential impacts on the prisons of any of these recommendations.

Disproportionality

29. As above, I have considered the potential impacts of my recommendations on the fairness of proceedings, particularly the impact on court users, and how these could be mitigated where necessary. I am conscious of the potential for reforms to generate disproportionate outcomes for different court users from different communities or demographic groups, which may fuel existing distrust in the criminal justice system.[15] Increasing trust in the criminal justice system is fundamental to improving public perceptions of fairness, and a willingness to abide by the decisions made.[16]

14 A summary of the modelling of both of these recommendations is provided in the conclusion of this Executive Summary (see para. 67).

15 This is not a new phenomenon, as highlighted in Cheryl Thomas, Are juries fair? (MoJ Research Series, 2010).

16 This is a point made in Tom Tyler's 2007 paper 'Procedural Justice and the Courts'. His research found that those who perceived their hearing as fairer, and thus viewed the law as more legitimate, reoffended at about 25% of the rate of those who saw the law as less legitimate. Tom R. Tyler, 'Procedural Justice and the Courts' (2007) 44(1) Court Rev 26–31.

30. Current levels of disproportionality across the criminal justice system are well documented. The David Lammy Review 'into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System' was clear in its findings that 'those who are charged, tried and punished are still disproportionately likely to come from minority communities.'[17] The 'Equal Treatment Bench Book' also highlights the over-representation of people from ethnic minority backgrounds at various stages of the criminal justice process, and the lower levels of trust in the system among members of these communities.[18]

31. Contributors to the Review have additionally highlighted the specific disproportionality issues faced by both female defendants and young defendants. Many of the points raised, however, focus on sentencing decisions and are therefore out of the scope of this Review. That said, contributors encouraged me to consider recommendations which supported reducing arrests, increasing Out of Court Resolutions (OOCRs) or otherwise diverting individuals from the criminal justice system as one way of addressing this disproportionality. I address this in more detail in Chapter 3 (Diversions).

32. My attention has been drawn to various work which continues to address disproportionality. This includes training by the Judicial College in relation to equality, diversity and inclusion, which aims to ensure that judges and magistrates can effectively address related issues in their work. In addition, there is the current work of the Criminal Justice Action Group on its Criminal Justice Strategy 2040, which will include system-wide consideration of disproportionality for both victims and defendants.[19] Further, I note the work underway in the CPS to address racial disproportionality in charging decisions, with a plan that aims to eliminate racial bias and ensure fair prosecution decision-making for all. Finally, the College of Policing is also enhancing its training and policies in this area.[20] I endorse this work, though to address these system-wide issues is beyond the scope of the Review.

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17 The Rt Hon. David Lammy, Lammy review: final report (September 2017), p. 3.

18 Equal Treatment Bench Book (Judicial College, July 2024), p. 170.

19 The Criminal Justice Action Group is chaired by the Permanent Secretary of the MoJ. It brings together senior cross-system officials to make decisions on and drive forward activity to deliver system-wide improvements with a view to both the short and long term.

20 See:Police Race Action Plan published | College of Policing.

33. I have, however, considered the potential disproportionate impact of my recommendations and, where they have the potential to impact adversely on any demographic group within the population, how this could be mitigated. I strongly advise the government to carry out and heed the results of equality impact assessments as part of the implementation of my recommendations, ensuring that measures are applied fairly and transparently. Regular monitoring should also be introduced to identify any disproportionate outcomes that do happen to arise, with processes in place to understand their causes and how they can be addressed.

The essential action required

34. Many of the main recommendations I put forward in this Review are not new, they have been identified over many years as outlined in the Review conducted by Lord Justice Auld in 2001 and in Chapter 10 of my Review in 2015.[21] This Review seeks to create a package of measures that are principled, will increase efficiency and, in combination, are intended to produce the necessary change. I have presented the recommendations in a manner that demonstrates how they run consecutively through all aspects of the many systems which make up the criminal justice system.

35. I do not approach these recommendations lightly. However, only through the combined impact of these measures can government start to overcome the current crisis and reduce the risk of total system collapse.

21 Rt Hon. Lord Justice Auld, Review of the Criminal Courts of England and Wales (HMSO, October 2001); Review of Efficiency in Criminal Proceeding (2015), ch. 10.

Summary of Recommendations

Chapter 3: Diversions

36. OOCRs represent a flexible, cost-effective and alternative initiative to court proceedings in relation to low-level offences allowing the police to devote time to more serious offending. Furthermore, OOCRs (which can include cautions, penalty notices and community resolutions) also provide opportunities for intervention at the early stages in what is or might become criminal behaviour, which can result in better rehabilitation outcomes and reduce future reoffending; they can also lead to improved victim satisfaction in the criminal justice system.

37. The use of OOCRs has decreased by 35% from 2015 to 2025. This decline can be attributed to changed police priorities, the complexity of the process to administer OOCRs, limited awareness or availability of programmes and financial constraints. There is also variation across regions, often influenced by the priorities of different Police and Crime Commissioners.

38. It is appropriate to encourage greater use of OOCRs both as a means of reducing the number of new cases entering the magistrates' court and as a mechanism to review appropriate cases in the open caseload to ensure that only those cases that need to go to court do so.

39. In the circumstances:

Recommendation 1: I recommend that 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.

Recommendation 2: I recommend that 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.

Recommendation 3: I recommend that 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.

Recommendation 4: I recommend that the 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.

Recommendation 5: I endorse the decision of the Home Office to amend Outcome 22 (police counting tool for Out of Court Resolutions) so that Out of Court Resolutions are recognised in the same way as other outcomes.

Recommendation 6: I recommend 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.

Recommendation 7: I recommend that the government reviews the Rehabilitation of Offenders Act 1974 in order to simplify and clarify the system to encourage the recognition of rehabilitation.

Recommendation 8: I recommend implementing Out of Court Resolutions alongside restorative justice for low-tier offences such as some thefts, public order offences and drug misuse.

Recommendation 9: I recommend an expansion of the Deferred Prosecution Scheme should be introduced by a legislative amendment to the Criminal Justice Act 2003.

Recommendation 10: I recommend that the Crown Prosecution Service and Ministry of Justice agree eligible offences and criteria for Out of Court Resolutions in consultation with the National Police Chiefs' Council.

Chapter 4: Investigation and Charging Decisions

40. Proportionate and appropriate early decision-making processes involving the police and CPS are important; from arrest, through release while investigations proceed, to charging and post-charge decisions relating to bail and remand.

41. The Policing and Crime Act 2017 (even after its amendment in 2022) imposed legislative requirements for checks on continued delay in investigation. As a result, a practice developed of releasing suspects under investigation (RUI) without any real control over how long that investigation might take. In addition, there remain issues between the police and CPS in relation to the sufficiency of evidence for an appropriate decision to be reached as to a proportionate charging decision.

42. Finally, whether or not accurately reflecting the approach taken by the Independent Office for Police Conduct, there is a perception that police officers will face formal investigation for conducting an inappropriate risk analysis in relation to bail if a suspect commits any further offence when released on bail. This drives risk aversion amongst the police. This contributes to the growing remand population, which is both a cause and an outcome of the open caseload.

43. In the circumstances:

Recommendation 11: I recommend that the 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.

Recommendation 12: I recommend that the 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 decision-making and improvement of their decision-making process.

Recommendation 13: I accept that 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.

Chapter 5: The Magistrates' Court Process

44. The magistrates' court handles more than 90% of criminal cases in England and Wales, with cases heard by District Judges (Magistrates' courts), their deputies and magistrates (also known as Justices of the Peace) supported by legal advisers.[22] The magistrates' court is authorised to deal with categories of offence based on the gravity of the allegation. Its disposal rate is significantly faster than that of the Crown Court and it is better suited to deal with many lower-level offences.

45. There is an important role for the magistrates' court to achieve a more balanced, modern and effective criminal justice system. Following the change in magistrates' court sentencing powers to 12 months (which is a limit I consider should be retained), the court should be strengthened further to manage its growing and more serious caseload while, at the same time, maintaining fairness and efficiency, which includes introducing automatic audio recording proceedings. In addition, the opportunity must be taken to look afresh at the cases suitable for trial in this court and the distribution of work between the magistrates' court and the Crown Court.

22 See further detail in Chapter 5 (The Magistrates' Court Process) on the breakdown of these cases.

46. I have therefore considered the reclassification of certain either way offences to summary only and whether the right to elect to be tried in the Crown Court should be removed for either way offences carrying a maximum sentence of two years or less (and other offences where appropriate). Finally, bearing in mind the impact that more serious cases being retained in the magistrates' court will have on the workload of legal practitioners, it is necessary to remove any 'perverse incentives' in the remuneration for solicitors to ensure that they are giving their clients the best and most fair advice, including when advising a client whether or not to plead guilty.

47. Taking these steps is intended to help overcome perceptions of some people that a lower quality of justice is being delivered in the magistrates' court, and reposition the court as an institution that is efficient, accessible and capable of delivering justice swiftly, fairly and at scale.

48. In the circumstances:

Recommendation 14: I recommend that the Ministry of Justice 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).

Recommendation 15: I recommend that the ability to amend magistrates' sentencing powers by Statutory Instrument should be repealed and that the 12-month maximum should be made permanent.

Recommendation 16: I recommend that 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.

Recommendation 17: I recommend that, 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.

Recommendation 18: I recommend that the 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 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.

Recommendation 19: I recommend that trial and sentencing proceedings in the magistrates' court be audio recorded and, if necessary for the purpose of appeals, appropriate parts transcribed.

Recommendation 20: I 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.

Chapter 6: Appeals from the Magistrates' Court

49. An appeal mechanism is an essential part of the justice system allowing for correction of legal errors and rectifying wrongful convictions thereby enhancing public confidence. The current process for appeals from decisions of the magistrates' court to the Crown Court is not proportionate in the burden it places on the courts, relative to the gravity of the offences involved. It is pervaded by procedural complexities.

50. As a result, the appeal system must be streamlined and its efficiency improved. An automatic right to a full rehearing impacts adversely on victims and witnesses (who may not be prepared to return to court a second time) and permits frivolous and unmeritorious attempts at a

second identical run through of the evidence. Focus should be on legal error, supported by audio recording of proceedings in the magistrates' court (see Chapter 5 – The Magistrates' Court Process).

51. In the circumstances:

Recommendation 21: I recommend that 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).

Recommendation 22: I recommend that the requirement for a full re-hearing in the Crown Court should be replaced with a hearing on issues for which leave to appeal has been granted.

Chapter 7: Maximising Early Engagement in the Crown Court

52. The first appearance of the case at the Crown Court is generally at the Plea and Trial Preparation Hearing (PTPH), which should ensure that it is only those cases that require a trial that are adjourned for that purpose. For the prosecution, an early decision should be taken as to acceptable pleas and those charges that are to be abandoned. As for the defence, a guilty plea can, of course, be entered at any stage of the process but, to maximise efficiency of the system, the earlier a guilty plea is entered, the better. If defendants know that they will not face a trial for years, it is not surprising that even those who intend to plead guilty put off their plea until the trial. Whilst the proportion of guilty pleas in the Crown Court has remained relatively stable, they are being entered much later in the process than they once were.[23]

53. I am not intending to place what might be considered improper pressure on defendants to plead guilty inappropriately. Instead, I aim to encourage those intent on pleading guilty to do so at the earliest opportunity, avoiding wasted court time, reducing 'cracked' trials and offering a quicker route to justice leading to a reduction in the open caseload. I have therefore reviewed the current sentencing reductions for a guilty plea.

23 From 2019, the proportion of guilty pleas entered at the fourth or fifth hearing increased from 12% to 22%.

54. I am confident that there is scope to improve the effectiveness of the PTPH by that hearing taking place at a time that will allow sufficient time for full instructions and meaningful dialogue between the parties, whilst giving defendants the information they need to enter a plea should they be minded to do so. This relies on complete disclosure. To that end, I encourage a pilot scheme in which the PTPH is delayed. The PTPH also provides an opportunity for the judge to offer a *Goodyear* indication, providing the defendant with an advance sentence indication. The scheme is currently not being used to its full potential, so I have considered how its use could be expanded to assist defendants who may otherwise be unaware of its benefits.

55. Finally, I have considered the impact of the current legal aid schemes for defence solicitors and advocates which is creating a 'perverse incentive' to focus on the merits of a case later in the process. As a consequence, they are not in a position to provide appropriate advice in relation to an earlier guilty plea.

56. In the circumstances:

Recommendation 23: I recommend that 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.

Recommendation 24: I recommend that 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.

Recommendation 25: I recommend that any future reform of the legal aid fee scheme should be adjusted to recognise the work advocates do in order to prepare for the Plea and Trial Preparation Hearing.

Recommendation 26: I recommend that 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.

Recommendation 27: I recommend that the 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.

Recommendation 28: I recommend that the Litigators' Graduated Fee Scheme should be reformed into a banded scheme with most cases in standard 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.

Recommendation 29: I recommend that 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.

Chapter 8: Crown Court Structure

57. The Crown Court plays a vital role in the delivery of criminal justice, with cases heard by a judge and a jury. However, its caseload has risen substantially over recent years, with cases showing an upward trend in the time waiting for a court date, and the time taken in court to be heard.[24] I have concluded that changes to the current mechanism for trials in the Crown Court need to change to enhance timeliness in the delivery of justice, efficiency and in going some way to address the open caseload in the Crown Court.

24 Source: HMCTS internal data; Criminal court statistics quarterly (2025).

58. While I note the merits of options previously put forward, including an Intermediate Court as first proposed by Lord Justice Auld, I propose instead the creation of a new division of the Crown Court, called the 'Crown Court (Bench Division)' (CCBD).[25] The CCBD would be constituted by a judge sitting alongside two magistrates, without a jury. My proposal is that the CCBD should have the potential to hear all either way offences. The decision whether a case should be allocated to the CCBD would be based on a number of factors, principal amongst those being whether the likely custodial sentence on conviction in that case would be three years or less. Given the CCBD would sit within the Crown Court, the costs and logistical challenges involved in its creation would be limited, in contrast to those involved in creating a new tier through an Intermediate Court.

59. For the changes in Crown Court structure to be their most effective, they will need to be accompanied by increased capacity and investment across the system. It is clear that only by combining reform with additional sitting days will the overall level that is so desperately needed be achieved. I recognise this will not be easy to deliver. I endorse work being done to maximise use of the current allocation of 110,000 days, itself a record high, and recognise that too substantial and rapid a further increase could overwhelm criminal justice partners. As I will set out, determining an exact figure is complex and dependent on multiple factors, including prioritisation of the caseload within the courts, fiscal constraints, system infrastructure, capacity and recruitment, and the extent to which my recommendations are accepted in full.

60. My team has modelled for a range of scenarios, up to an additional 20,000 sitting days per year. Although I recognise that this is not achievable even in the medium term, I recommend that when it is possible (bearing in mind funding, alongside the capacity of the CPS, the bar and the defence community, the courts and the judiciary) sitting days in the Crown Court should be increased to 130,000 per year, to maximise the effectiveness of proposed reforms. I have accounted for the ways in which the reforms I recommend will critically enable the scaling up of capacity. I will return to consider resourcing across the criminal justice system more fully in the Efficiency Review.

25 Review of the Criminal Courts of England and Wales (2001).

61. It is my firm belief that the CCBD would help to ensure efficient and proportionate use of resources whist still upholding the same high standards of fairness, independence and justice provided across the Crown Court.

62. In the circumstances:

Recommendation 30: I recommend 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 within which the PTPH judge would be required to operate.

Recommendation 31: I recommend the Sentencing Council creates Crown Court Division Allocation guidelines following its required consultation process.

Recommendation 32: I recommend that 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.

Recommendation 33: I recommend that 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.

Recommendation 34: I recommend that 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 days (the current allocation) to the new target and this sitting day level should be regularly reviewed.

Recommendation 35: I recommend that a vacancy request be addressed to the Judicial Appointments Commission so as to generate a specific 'Circuit Judge – crime' and 'Recorder – crime' recruitment competition.

Recommendation 36: I recommend that 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.

Recommendation 37: I recommend that His Majesty's Courts and Tribunals Service maximise sitting days for Recorders, and for Circuit Judges and Recorders sitting-in-retirement.

Recommendation 38: I recommend that 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 appointed Recorders could also gain criminal experience sitting in the Crown Court Bench Division.

Recommendation 39: I recommend that 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.

Recommendation 40: I recommend that only those eligible to appear in the Crown Court would have rights of audience in the Crown Court Bench Division.

Recommendation 41: I recommend that the Ministry of Justice implements a match funding scheme for Criminal Barrister pupillages to start immediately to address the shortage of criminal advocates

Recommendation 42: I recommend that appeals from the Crown Court Bench Division be on the same basis as appeals from the Crown Court as currently constituted.

Chapter 9: Trial by Judge Alone

63. It is clear that trial by jury does not always represent the most sensible approach to the resolution of the most difficult and complex cases. The increasing length of jury trials is contributing to the open caseload and poor timeliness in the system: across the range of trials, jury trials now take more than twice as long than they did in 2000.[26] Although there are a number of contributing factors, one of the reasons is the increased complexity of the factual matrix of the cases, the expert evidence deployed to establish them and the increased efforts made to provide support and guidance to jurors. Furthermore, the personal and financial burden placed on jurors, particularly those involved in lengthy trials, is significant.

26 Source: Criminal court statistics quarterly: July to September 2024 (MoJ, December 2024). See also Criminal court statistics quarterly: January to March 2019 (MoJ, June 2019); Judicial and court statistics (annual) 2010 (MoJ, June 2012); Judicial and court statistics 2006 (MoJ, November 2007).

64. Many arguments against jury reform have been presented over the years: they are summarised both in the Report by Lord Justice Auld and my Review of Efficiency of Criminal Proceedings. I have considered each with care but I have concluded that there are certain circumstances where a trial by judge alone is appropriate, which is the case in common law countries such as Australia, Canada and New Zealand. This is based on the need for cases to be resolved in a more timely manner, in a forum most proportionate and suitable to the alleged offence or offences.

65. If implemented, this should reduce the duration of the longest trials in the Crown Court, leading to a faster throughput of cases and subsequently quicker access to justice via the courts. This feature is of particular importance for serious and complex fraud trials which place more significant burdens on court resources and jurors' time. I have considered how to balance the defendant's rights with the discretion of the judiciary, ensuring the trial process remains fair and accessible, and that evidence in those more complex cases is understood and applied correctly to ensure fair outcomes and decision-making for all parties involved.

66. In the circumstances:

Recommendation 43: I recommend that 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.

Recommendation 44: I recommend that 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.

Recommendation 45: I recommend that in cases of anticipated exceptional length or complexity (within section 29 of the Criminal Procedure and Investigation Act 1996), a judge should 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.

Conclusion

67. Based on the recommendations that have been modelled (restriction of the right to elect, reclassification, and the CCBD) it is estimated that these alone would save approximately 9,000 sitting days in the Crown Court each year, by diverting cases to the magistrates' court or the CCBD, where they can be heard in a more timely manner. This would mean a jury is reserved to hear the most serious cases.

68. Taking all the recommendations together, they provide a holistic package of measures which are needed to address each element of the multiple, overlapping crises which I have outlined. Doing nothing, or implementing only incremental change, will see this crisis get much worse and the risk of total system collapse will quickly become very real. To prevent this, action across all aspects of the criminal justice process is essential.

Chapter 1

Introduction

Chapter 1 – Introduction

1. When, in 2019, I retired from my position as President of the Queen's, now King's, Bench Division, I outlined in my valedictory speech that I would have loved to say that I was leaving the criminal justice system in a better place than it was when I started my career. I shared how, in many ways, it is: there has been enormous progress in procedure and evidence, in the protection for those accused of crime and the approach to dealing with those who are vulnerable in their experience of the criminal justice system. However, I also predicted that many of the challenges faced then by criminal justice, be it the ongoing rise in complexity of criminal trials or the long-term underfunding of criminal justice agencies, would pose an ever-greater challenge.

2. Six years later, there can be little doubt that criminal justice is in crisis. The aphorism 'justice delayed is justice denied' is entirely apt, with devastating impacts on victims and defendants, and eroding confidence in the system. As of December 2024, there were around 75,000 open cases in the Crown Court.[27] That is more than double the number of 2019, and trials are being listed as far ahead as 2029.[28] The Ministry of Justice (MoJ) has projected that by March 2029, 105,000 Crown Court cases will be open, with a rising number of cases awaiting trial.[29] In England and Wales, criminal justice is delivered through a series of systems including the police, the CPS, the defence community, the courts, the judiciary, prisons and probation. Each one is facing enormous challenges. This is simply not acceptable in what is supposed to be an advanced justice system said to attract the admiration of all.

3. The COVID-19 pandemic and the Criminal Bar's industrial action have had long-lasting effects, severely limiting capacity for jury trials. However, I must be clear that the challenges date back for well over a decade and were foreshadowed in my 'Review of Efficiency in Criminal

27 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025).

28 HMCTS Unpublished Management Information.

29 Source: Crown Court Open Caseload Projections: 2025 to 2029. For further details on the underlying data, methodology and assumptions of the latest MoJ Crown Court Projection, see the Crown Court Open Caseload Projections: 2025 to 2029 ad hoc publication.

Proceedings' published in 2015.[30] Furthermore, considerable financial constraints have also contributed. There are significant challenges in delivering an effective and efficient criminal courts process, despite the hard work of many people in the criminal justice agencies.

4. The combined impact of all of this is that there is a real risk of total system collapse in the near future. That is to say that cases have little or no chance of being brought before the court, victims and witnesses disengage and if they do attend court that would be three or four years later, when they cannot recall specifics. Overall, the criminal justice system would stagnate, open caseloads would continue to increase, agencies would not be able to cope and inefficiency would be the norm. Little or no consequences for lawlessness could lead to a breakdown in law and order and society taking things into their own hands. Every submission and discussion with criminal justice agencies that I have had as part of this Review has confirmed this reality.

5. This is not an exaggeration or scaremongering. The reality of criminal courts which are no longer effective is already beginning to materialise. The anthropologist Joseph Tainter theorised in the 1980s that as social systems expand to solve emerging problems, they become incrementally more complex, but these increments require increasing investments and offer diminishing returns. When further investments cannot be afforded, systems become sclerotic and vulnerable to collapse.[31] This is the consequence that is now being faced. This poses a profound danger to the rule of law and the foundations of a safe, fair and democratic society.

6. I acknowledge the first steps recently taken by government: a record high number of sitting days have been funded; more judges are being appointed; and there has been increased funding for court maintenance. These are important steps, but they will not be sufficient.

7. The measure that the system is in true crisis is that these usual steps, the traditional levers by which to remedy systemic problems in the criminal courts, are no longer working. This phenomenon is what Sir David Omand, formerly Director of GCHQ and latterly Permanent Secretary at the Home Office, calls the 'rubber levers test' in his book *How to Survive a Crisis:*

30 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015).

31 Joseph Tainter, The Collapse of Complex Societies (Cambridge University Press, 1988).

> 'You press the button that says, "emergency stop", but to your horror, you discover that the vehicle doesn't stop. That in a sense takes us to the heart of a real crisis.'[32]

8. Having regard to the ever-increasing caseload, on 12 December 2024, the Lord Chancellor announced an Independent Review of the Criminal Courts. The Terms of Reference were drawn exceptionally widely, and I was asked to conduct it and to report on policy options by late spring and on efficiency by late 2025.[33] Throughout, I have been very conscious that the timetable for reporting on policy options is exceptionally short. This has required me to recommend measures (however wide-ranging) which can be introduced swiftly and deliver structural change whilst utilising current resources in the system to maximum effect to tackle the present acute and urgent challenges. I have also been required to take account of the financial context within which government is operating: there are real constraints on capacity within the system and limitless resources are not available.

9. The present task is made easier because of the number of other reviews and reports that have been commissioned over the last 60 years and many of the recommendations I make are therefore not new. What I am quite clear about is that, given the respect in which I have held the delivery of criminal justice in this country for over 50 years, throughout this Review I have erred on the side of caution in interpreting the evidence and forming recommendations. I have tried to take all views into account in formulating the policy and set out a radical but necessary package of measures, which I will build on for the Efficiency Review later in 2025. In various places, although expressing my view, I have provided options that the government will have to consider depending on the extent to which it seeks even more radical solutions to those that I propose.

32 David Omand, How to Survive a Crisis: Lessons in Resilience and Avoiding Disaster (Random House, 2023).

33 The full Terms of Reference are set out in Annex B.

10. In making these recommendations, I have followed a defined set of principles. These are to:

    a. Provide appropriate and fair decision-making. Specifically, the time and form that the decision-making process takes must reflect the nature of the offence and the potential impact on those involved, and must meet the high expectations of defendants, victims and witnesses as to a fair and prompt hearing of allegations by an independent court in a forum proportionate to the allegations.

    b. Maximise participation, maintaining the principles of open justice (other than in exceptional circumstances) and promoting effective participation from defendants, victims and witnesses.

    c. Provide a proportionate approach to trial processes, giving the public confidence, while balancing the rights of all involved.

    d. Deliver fair proceedings that safeguard against disproportionate outcomes for some sections of society and are consistent with the right to a fair trial and other rights guaranteed by common law and the ECHR.

    e. Ensure that timeliness, from arrest through to resolution, is considered and given appropriate weight in the administration of justice, for the benefit of all involved – defendants, victims and witnesses.

11. Although I have been asked by some to model every recommendation, it has not been possible owing to the significant time pressures under which the Review has been conducted, let alone the complexity of modelling the interacting impacts of all recommendations. Where modelling is included in the Review, this is considered in terms of workload, which simply looks at the inflowing work (i.e. sitting days) into the system. This has been used as an alternative to caseload (i.e. the total cases in the system) which is highly sensitive to assumptions about how the court prioritises work. As the outstanding workload decreases, it is expected that the timeliness of cases through the system will increase. I have no doubt that the MoJ will want and need to conduct more detailed modelling, including through impact assessments of any recommendations taken forward.[34] Similarly, the

34 For each of the modelled recommendations, an initial assessment of the impacts on both Crown Court sitting days and the expected financial impact of these recommendations is presented in the relevant chapter. Further details on the methodology and assumptions underpinning this can be found in Annex F (Technical Annex).

MoJ will need to consider the interaction of my recommendations with the Rt Hon. David Gauke's 'Independent Sentencing Review'.

12. I am clear that the change needs to be made to each of the systems within the series making up the criminal justice system: from charge through to sentence (which I am conscious fell to the Sentencing Review recently undertaken by the Rt Hon. David Gauke and his panel). The recommendations I make must be seen, in combination, as a reform agenda for the entire system. Adopting some parts and rejecting others is likely to be insufficient.

13. I do not approach these, often radical, recommendations lightly. However, neither do I believe that there is a realistic choice. I do not feel able to guarantee success, but I have no doubt that less dramatic change will not alter the overall picture. My conclusion is that it is only through the combined impact of these measures that steps can be taken to start to address (and, hopefully, overcome) this crisis.

Chapter 2

Problem Diagnosis

Chapter 2 – Problem Diagnosis

Overview

1. It is essential to understand how the current crisis in criminal justice arose in order to define the measures needed to begin to solve it. In this chapter, I will describe the short- and long-term causes of the current situation, drawing on rigorous data-driven analysis and submissions to the Review, and supported by my observations from the 50 years that I have worked as a criminal lawyer.

2. I will open this chapter by setting out the multi-faceted and interconnected set of problems faced by the criminal courts. As of December 2024, there were around 75,000 open cases in the Crown Court, and trials are being listed as far ahead as 2029.[35] The MoJ has projected that by March 2029 there could be approximately 105,000 open cases, with a rising number of cases awaiting trial.[36]

3. The MoJ and criminal justice agencies have experienced some of the most significant funding constraints of any government departments over the last 15 to 20 years, and the effects of these have been compounded by the rising complexity in the investigative and trial processes. The combined impact is that there are now deep-rooted resourcing challenges and rising inefficiency across the criminal justice agencies, despite the hard work of many people in the system.

4. Whilst financial investment in the criminal justice system is vital, it is clear from the evidence I have seen that more spending alone to support increased Crown Court capacity, without very significant changes to the full range of processes for criminal cases, would not be effective. Quite apart from being extremely expensive, this would be impossible to deliver in the current Crown Court structure without real reform.

35 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025); analysis of HMCTS internal Management Information.

36 Source: Crown Court Open Caseload Projections: 2025 to 2029. For further details on the underlying data, methodology and assumptions of the latest MoJ Crown Court Projection, see the Crown Court Open Caseload Projections: 2025 to 2029 ad hoc publication.

5. Over the last 50 years, many changes have profoundly improved the quality of justice in the criminal courts but also added to their complexity.[37] Each, on its own, has been a valuable development but, taken together, they have contributed greatly to the length and complexity of criminal proceedings compared to in the 1970s when I started my career.[38]

6. The impact of rising caseloads in the Crown Court has been compounded by developments including the focus of successive governments on policing and targeting of violent and sexual offences; the impact of the COVID-19 pandemic; and, thereafter, the Criminal Bar's industrial action in 2022. The latter events severely limited capacity for jury trials, which has increased the proportion of the most complex cases in the open caseload. This has had long-lasting effects as the courts struggle to process that increasingly serious case mix.

7. I will begin this chapter by first explaining the problem in more detail and then setting out the shape of the radical and essential package of measures needed, which I will explore throughout this Review.

The Problem: The Open Caseload and Delays in the Crown Court

8. The open caseload in the Crown Court has more than doubled in size since the beginning of 2019. As shown in Fig. 2.1, it increased from around 33,000 cases in Q1 2019 to a historic high of around 75,000 cases at the end of 2024 – an average annual increase of approximately 7,000 cases. This partly reflects rising demand, with it being expected that the open caseload will increase somewhat when more cases enter the system. However, the speed of growth and scale of the open caseload greatly exceeds historic trends, making the caseload increasingly unmanageable and driving considerable delays in the system. By contrast, between 1990 and 2014, the open caseload grew

37 Obvious examples include: the regime to regulate police investigations under PACE 1984; the introduction of a statutory framework to guarantee effective disclosure of material to the defence by the Criminal Procedure and Investigations Act 1996; the greater quantity and quality of evidence available and admissible (especially in relation to digital material, technology and communications data); continued efforts of the judiciary to spend more time communicating with jurors; and what Lord Judge referred to as a 'revolution' in the approach to vulnerable victims, witnesses and defendants (The Rt Hon. The Lord Judge, The Evidence of Child Victims: The Next Stage, in The Safest Shield: Lectures, Speeches and Essays (Hart Publishing, 2015), pp. 225–238).

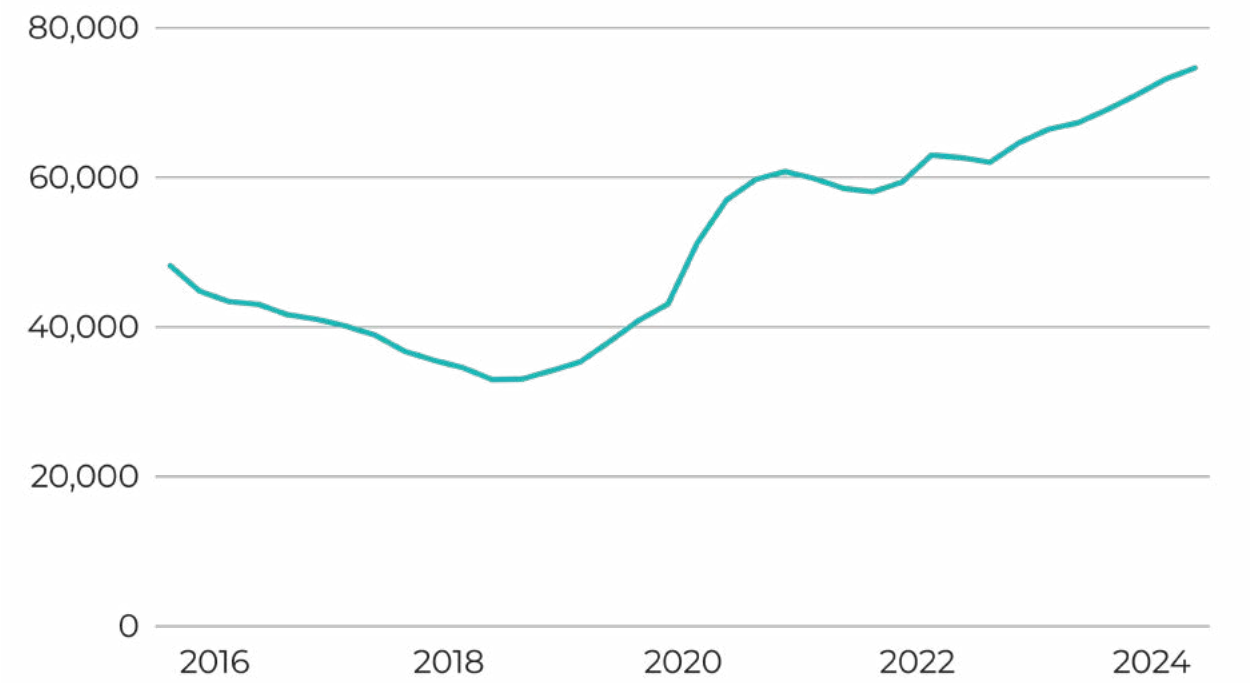
38 See Fig. 8: Hearing time in the Crown Court.

only by an average of approximately 1,000 cases per year (increasing from around 32,000 cases in 1990 to around 55,000 cases in 2014, a previous peak).[39]

Figure 2.1

Crown Court open caseload at quarterly intervals

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

9. Between 2014 and 2018, the situation might be thought to have improved, with the open caseload shrinking by an average of 5,500 cases per year (reducing from around 55,000 cases in 2014 to around 33,000 cases in 2018).[40] This slow decrease in the number of cases stands in stark contrast to the rapid growth being experienced today.

39 Source: Criminal court statistics quarterly (2025); Criminal court statistics quarterly: January to March 2019 (MoJ, June 2019); Judicial and court statistics (annual) 2010 (MoJ, June 2012); Judicial and court statistics 2006 (MoJ, November 2007).

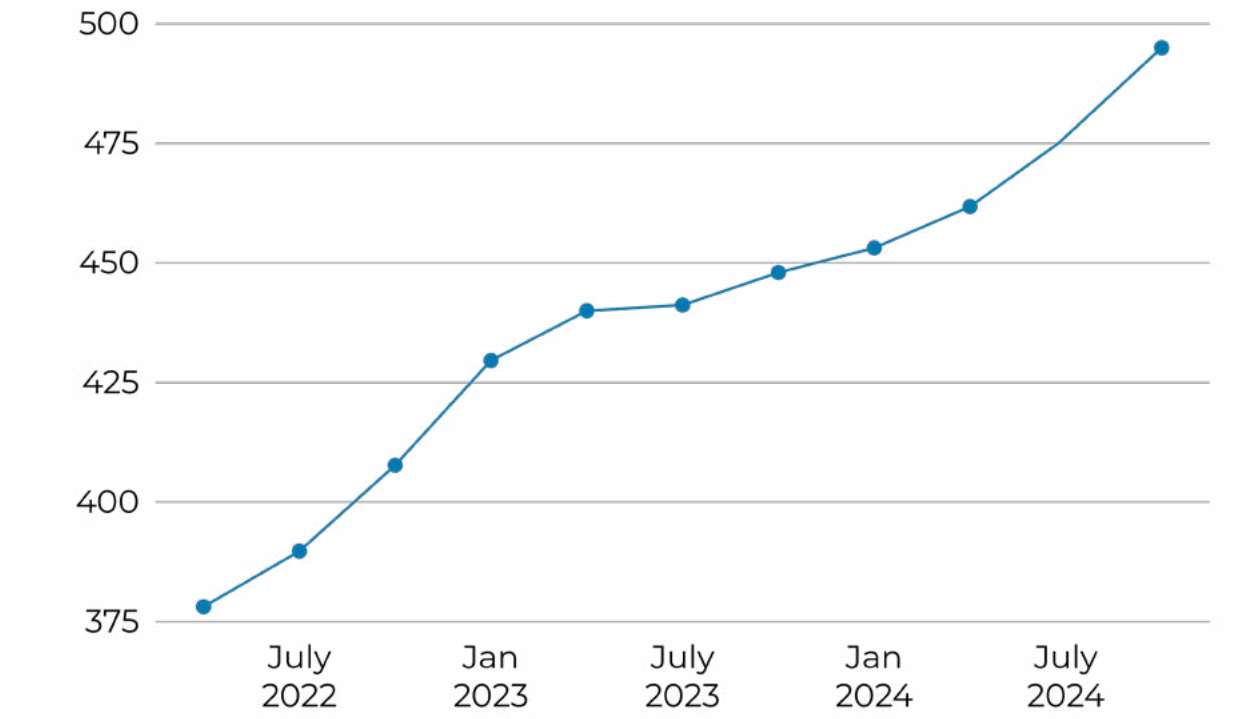
40 Source: Criminal court statistics quarterly (2025).

10. The size of the open caseload is driving severe delays in the criminal courts. Until the last decade, it was the norm for cases to be open for six months, or at most one year.[41] As shown in Fig. 2.2, since the COVID-19 pandemic, the average time from the Plea and Trial Preparation Hearing (PTPH) to the trial listing date has increased from 384 days in May 2022 to 495 days in October 2024.

Figure 2.2

Monthly averages of days between PTPH and trial listed date for open cases

England and Wales, 2022-present



Source: IRCC analysis of HMCTS internal management information

Note that there are significant data quality limitations associated with this experimental measure which are detailed in the technical annex to this report.

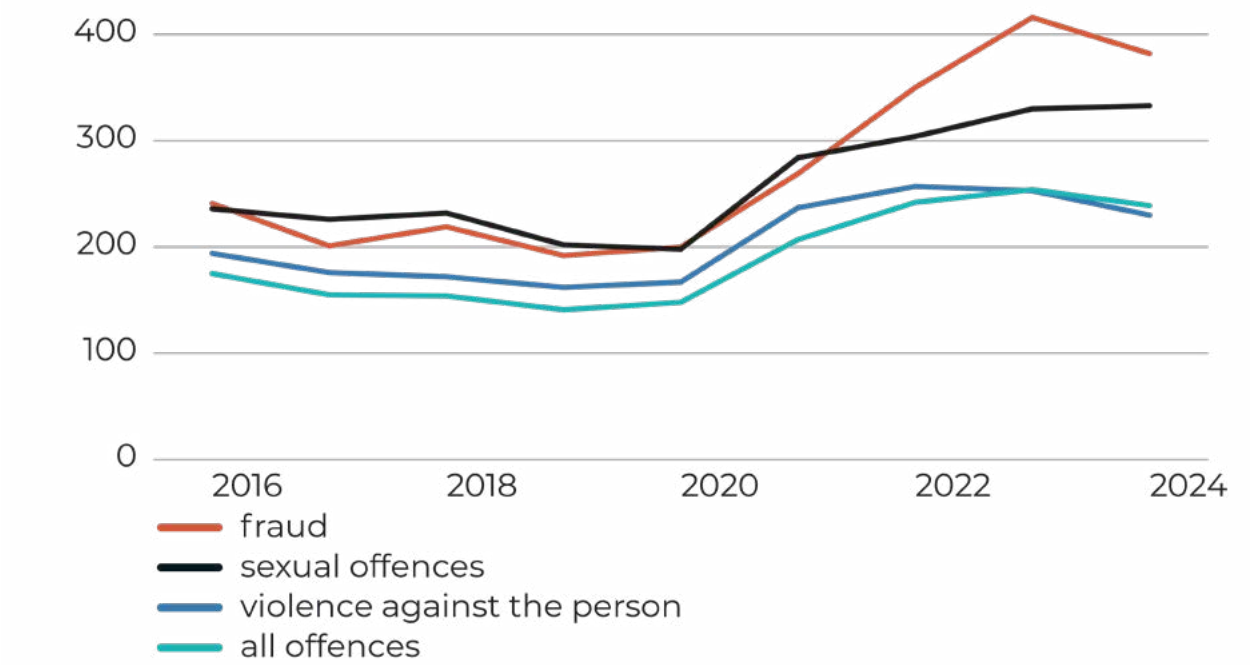
41 The Rt Hon. Sir Brian Leveson, Valedictory Speech (21 June 2019).

11. The length of time taken to deal with a case once it is sent to the Crown Court has also increased, especially for the most serious offence types, further lengthening delays. As shown in Fig. 2.3, the average time from receipt to completion in the Crown Court across all offences increased from 141 days to 239 days between 2019 and 2024 (70% increase). Meanwhile, for sexual offences specifically, this increased by 65% from the relatively high level of 202 days to 333 days.[42] For fraud offences – which have proliferated through the development of new technology – it increased from 192 days to 382 days (99% increase).[43]

Figure 2.3

Annual averages of days from receipt to Crown Court to completion for defendants in selected offence groups

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

42 Note: the increase in the time taken for sexual offence cases has coincided with the expansion in the implementation of s. 28 pre-recorded evidence for all vulnerable and intimidated witnesses which may be a strong contributory factor given its frequent application in relation to such offences. Research by Professor Cheryl Thomas found that the average time taken from the s. 28 recording to case completion (for sexual and non-sexual offences) increased from fewer than 150 days on average in 2016/17 to almost 250 days on average in 2023 while in particular the number of cases taking longer to complete increased substantially between 2021 and 2022. Source: Written evidence submitted by Professor Cheryl Thomas (Justice Select Committee, December 2023).

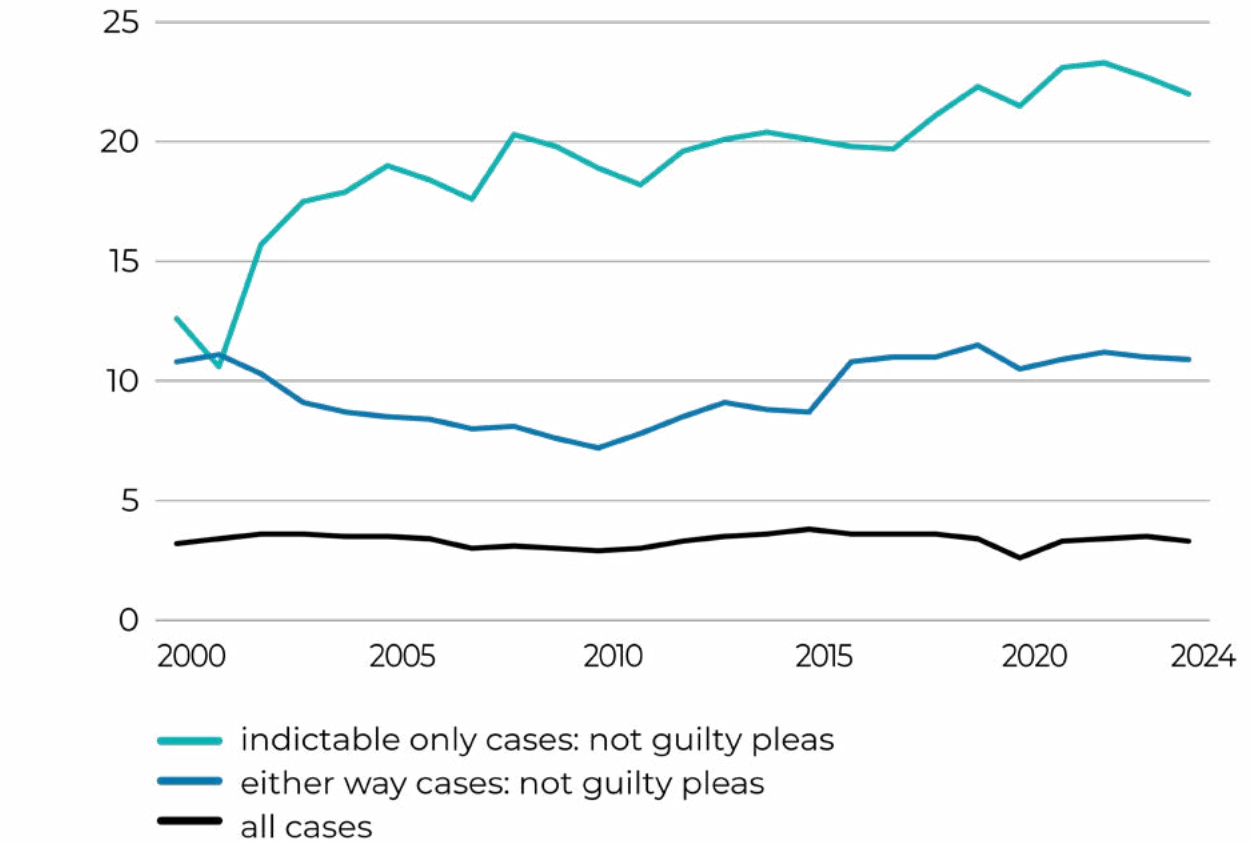
43 Source: Criminal court statistics quarterly (2025).

12. Similarly, the total hearing time of trial cases has increased, owing to the substantive changes in criminal law and procedure which I will discuss in detail later in this chapter. As shown in Fig. 2.4, jury trials for the most serious (indictable only) offences have more than doubled in hearing time length, increasing from around 11 hours in 2001 to over 22 hours in 2024.[44] The average hearing time for all types of cases in the Crown Court, including appeals, remains more stable.

Figure 2.4

Annual average hearing time (hours) at Crown Court for selected hearing types

England and Wales, 2000-2024



Sources: Criminal court statistics quarterly, Oct to Dec 2024; Criminal court statistics quarterly, Oct to Dec 2019; Judicial and court statistics 2010; Judicial and court statistics 2006.

44 Caseload data for the years prior to 2016 are counted on a slightly different basis than data for the years 2016 and onwards. This is due to improvements to the coherence and accuracy of the MoJ Crown Court statistics, following the One Crown development taken forward by the MoJ and HMCTS in late 2024. This has led to improvements to the underlying reference data which is used to define the status of a case and a change to how transfers are counted in receipts and disposals to better reflect the way that cases are captured in the Common Platform system.

The Impact of Delays on Victims, Witnesses and Defendants

13. Many victims, witnesses and defendants involved in trials are now having to wait years for their court date. These delays can have a profound impact on victims as Case Study A shows and as I have heard from victims' groups. Too many victims withdraw from the criminal justice process. Evidence on when they do this and why, however, is limited and complex.[45] This includes the ways in which delays make it harder for victims and witnesses to give their best evidence (by, for example, eroding their recollection and confidence). A delayed trial also fundamentally disrupts their lives, preventing them from overcoming trauma, and leading some to suffer severe mental health challenges and regret ever reporting the crime they experienced. Victims are not only adversely affected by lengthy waiting times before a case is heard, but also by frequent rescheduling of hearings and poor communication about trial scheduling.

14. Delays can also exacerbate the economic and psychological impacts on defendants awaiting trial. These can include:

    a. Significant financial impacts, which are multiplied by an elongated process, and the impact of an extended period in which those on remand in custody or on bail may be unable to work, apply for new jobs or travel. While most defendants in the Crown Court have their defence funded by legal aid, some also face irrecoverable legal costs which are increased by delays.

    b. The negative psychological impacts of prolonged periods of uncertainty on personal relationships, including with partners, children and friends.[46]

15. There is a close relationship between the open caseload and the prison remand population (i.e. those people charged and awaiting trial who are held in prison). The remand population almost doubled from around 8,800 to around 17,000 between December 2018 and December 2024 (a 94% increase).[47] The MoJ does not publish data on the total length of time on remand, however there is recognition by

---

45 See Fig. 8: Hearing time in the Crown Court and, for serious sexual offences, The End-to-End Rape Review: Report on findings and actions (MoJ, June 2021); Evidence in Sexual Offences Prosecutions: A Consultation Paper (Law Commission, May 2023).

46 See Case Study B; also Jill Peay and Elaine player, 'Not a stain on your character?: the finality of acquittals and the search for just outcomes' [2021] Crim LR 921–944.

47 Source: Offender management statistics quarterly: October to December 2024 (MoJ and HMPPS, April 2025).

parliamentary select committees, the National Audit Office and HM Inspector of Prisons that the length of time prisoners spend on remand is also growing.[48] This is resulting in more prisoners being held for longer than the statutory six-month custody time limit, more requiring additional support in custody and potentially more being released immediately from court on conviction.[49] Press reports have also cited anecdotal evidence of untried defendants spending years on remand (see Case Study B). Those on remand are often held in the oldest and most overcrowded parts of the prison estate and, if acquitted, are not eligible for compensation and do not receive resettlement support on release.[50]

16. There are also concerning indications that wider public confidence in the fairness and effectiveness of the criminal justice system has started to decline over recent years. After increasing steadily from around 2008, the Crime Survey for England and Wales has reported relatively modest but statistically significant decreases in public confidence: 6% in fairness (from 69% to 63%) and 3% in effectiveness (from 53% to 50%) between 2017/18 and 2023/24. More concerningly for this Review, confidence that courts are effective at dealing with cases promptly has dropped more sharply from 52% to 43% over this period.[51]

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48 Crown Court backlogs (Committee of Public Accounts, March 2025); Reducing the backlog in the Crown Court (National Audit Office, 2023); The role of adult custodial remand in the criminal justice system (Justice Select Committee, January 2023); HMI Chief Inspector of Prisons for England and Wales Annual Report 2022–23 (HM Inspectorate of Prisons, July 2023); Written evidence submitted by His Majesty's Inspectorate of Prisons (HM Inspectorate of Prisons, December 2024).

49 Although custody time limits in the Crown Court are currently set at six months (temporarily raised to eight months during 2020 to 2021 to deal with COVID disruption) to ensure remand cases are expedited, they can be renewed through an application to the court. In September 2022, figures released by the MoJ suggested that almost one third of the remand population had been held beyond the initial six-month limit (Prisoners on Remand (House of Lords question for Ministry of Justice HL3408, response 22 November 2022). The MoJ has informed the Review that the method used to produce these figures is no longer deemed to be accurate. However, this figure was cited by the Public Accounts Committee in March 2025 and previously by the National Audit Office and the Justice Select Committee in the reports listed above. The Public Accounts Committee raised particular concerns about the lack of information on the number of people remanded in custody beyond their custody time limits.

50 The role of adult custodial remand in the criminal justice system (Justice Select Committee, 2023).

51 Crime Survey for England and Wales (CSEW) perceptions of the criminal justice system, year ending March 2009 to year ending March 2024 (Office for National Statistics, January 2025).

Case Study A: Impacts of delays on victims

A recent report published by the Victims' Commissioner, Baroness Newlove, highlighted the significant impacts of delays in the court on victims. This included:

i. feeling trapped in the criminal justice process and unable to move on with their lives and recover – including victims having trials adjourned and relisted seven times or more;

ii. victims experiencing physical and mental health deterioration whilst waiting for court cases to progress, with some even attempting suicide; and

iii. delays impacting a victim's recollection of events and therefore reducing the quality of evidence they can give the court.

Victims and relevant experts are quoted in the report saying:

> 'I'm 30 now and I was 25 when I reported … The only memory I've got of the second half of my 20s is going through the court system.' (Victim)
>
> 'The crime itself was horrendous enough, but then the delays on top of it and then the build up inside of you is just horrendous.' (Victim)
>
> 'It's difficult because actually, your memory fades … in terms of the little details … you don't remember everything perfectly four years on.' (Victim)
>
> 'I have had clients who have had to stop working due to the debilitating stress caused by waiting for their trial date, only for their hearing to then be adjourned for a further 6 to 12 months.' (Support Worker)
>
> Delays are also damaging victims' faith and trust in the criminal justice system, leading to disengagement, and in many cases, withdrawal from the process. The Victims' Commissioner's Annual Survey in 2023 reported only 38% of respondents expressed confidence in the system's fairness, 27% in effectiveness and 23% that they could receive justice by reporting a crime.

Sources:

Justice delayed: The impact of the Crown Court backlog on victims, victim services and the criminal justice system (Victims' Commissioner, March 2025).

Victims' Commissioner Annual Survey 2023 (Victims' Commissioner, August 2024).

Case Study B: Impacts of delays on defendants and their families

In an interview with *The Guardian* newspaper in December 2024, Charlie Taylor, Chief Inspector of Prisons, observed that he had personally met or heard of cases of prisoners waiting four or five years on remand. Adrian Usher, Prisons and Probation Ombudsman, said that he was aware of defendants remanded for four years or more who were considering switching to a guilty plea in the hope of immediate release:

> 'That may mean that we have innocent people who are pleading guilty because they know they will walk away from court that day, and that is a concern for me.' (Adrian Usher, Prisons and Probation Ombudsman)

The BBC reported on the case of a 17-year-old accused of a serious violent crime in January 2018, who had his trial rescheduled six times, the latest being in January 2025. In the intervening seven years, he became an adult (now 24) and had a mental breakdown because of the stress. It is possible that if found guilty and imprisoned in 2019, the original trial date, he would have already served his sentence and been released. He told the BBC:

> 'I would have rather just got locked up – even if it's for something I've not done – get out and start my life again, than be seven years on thinking, 'Is it going to happen?'

In September 2022, Sky News reported on a woman whose partner was accused of drug charges, which he denied, and was held on remand for over two years whilst suffering from cancer and going through treatment in prison. She told the journalist:

> 'I get good days and bad days … we're just in limbo all the time. It's just devastating. The kids … two birthdays have been missed … Death is easier to deal with than remand. It feels like a prison sentence without a trial.'

Sources:

Rajeev Syal and Emily Dugan, Court delays driving innocent prisoners to plead guilty (The Guardian, 9 December 2024).
Michael Buchanan, Courts in crisis: The struggle for justice in one English town (BBC News, 10 June 2024).
Matthew Thompson, Hundreds of people being held on remand for years before standing trial (Sky News, 6 September 2022).

How the Crisis is Likely to Develop in the Future

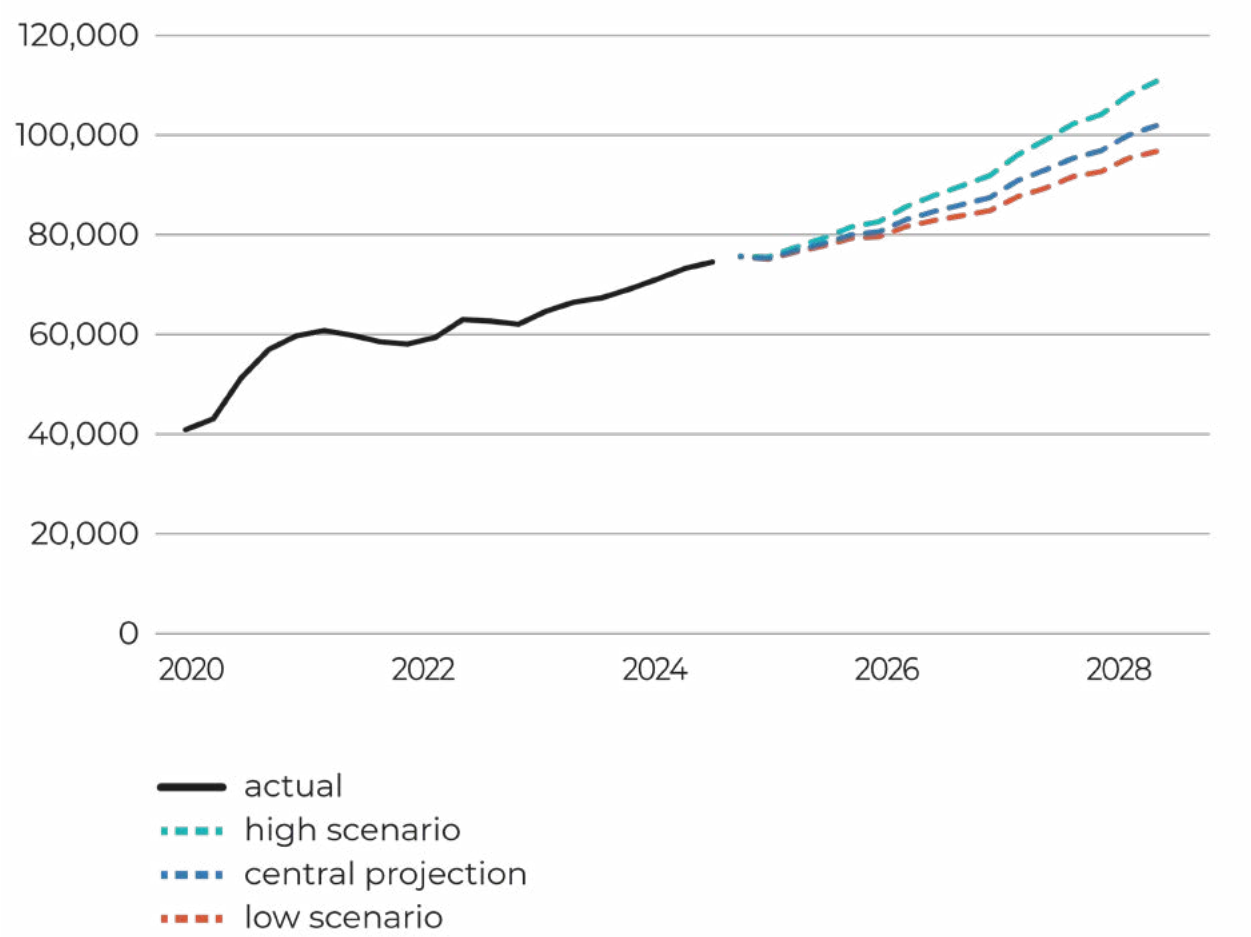
17. Without radical action, MoJ Crown Court projections suggest that the open caseload could grow substantially over the next five years. So, therefore, will delays in the system. As shown in Fig. 2.5, the open caseload could reach approximately 105,000 cases by March 2029 if demand continues to rise as projected by the MoJ and the courts continue to operate as in 2024.[52] This is an average annual increase of more than 7,000 cases per year. To emphasise how troubling these projections are, I must underline that they take into account all the remedial action that the government has already taken, including the increased funding for sitting days. An open caseload of this magnitude would add significantly to the delays already seen and will have further impacts on all involved in criminal trials and the delivery of justice.

52 Source: Crown Court Open Caseload Projections: 2025 to 2029 (March 2025). Note: there is considerable uncertainty in these projections, as it is challenging to account accurately for plea behaviour, judicial listing priorities and future demand, amongst other factors. For further details on the underlying data, methodology and assumptions of the latest Crown Court Open Caseload Projections: 2025 to 2029, see the MoJ Crown Court ad hoc publication.

Figure 2.5

Projected growth of open caseload volume at quarterly intervals

England and Wales, 2020-2029; actuals to March 2025 with projections following



Sources: Criminal court statistics quarterly, October to December 2024; MoJ Crown Court open caseload projections: 2025 to 2029.

18. As shown in Fig. 2.6, in the last five years, the age of open cases in the Crown Court markedly increased. In Q1 2016, 11% of valid open cases in the open caseload were one year or older, rising to 24% in Q4 2024.[53] Similarly, the proportion of valid cases open for two years or more rose from 2% in 2016 to 8% by the end of 2024. I expect this general trend in the age of valid cases to continue as prosecutions and demand continues to rise. However, even if I assume that the proportion

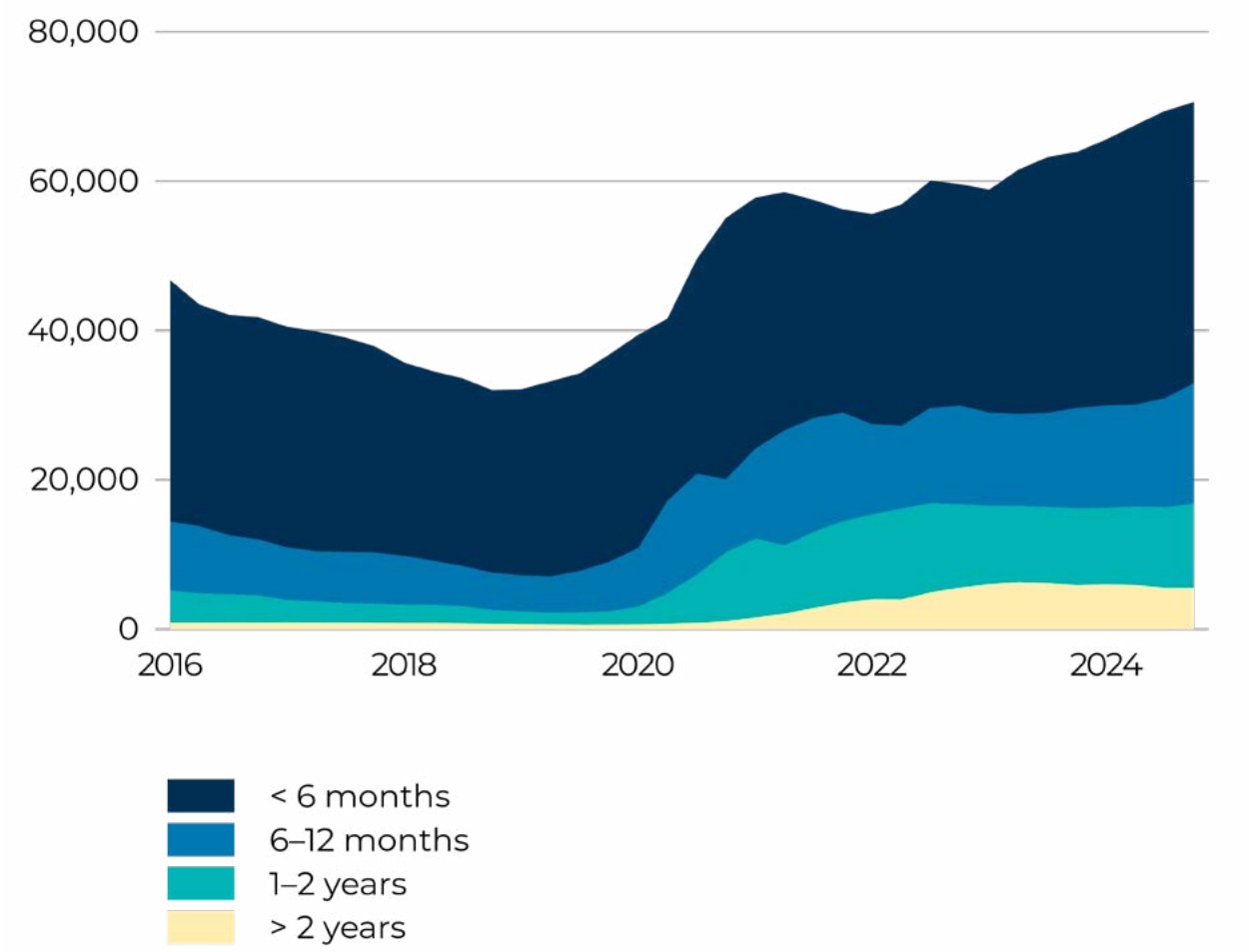
53 Valid open cases exclude open cases that have had a bench warrant issued on the case, at any point prior to the open date. A bench warrant is issued for a person deemed to be in contempt of court – usually because of that person's failure to appear at their court appearance.

of cases of different ages remains constant, if demand grows as projected, by March 2029 as many as 25,000 cases could be one year old or more.[54]

Figure 2.6

Number of valid open cases at quarterly intervals grouped by age class

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024.

54 Source: IRCC review of 'MoJ Crown Court Open Caseload projections (March 2025)' and 'Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025)'

19. An important factor which is likely to drive the continued growth in the open caseload is that guilty pleas are increasingly being entered later. This drives up delays in the disposal of cases which, in turn, further heightens the incentive to plead later and the growth of the open caseload. This results in what might be referred to in technical terms as a 'positive feedback loop'. A delay in entering the plea also means that additional work is carried out by the police, prosecution, defence and courts in preparing that case for trial. Later guilty pleas are also partly a factor of a changing case mix, with a growing proportion of more serious offences in the open caseload that typically attract lower guilty plea rates.

20. A key incentive for a defendant to enter a guilty plea early in the process is the potential sentence reduction, ranging from 33% for pleading guilty at the first opportunity to 10% on the first day of trial. Furthermore, evidence suggests that the main factor influencing defendants' pleas is not the magnitude of sentence reduction but the likelihood of being found guilty at trial indicating there will be diminishing returns of increasing sentencing reductions on plea behaviour.[55] Whilst the overall proportion of defendants pleading guilty has remained stable (excluding the period of the COVID-19 pandemic), decreasing slightly from 64% in 2016 to 61% in 2024, the proportion of defendants pleading guilty to all counts at the fourth, fifth and sixth (or more) hearing nearly doubled from 12% in 2019 to 22% in 2024.[56]

21. The MoJ's open caseload projections do not reflect the risk that guilty plea rates themselves could fall significantly as a result of increasing delays in listing and commencing trials; that in turn could trigger higher rates of witness and prosecution withdrawal.[57] In addition, the projections model shows relatively modest increases in new prosecutions and associated court receipts of 5 to 10% over five years, reflecting the latest trends in the data. However, there is a risk that

55 With thanks to Julian V. Roberts KC (Hon.), Emeritus Professor at the University of Oxford, for his submission to this Review; Attitudes to Guilty Plea Sentence Reductions (Sentencing Council, May 2011).

56 Source: Criminal court statistics quarterly (2025).

57 I have also heard from colleagues in the defence community of increasing anecdotal evidence of legal professionals encouraging defendants to delay pleading guilty until the trial on the basis that the trial might collapse. With thanks to the Criminal Bar Association for its submission to this review. Similarly, defence lawyers' remuneration may impact on this.

receipts are higher than this in the future. Receipts of cases grew by 19% in the previous five years, though this is not necessarily indicative of future increases.[58]

22. Finally, across the systems, effects as a consequence of government policies may drive further inefficiency and delays, making it even more challenging to make accurate projections about demand. The impact of increased police officer numbers due to the previous government's Police Uplift Programme is expected to continue yielding higher volumes of arrests and charging decisions as new recruits gain experience. The current government's Safer Streets Mission has pledged further increases to police numbers as well as a greater focus on both serious and volume offences while other justice agencies and the defence community are likely to continue struggling with workload, workforce and capacity challenges. Not all of these factors are accounted for in the MoJ's projections, though some may also help to suppress demand. The current problem may therefore be even worse than MoJ projections indicate.

How the Situation Arose

Cause 1: Resource Constraints and Rising Inefficiency Across the Criminal Justice System

23. I made the point at my valedictory speech in 2019 that many facets of the system were struggling. I said:

> 'Crime is not being detected, volumes through the courts are decreasing. The police, forensics, the CPS, the fabric of the court, the Prison and Probation Service, all are struggling. Remuneration for legal services in crime … creates real challenges which I have no doubt need to be addressed.'

Set out below are problems which relate to this underinvestment and the distinct and considerable challenges that this places on each part of the collective criminal justice system.

58 Low, central and high scenarios are similar to those published in the MoJ's Prison Population Projections: 2024 to 2029 (MoJ, December 2024).

Funding and investment

> 'The provision of justice is a smaller fraction of what government does now than it was in the past.'
>
> (Institute for Fiscal Studies, 2025)

24. There is no denying the significant funding constraints in recent years. Analysis published by the Institute for Fiscal Studies (IFS) in 2025 states that 'whereas total day-to-day spending by departments in 2025/26 is set to be around 40% higher than in 2002/03, the MoJ budget is set to be no higher in real terms than was the equivalent budget in 2002/03'. The steepest reductions were felt between 2007/08 and 2016/17 when the overall MoJ day-to-day spending (which makes up the vast majority of its budget) fell by approximately 30% in real terms. Capital spending, largely investment in the court estate and prisons, fell much further, by approximately 70% over a similar time period, with some years of almost zero investment for HMCTS and HMPPS in the early 2010s.[59]

25. HMCTS has also faced double-digit reductions in its spending, both in cash and real terms. Total expenditure declined by over 20% in real terms between 2010/11 and 2017/18, while in 2023/24 real-terms spending remained 3% lower than the first budget for HMCTS following its creation in 2011/12.[60] These spending reductions have been driven by a number of inter-related factors including a long-term programme of court closures and changes seeking to maximise economies of scale, including elimination of duplicated functions and roles following the merger of Her Majesty's Courts Service and the Tribunals Service into one agency. The HMCTS estate in England and Wales reduced from around 600 operational court and tribunal buildings in 2010 to around 320 in 2024 (though in the most part those permanently closed were magistrates' and civil courts, many of which

59 Justice spending in England and Wales (IFS, February 2025).

60 Source: HMCTS annual reports and accounts (2011/12–2023/24). Total (gross) operating expenditure does not include any offsetting income, of which HMCTS reported £808 million in its 2023/24 accounts, mainly from court and tribunal fees and support payments from other public bodies. Real-terms changes were derived using GDP deflator at market prices (March 2025) with 2023/24 as the base year; GDP deflators at market prices, and money GDP March 2025 (Spring Statement & Quarterly National Accounts) (HM Treasury, March 2025).

were underutilised and in a poor condition).[61] Staff numbers have also decreased by 21% (4,355 full-time equivalent) between 2010/11 and 2023/24.[62] Whilst this has resulted in a more efficient organisation in the sense that it provides a similar number of sitting days at a reduced cost, this may have also contributed to overall capacity challenges in HMCTS and across agencies.

26. Criminal legal aid spending has experienced even greater reductions than the MoJ overall, falling by approximately 40% in real terms between 2005/06 and 2016/17, before a further sharp fall due to the COVID-19 pandemic in 2020/21. Since 2020/21, spending has recovered to around the level seen in 2016/17 in real terms.[63] The reductions were partly driven by lower workloads for legal practitioners, owing to the fall in the number of receipts from around 2010, and further driven down by the limitation on the number of sitting days prior to the COVID-19 pandemic, though as discussed above, both case volumes and sitting days have begun to rise significantly.

27. Government policies also reduced fees for legal providers, such as the 8.75% reduction in solicitors' fees in 2014 and cuts to advocates' fees between 2010 and 2012, as well as prolonged periods of no increases for solicitors that left some rates, for example in the police station and magistrates' courts, at lower or unchanged levels compared to 15 or 20 years previously. Furthermore, thresholds for criminal legal aid eligibility were not changed from 2008 onwards, significantly eroding their value in real terms due to inflation, particularly for cases in the magistrates' courts and for those not in receipt of a passported benefit.[64]

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61 Note: these figures exclude additional/temporary Nightingale courts introduced to increase capacity and alleviate the pressure on courts and tribunals during the COVID-19 pandemic. Court and tribunals buildings data is not regularly published by HMCTS but has been disclosed in response to parliamentary questions and also published by other organisations, including: HM Courts & Tribunals estate visualisation (National Audit Office, September 2019); Court and tribunal closures (House of Commons Library, March 2016); Access to justice dashboard (The Bar Council, September 2024).

62 Source: HMCTS annual reports and plans (2011/12–2023/14) (HMCTS, updated October 2024); Court statistics for England and Wales (House of Commons Library, September 2024).

63 Source: Legal aid statistics quarterly: October to December 2024 (MoJ and Legal Aid Agency, March 2025).

64 Sir Christopher Bellamy, Independent Review of Criminal Legal Aid: Final Report (November 2021), pp. 6–7. Note: legal aid is generally available in the Crown Court as eligibility thresholds are more generous than for cases in the magistrates' court.

28. The criminal justice system has benefited from spending increases in recent years to recover some of the funding lost over the previous decade. These include substantial investments in prison and court infrastructure as well as funding to raise criminal barrister and solicitor fees following the recommendations of the Independent Review of Criminal Legal Aid.[65] The HMCTS Reform programme invested around £1.2 billion between 2016 and 2025 to improve and digitise court processes and improve the design and organisation of the workforce and estates, of which around one quarter (c. £300 million) was spent on the Crime programme specifically.[66] The Reform programme also delivered cross jurisdictional tools and components used by the Crime Programme which are not included in the c. £300m figure.

29. Part of the rationale for reduced spending in criminal courts was decreasing demand for much of the 2010s. Crown Court receipts reduced from a peak of around 150,000 cases in 2010 to around 102,000 in 2019.[67] This was a key part of the justification for reducing funding for sitting days in the Crown Court in the same period. Allocated Crown Court sitting days fell from approximately 109,000 in 2015/16 to approximately 82,000 in 2019/20, a 25% reduction in four years, to match falling caseloads and demand in the system. However, as caseloads began to rise rapidly in 2019, sitting day allocations were slow to increase to a similar level, resulting in disparity between receipts and disposals in all subsequent years. The Crown Court's productivity in disposing of cases has also diminished, as explained later in this chapter (see Fig. 2.7 Adjusted disposal rates). Given the profound challenges that have been faced since 2019, in hindsight, it might well also be argued that spare capacity in the 2010s could have been better invested in maximising reductions in the open caseload, which even in Q1 2019 stood at 33,000 cases. I will discuss this further at cause 3.

30. The government is now taking steps to invest more, including appointing and training additional judges, funding 110,000 sitting days in 2025/26, and increasing annual funding for court maintenance.[68]

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65 See: Main Estimate 2024-25: Estimates Memorandum (MoJ, July 2024); Justice spending in England and Wales (Institute for Fiscal Studies, February 2024); Sir Christopher Bellamy, Independent Review of Criminal Legal Aid: Final Report (November 2021).

66 Progress on the courts and tribunals reform programme (2023). The Reform programme also delivered cross-jurisdictional tools and components used by the Crime programme which are not included in the c. £300 million figure.

67 See Fig. 2.8: Receipts, disposals and open Crown Court cases.

68 Swifter justice for victims as courts sit at record level (MoJ, 5 March 2025).

However, it is likely that scaling up capacity will be a slower and longer-term process than scaling down capacity and a considerably higher figure would be needed just to meet rising demand. The pace at which additional resources can be absorbed into the system is a limiting factor on how quickly they can have an impact on the problems. As mentioned earlier, further investment alone is not enough to address the crisis. This is crucial to my view, set out in the section 'The Solution'.

Crises across criminal justice agencies

Case Study C: Stakeholder commentary on underfunding and lack of capacity

Key highlights taken from the submissions include:

> 'The recent announcement by the Ministry of Justice of a 12% increase in fees across the board is very welcome. However, this cannot be regarded as the end of this issue considering decades of neglect and decline.'

(Dr Tom Smith, Associate Professor in Law, University of the West of England and Dr Roxanna Dehaghani, Reader in Law, Cardiff University)

> 'The CPS and legal professionals are under intense pressure from a shortage of staff and high volume of cases, many of which are complex and taxing to take on. Thought is needed now as to how to drastically increase the number of criminal barristers.'

(London's Victims' Commissioner Policy Paper, January 2025)

> 'Hardened practitioners are walking away from the profession due to stress levels. Criminal barristers have alcohol and mental health problems. Remuneration bears no resemblance to the skill and workload the profession shoulders.'

(Views of a Junior Criminal Barrister: The Crown Court Backlog and Inefficiencies, January 2025)

> 'Addressing these challenges requires a coordinated effort across the criminal justice system, including increased investment, better resource management, and administrative reforms.'

(CPS submission to this Review)

31. Each part of the collective criminal justice system is simultaneously impacted by the open caseload in the courts:

    a. Inexperience within the police is adversely affecting the quality of investigatory work. Between 2010 and 2018, the number of police officers dropped by 15% (21,000 officers). Although police officer numbers have recovered to historic highs in recent years, the workforce remains relatively less experienced than it once was.[69] Furthermore, there remains a national shortage of detectives and investigative capacity which has not been addressed by the Police Uplift Programme.[70] This can lead to delayed and incomplete disclosure of evidence which reduces the fairness of proceedings and may further delay the timing of guilty pleas.[71] Similarly, the prevalence of inexperienced call handlers, responders and investigators has also had negative impacts on identification and handling of crime scene evidence.[72] A joint inspection by the police and CPS reported in 2024 that experience amongst both workforces had decreased while investigation and case file complexity was increasing. This included changes to official guidance on charging and disclosure in 2020 that had the effect of increased case preparation work for police before sending to the CPS.[73] Combined with high investigative workloads, an inexperienced workforce increases the risk of delays to cases in proceeding to court as well as adjournments or discontinuations.

    b. The CPS is experiencing significant recruitment and retention challenges. At the time of the CPS response to the Review, it set out the significant capacity issues it is facing in terms of its legal workforce. Its workforce is also ageing, 44% of prosecutors and 50% of advocates are currently over 50 years old with many approaching retirement. This will not only compound the current recruitment challenges but lead to a significant loss of experience. As a result,

69 Source: Police workforce, England and Wales; 31 March 2024 (Home Office, March 2024).

70 Policing Productivity Review: Improving outcomes for the public (Home Office, October 2023).

71 With thanks to Professor Layla Skinns, University of Sheffield for her submission to this Review.

72 An inspection into how effectively the police investigate crime (HM Inspectorate of Constabulary and Fire & Rescue Services, March 2025).

73 Joint case building by the police and Crown Prosecution Service (Criminal Justice Joint Inspectorates, January 2024).

the CPS is struggling to service increasing caseloads, with negative impacts on case preparation and progression.[74]

c. The defence community also faces significant workforce challenges. The number of duty solicitors declined by around 25% between 2017 to 2024.[75] The Law Society has forecast that this trend will continue with the number of duty solicitors falling by 37% (2,064) between 2017 and 2027.[76] The number of publicly funded criminal barristers (i.e. those specialising in criminal legal aid work) declined by 11% between 2017/18 and 2020/21, but recovered by 2023/24 to almost exactly where it was in 2017/18. Work volumes are increasing and barristers report working at full capacity.[77] The Criminal Bar Association's (CBA) National Survey 2025 found 80% of criminal barristers are working more than 50 hours a week and 20% work over 70 hours with negative consequences for their personal well-being and relationships. It comes as little surprise, then, that one third of respondents were actively seeking to leave the Bar as well as one third considering moving into another area of legal practice, while 12% were actively considering both options. Key stressors include: the need to undertake large amounts of administrative work that was previously done by the CPS and solicitors; listing of cases which do not go ahead on the date of trial; and working in poor court infrastructure.[78]

d. The government has made welcome investments in criminal legal aid. This funding has contributed to the overall number of barristers beginning to stabilise. In addition, the government is consulting on plans to invest up to £92 million for criminal legal aid fees, representing a 12% increase in funding.[79] However, considerable risks remain, with caseloads continuing to rise rapidly, the majority of new joiners having entry-level experience and many experienced practitioners nearing retirement age. The proportion of those practising with between eight and 22 years of experience dropped from 44% to 31% between 2017/18 and 2023/24. While numbers

74 With thanks to the CPS for its submission to this Review.

75 Source: Legal aid statistics quarterly (2025), Table 9.8.

76 Perfect storm for policing, law and order by 2027 (The Law Society, 14 June 2023).

77 With thanks to the Bar Council for its submission to this Review.

78 Source: Criminal Bar Association National Survey 2025 (The Criminal Bar Association of England and Wales, March 2025). The CBA commissioned Professor Katrin Hohl OBE of City of St Georges' University of London to undertake the survey. It received 1,717 responses.

79 Criminal Legal Aid: proposals for solicitor fee scheme reform (MoJ, May 2025).

have increased at more junior and senior levels, there has been an accompanying 25% drop in the numbers of King's Counsel doing public criminal work over the same period (although the KCs have not necessarily left the profession, they may simply be specialising in another area of law or taken a period of leave and so on).[80]

e. The growth in the remand population, driven by high caseloads and delays in the courts, is undoubtedly contributing to the challenges in prison capacity. Between 2018 and 2024, the remand population increased from around 11% of the overall prison population to around 20%.[81] With the adult male prison estate running at 99% capacity for much of 2023 and 2024, with often fewer than 500 spare places.[82] Although a programme of early releases in autumn 2024 known as 'SDS40' brought some respite to capacity pressures, the adult male population crept back up to 99% of capacity in the first half of 2025, necessitating the Lord Chancellor to announce further extraordinary measures to stabilise the situation.[83] The acute capacity pressures have also prompted the government to ask the Rt Hon. David Gauke to lead an Independent Sentencing Review which has recently reported.[84]

f. The challenges in prison capacity have created additional challenges for Prisoner Escort and Custody Services (PECS). PECS suppliers are working significantly above the forecasted contracted volumes. Additionally, the number of 'displaced prisoners' (prisoners on remand in custody being held in a prison other than that aligned to the court responsible for their case) has risen substantially. This leads to late deliveries of defendants to court and consequent wastage of court sitting time.[85]

g. Extreme workloads and resource strains in the Probation Service are contributing to delays in sentencing. The volume of change

80 With thanks to the Bar Council for their submission to the Review.

81 Source: Offender management statistics October to December 2024 (MoJ and HMPPS, April 2025).

82 Annual Statement on Prison Capacity: 2024 (MoJ, December 2024); Increasing the capacity of the prison estate to meet demand (National Audit Office, December 2024).

83 Lord Chancellor and MOJ Permanent Secretary Prison Capacity Press Conference (14 May 2025). I am conscious that the challenges faced by HMPPS are addressed in the Report published by the Independent Sentencing Review chaired by the Rt Hon. David Gauke who has made many recommendations to address the very real challenges that HMPPS faces.

84 Independent Sentencing Review 2024-25 (MoJ, May 2025).

85 With thanks to HMPPS for its submission to this Review.

experienced by the service over the last 11 years, from partial privatisation in 2014 to reunification of a national service in 2021, has caused staff resignation rates to soar, with recruitment unable to replace skills, expertise lost from exiting staff and tasks increasingly being delegated to junior members of staff. At the same time, workloads have dramatically increased due, in part, to legislative changes increasing eligibility for post-custody supervision, and more recently by early release schemes introduced to help manage prison capacity. As a result, pre-sentence reports requested by judges ahead of sentencing are often delayed, preventing sentencing from taking place in a timely manner with subsequent impacts on the criminal justice system users.[86]

Rising inefficiency

32. There are also many opportunities to make better use of the resources which already exist, these include:

    a. Making more effective use of the court estate, including through remote hearings and regional flexibility. The court estate has shrunk over the last 15 years, with the aim of focusing investments on a small number of buildings. Despite this, major problems remain with maintenance, technology and essential services. HMCTS's estimated maintenance backlog was valued at approximately £1.3 billion as of October 2024 with many active courtrooms often out of use due to dilapidation, not only making the working environment uncomfortable, but also rendering hearings and trials ineffective.[87] The National Audit Office recently highlighted the example of the failure of the fire alarm system at Birmingham's Victoria Law Courts, the largest magistrates' court in England and Wales, which resulted in a loss of 4,176 courtroom days between May 2022 and January 2024.[88] There are also widespread issues with essential services, including considerable shortages in the availability of translation services which prevent hearings from going ahead.

86 With thanks to Michelle McDermott, Principal Lecturer, University of Portsmouth for her submission to this Review.

87 Maintaining public service facilities (National Audit Office, January 2025).

88 Ibid, p. 18.

> 'Crown Courts often lack the ability to function … [My local] Crown Court cannot accept any custody cases due to broken heating in the cells. Cases are being adjourned or parachuted out into other courthouses … Boilers breaking down and jurors wearing hats and scarves indoors … The photocopiers cease to function, and an entire day is lost as interview transcripts cannot be copied.'
>
> (Submission from a criminal barrister to the Review)

b. More effective listing practices. There is no national approach to listing across Crown Court centres. Listing has become an increasingly challenging task owing to the growing caseload, increased complexity of cases, levels of ineffective trials, later guilty pleas, challenges with advocate availability and uncertainty over sitting day allocations. Disposing of cases also requires an ever-increasing number of hearings, with some cases requiring more than six hearings, thereby adding pressures to all agencies as well as the listing process.[89] To combat this (and, in particular, the problem of cases 'cracking'), the practice of listing more cases than can be accommodated in a court day has become prevalent. However, this is increasing the likelihood of scheduling conflicts for advocates and wasted work.[90]

c. Making effective use of technology and AI. There has been important progress in the digitisation of courts, including by HMCTS in the Reform programme. The introduction of the Common Platform as the criminal courts' case management system has not been without its challenges, but there are signs that it is now beginning to operate more smoothly. While visiting Crown Court centres as part of the Review, my team has heard from court staff that although further improvements are required, the platform is much improved compared to 18 to 24 months ago. In 2023, the National Audit Office gave an extremely mixed verdict on progress, finding that the Common Platform had been improving since its initial launch but its difficult roll-out had 'negatively impacted justice outcomes and burdened court users'.[91] It has been reported

89 Source: Criminal court statistics quarterly (2025).

90 I am aware that HHJ Edmunds KC has conducted a substantial review of listing practices to which I shall return in the Efficiency Review.

91 Progress on the courts and tribunals reform programme (2023).

that some challenges also still remain in the reliable and consistent provision of basic working equipment in courts such as Wi-Fi connectivity, video screens and microphones.

d. Improving end-to-end case progression. I have frequently heard from those contributing to this Review that there are barriers to effective case progression and getting cases 'right first time'. Case progression is slowed by procedures and relationships between different criminal justice agencies which are not conducive to swift progression and lead to wasted time through repeating work and lack of preparation for hearing dates, which means that accountability is reduced in effectiveness. It is particularly disappointing that key recommendations from my 2015 Review that addressed this issue have not been implemented.[92] There appears to be a growing sense of learned helplessness and acceptance of failure demand across the system which is inhibiting swift case progression.

e. Removing barriers to accessing defendants in prisons. Defence lawyers and probation officers report difficulties in consulting their clients held on remand to prepare cases and pre-sentence reports, be that in person or through video link. I have heard frequent examples of defence advocates whose first opportunity to discuss the case with the defendant comes when the defendant is attending court for the PTPH. This not only delays progression of their case but is adding further pressure to prison capacity and causing increasing frustration for the defence community. It is unsatisfactory that a defendant on remand cannot secure effective legal representation and the opportunity to discuss their case well in advance of procedural steps in court, by which time significant decisions (such as the question of plea and the preparation of fully articulated defence case statements) should have been made.

f. Incentivising effective collaboration and local leadership to drive up performance. Courts have limited powers to enforce compliance, with very limited sanctions to apply for non-compliance with court directions or orders. The practices for managing performance across agencies vary considerably, with some Local Criminal Justice Boards playing a much greater role than others in driving performance. Case Study D provides a positive example of how strong leadership, along with other factors, can result in improvements to efficiency and effectiveness.

92 Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015). See in particular 7.3.2 Case Progression: a new approach, p. 52.

Case Study D: Improving efficiency and effectiveness in a challenging context

During the course of this Review, my team visited courts across the country to hear from those working in the criminal justice system. They met many hardworking staff and saw some excellent examples of best practice, as well as seeing the real challenges across the system. The team was told about several initiatives underway at Liverpool Crown Court, which showcase how, through strong leadership and cross-agency collaboration, efficiency and effectiveness can be improved even in challenging circumstances. These include:

1. 'Operation Expedite', launched in June 2023, aims to ensure straightforward drug offences are dealt with expeditiously and early guilty pleas are secured, where appropriate, by offering a trial date within 13 weeks of the Plea and Trial Preparation Hearing (PTPH).
2. The 'Case Resolution Scheme' encourages the CPS and defence representatives to review cases in advance of trial to consider if a) there is enough evidence to continue and b) there is any opportunity for resolution. The scheme is reducing the number of cracked trials and ensuring that cases requiring trial are effective on 'day one'.
3. 'Better Case Management Final Review Hearings' were implemented from October 2024. These are conducted three to four weeks in advance of the trial date by a judge to identify cases capable of being resolved ahead of trial and, where this is not possible, ensuring trial readiness on 'day one'.

The Review has also seen examples of good practice in other court centres including the Case Co-ordinator pilot at Snaresbrook Crown Court and delaying PTPHs at Bristol Crown Court to ensure sufficient preparation time and improve effectiveness.

There should be no doubt that Liverpool Crown Court still faces profound challenges, including technology limitations and delays caused by Prisoner Escort and Custody Services (PECS). These reflect common themes across the courts that the Review visited.

Impact on court performance

33. Rising rates of vacated and ineffective trials in the Crown Court waste preparatory effort and resources across the criminal justice system. The ratio of vacated trials has increased sharply in recent years, rising from 29% in 2016 to 38% in 2024 (and briefly accelerating to 62% in 2020, in the COVID-19 period).[93] In the same period, the rate of ineffective trials increased from 11% to 16% in 2024, and the rate of effective trials decreased from 36% to 27%.[94] Among the most common reasons for trials being ineffective is the defence or prosecution not being ready, reflecting the dysfunction in the system as set out above.

34. Dysfunction and inefficiency across the system is underlined by the notable decline in Adjusted Disposal Rate (ADR) for the Crown Court. ADR considers how many disposals are delivered (i.e. how many cases reach a conclusion) per sitting day in an individual court. It then compares this with the number of disposals expected given the proportion of cases that go to trial at that court. This accounts for much of the volume and complexity of work so that courts can easily be compared (e.g. Truro Crown Court – a rural Crown Court – can be compared to the Central Criminal Court – a busy London Crown Court). Figure 2.7 shows that the average ADR across all courts in England and Wales sharply decreased between 2019 and 2020. Between 2021 and 2024, it slightly improved, but has never recovered to pre-2020 levels. See Annex F (Technical Annex) for further details.

35. The combined impact of fewer disposals and more vacated and ineffective trials is intensifying the wider crisis.

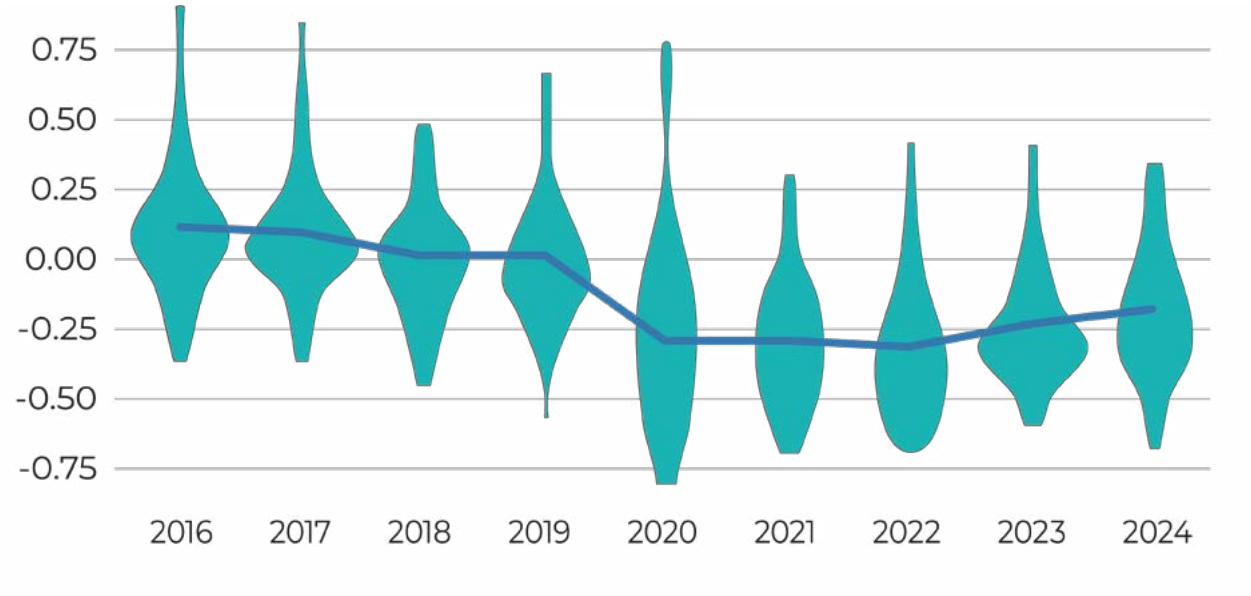
93 A vacated trial is a trial which has been removed from the trial list before the date of the trial, excluding warned list cases. An ineffective trial is a trial that does not go ahead on the scheduled trial date and a further listing is required. This can be due to action or inaction by one or more of the prosecution, the defence or the court. The vacated trials ratio is not a direct metric of proportion of vacated trials as it is using listed trials and vacated trials for which the data is captured at different points.

94 Source: Criminal court statistics quarterly (2025).

Figure 2.7

Average and distributions of Crown Court Adjusted Disposal Rate scores by year

England and Wales, 2016-2024



Adjusted Disposal Rate scores are positive when courts have higher disposal rates than expected, and negative when they have lower disposal rates than expected. Expectations set using 2018 as baseline.
The filled shapes (violin plots) show how Crown Court scores are distributed.
The line indicates the average (mean) of these scores.

Sources: MoJ internal data, HMCTS internal data

Cause 2: The Ever-Increasing Complexity of Criminal Law and Procedure

> 'The strongest impression that I have formed of the criminal justice system in the course of the Review is of the complexities in every corner of it. Their consequence is much damage to justice, efficiency and effectiveness of the system and to the public's confidence in it.'
>
> (Lord Justice Auld, Review of the Criminal Courts of England and Wales, 2001)

36. Other contributing factors extend further back in time, rooted in implementing political priorities, to reflect changing social attitudes and lifestyles, and the entirely appropriate desire constantly to improve the fairness and effectiveness of the criminal justice system. While challenging to measure, the sheer scale and increasing rate of

reforms to criminal law, procedures and the conduct of trials over the last 50 years has added time and complexity to the overall criminal justice process. Despite Lord Justice Auld's warning nearly a quarter of a century ago, the volume of criminal laws and procedures being introduced has continued to grow. These changes have come at a cost, introducing considerable time and complexity to trials and their preparation, and consequently delaying case progression.

37. As the law has become more sophisticated, jury trial has been progressively reserved for the most serious cases, while a swifter form of justice has evolved in the magistrates' court which now handles the vast majority of criminal proceedings. In 2024, only 1% of all criminal cases were dealt with by jury trial in the Crown Court, with the magistrates' court dealing with more than 90% of all cases received in the criminal courts, of which less than one quarter involved either way offences.[95]

38. Since 1996, there has been a statutory code regulating the disclosure of evidence that has, rightly, placed a significant burden on prosecutors, including in the disclosure of evidence that is not used in the case. That burden has increased significantly in recent years because of the volume of digitally held material that may commonly be swept up in the course of an investigation. Disclosure reforms have been fundamental in securing a fair trial for defendants and there is no doubt that the regime has had a positive impact on transparency and the quality of justice, but there is also no doubt that it is hugely resource-intensive. The central role that disclosure plays is borne out by the numerous reviews in recent years, each seeking to optimise the system with the most recent of those being the Independent Review of Disclosure and Fraud Offences.[96] To put this in perspective, in my early years at the Bar, the Attorney General's Guidelines required the prosecution to disclose only the names and addresses of those from whom witness statements had

95 Source: ibid. This proxy assumes not guilty plea trials have a jury, and 1 defendant = 1 case. In 2024, there were 127,468 defendants dealt with, whereas disposed cases was 121,579. This gives a ratio of 1.12 defendants per case. Additionally, this contains a double counting of cases in the magistrates' court that were sent straight to the Crown Court.

96 Jonathan Fisher KC, Independent Review of Disclosure and Fraud Offences (Home Office, March 2025). Previous reviews of disclosure include: Review of the efficiency and effectiveness of disclosure in the criminal justice system (Attorney General's Office, November 2018); Magistrates' Court Disclosure Review (Judiciary of England and Wales, May 2014); the Rt Hon. Lord Justice Gross, Review of Disclosure in Criminal Proceedings (Judiciary of England and Wales, September 2011); the Rt Hon. Lord Justice Gross and the Rt Hon. Lord Justice Treacy, Further review of disclosure in criminal proceedings: sanctions for disclosure failure (Judiciary of England and Wales, November 2012).

been taken, but not included in the prosecution case (and no mention needed to be made of alibi witnesses from whom statements had been taken). Disclosure beyond that list of witnesses was very limited.

39. As I have previously mentioned, the growth of technology has exponentially increased the volume and variety of evidence which must be considered in investigations and in court. Thirty years ago, the mobile phone and its ability to send text messages was groundbreaking. Today, the 256 gigabytes storage of a typical phone, if printed, would represent around 50 million sheets of paper. If stacked, that would be approximately 3.1 miles in height (slightly taller than Mont Blanc). Many people also own multiple devices, which can multiply the volume of evidence in cases. While such material can provide important insights into a defendant's movements and intentions, the time and complexity involved in examining this data is immense. This is particularly acute for fraud trials. Between 2010 and 2017, the average size of Serious Fraud Office (SFO) cases grew from around two million documents (350 gigabytes of data) to six million documents (850 gigabytes), with the largest live case on the SFO system as of January 2025 having around 48 million documents (6.5 terabytes).[97] AI offers opportunities to analyse this information faster in the future, but will also bring its own complexities.

40. In the modern criminal trial, forensic science has seen dramatic advancements in DNA profiling, fingerprint analysis, cell site analysis, use of nanotechnology and AI which has been crucial in advancing investigatory capabilities. However, it has also driven a need and appetite for the prosecution and defence to present more sophisticated evidence sometimes supported by evidence from expert witnesses (which can be complex and lengthy). The growth in use of expert evidence seems set to continue as areas of expertise develop and subdisciplines emerge, each offering value to the criminal justice system, but at a cost, with some cases requiring multiple experts to appear on both sides. Emerging evidence on the effect of technological innovations on criminal justice demand is mixed and complex, suggesting simultaneous additive and reductive impacts on detections

97 Written Evidence to Home Affairs Select Committee (SFO, October 2023). With thanks also to the SFO for its submission to this Review.

and prosecutions. Furthermore, it is moderated through interaction with other factors such as the experience of practitioners and workload.[98]

41. There has also been a substantial (albeit welcome) cultural shift in the approach to vulnerable witnesses and victims, with an increasing focus on supporting them to overcome trauma and give their best evidence in court. There has been a particular focus on rape, domestic abuse and historic sexual offences. These have all led to greater complexity and increased time taken at the police investigation stage. Key changes which have had an impact on criminal trials include:

    a. The introduction and expansion in the last 25 years of special measures, such as pre-recorded cross-examination, use of intermediaries and the introduction of specialist support staff such as Independent Sexual Violence Advisers (ISVAs) and Independent Domestic Violence Advisers (IDVAs).

    b. The piloting of specialist courts and expediting of certain case types.

    c. Protections against the increasingly intrusive nature of disclosure of complainants' and other witnesses' data, due to the proliferation of digital materials and mobile phones used in evidence. The Police, Crime, Sentencing and Courts Act 2022 introduced a new regime and code of practice governing the access to and use of witness phone and electronic devices following recommendations in the End-to-End Rape Review 2021.[99]

42. There are further changes intended to improve the quality of justice each adding time and complexity in the courts' process. A non-exhaustive list includes:

    a. For many decades, governments have continued to create hundreds of new criminal offences every year, often in regulatory contexts through secondary legislation. For example, in 2010, the Law Commission noted:

    'Since 1997 more than 3,000 criminal offences have come on to the statute book. That figure should be put in context, taking a longer perspective. Halsbury's Statutes of England and Wales has four volumes devoted to criminal laws that (however old they may be)

98 Sarah Hodgkinson, Tammy Ayres and Matt Hopkins, Rapid Evidence Assessment on the use of DNA and body-worn cameras and the relationship with criminal justice system outcomes (Home Office, May 2025).

99 Extraction of information from electronic devices: code of practice (Home Office, March 2023).

are still currently in force. Volume 1 covers the offences created in the 637 years between 1351 and 1988. Volume 1 is 1,382 pages long. Volumes 2 to 4 cover the offences created in the 19 years between 1989 and 2008. Volumes 2 to 4 are no less than 3,746 pages long. So, more than two and a half times as many pages were needed in Halsbury's Statutes to cover offences created in the 19 years between 1989 and 2008 than were needed to cover the offences created in the 637 years prior to that. Moreover, it is unlikely that the Halsbury volumes devoted to "criminal law" capture all offences created in recent times.'[100]

Between 2010 to 2014, the MoJ counted between 174 and 712 new offences created each year across government, as part of the Criminal Offences Gateway initiative established in 2010 to scrutinise proposals to create new criminal offences and prevent the proliferation of unnecessary new criminal offences.[101] Academic research carried out around the same time suggests an even higher rate of criminal offence creation stretching back to the 1950s, ranging between 634 to 1,235 per year.[102] The Criminal Procedure Rules (CPR) have also been subject to numerous and significant amendments since they came into force in 2005, increasing from around 200 pages to over 500 pages in their latest 2020 edition, sitting alongside the 100+ pages of Criminal Practice Directions.[103] Judges are further guided by the over 700 pages of the 'Crown Court Compendium', in addition to the Sentencing Code,[104] which consolidates over 50 pieces of primary legislation into a single Act but runs to over 400 sections of statute.

100 Criminal Liability in Regulatory Contexts: A Consultation Paper (The Law Commission, 2010), p. 5.

101 New criminal offences - statistical bulletin 1 June 2009 - 31 May 2014 (MoJ, December 2014).

102 Emma Ainsley, James Chalmers and Fiona Leverick, Patterns of Criminalisation: 1951,1997, 2010, 2014 (University of Glasgow, 2016); the final paper was published as James Chalmers and Fiona Leverick, 'Criminal Law in the Shadows: Creating Offences in Delegated Legislation' (2018) 38(2) Legal Stud 221–241. Note: Chalmers and Leverick counted the new offences created in four sample years using a different methodology to that adopted by the MoJ.

103 Criminal Procedure Rules 2005 (c. 210 pages); Criminal Procedure Rules 2020 (c. 534 pages); Criminal Practice Directions 2023 (July 2024).

104 Crown Court Compendium (Parts 1 and 2) (Courts and Tribunals Judiciary, updated April 2025); Sentencing Act 2020; Sentencing Code (Sentencing Council).

This is further supplemented by the Sentencing Council's Guidelines, which run to hundreds of pages.[105]

b. PACE 1984 has added complexity to criminal procedures trials. It provides a prescriptive regulatory regime around the exercise of police powers which has had a deep and generally positive impact on police practice and culture since it was introduced. For example, PACE Codes addressed flawed investigative procedures that were exposed by high-profile miscarriages of justice in the 1970s which triggered the review by the Phillips Royal Commission, which in turn led to PACE 1984.[106] Code C has transformed police station interviews. Code D has improved identification processes and seen further updates on procedures on obtaining eye-witness evidence, provisions for taking and retaining fingerprints and DNA, the use of CCTV, which has an impact on a large volume of cases, and in response to the development of social media. While essential, this has led to more opportunities for the defence to challenge compliance, and courts devoting time to reviewing alleged breaches of PACE and their impact on admissibility.[107]

c. The creation of the CPS in 1986 has led to the professionalisation of the prosecution process, with the opportunity for greater consistency and national practice. However, the introduction of systems for case management processes has diminished case ownership and continuity. The development of the statutory charging scheme in 2004 has also not been without its complications, particularly with the partial return of charging responsibilities to the police between 2010 and 2012. In parallel, police forces have also seen a return in the range of specified proceedings which they can take responsibility for prosecuting.[108]

d. Jurors are given much more extensive guidance than in the past, including more detailed judicial instructions (jury homilies) at the start of trials, and much more elaborate directions at the

105 Sentencing guidelines are now only published online on the Sentencing Council's website but archived versions of most previously published definitive guideline documents are still available in the Sentencing Council's publication section.

106 Royal Commission on Criminal Procedure (Philips Commission) (The National Archives, 1978–81).

107 Michael Zander QC, PACE (The Police and Criminal Evidence Act 1984): Past, Present, and Future (London School of Economics and Political Science, 2012); David Cowan, Pace Odyssey, The Law Society Gazette, 16 March 2020.

108 John Bardens, Charging decisions and police-led prosecutions (House of Commons Library, March 2014).

end of the evidence, with routine provision of written directions including routes to verdict to support their decision-making. These changes were partly driven by the realisation of the real importance placed on instructing jurors against online research or social media commentary as well as a desire to improve the quality of deliberations and robustness of verdicts.[109]

e. Bad character and hearsay. The Criminal Justice Act 2003 radically changed the approach to evidence on bad character and hearsay and led to an increase in the volume of evidence received in court. The admission of such evidence is now common but requires careful judicial scrutiny and more elaborate judicial direction to the jury.

f. A focus on mental health. As society's understanding of mental health and neurodiversity has improved, it has become an increasing feature of trials to hear from medical experts and gather mental health reports, which adds to overall complexity.

g. Interpreters. Many cases now require interpreters, often in more than one language, which is time-consuming. There were around 153,000 completed requests for interpreters in 2015 compared to around 201,000 in 2024.[110]

43. The additional time and complexity that these reforms have added to the criminal court process has played a critical role in contributing to a criminal justice system which cannot progress cases swiftly and effectively. This in turn has contributed to the scale of the open caseload and the delays seen today, with a real risk of total system collapse.

109 David Ormerod, 'Appreciating the jury' [2020] Crim LR 983–986.

110 Source: Criminal court statistics quarterly (2025), Table L1.

Cause 3: Rising Caseloads Since 2019, and Their Combined Impact with the COVID-19 Pandemic and Criminal Bar Association's Industrial Action

44. The growth in the open caseload has, in part, been exacerbated by major unforeseen events which have further disturbed the usual flow and pattern of work in the system, namely the COVID-19 pandemic and four-month-long industrial action taken by criminal barristers in 2022. These events severely limited capacity for jury trials, which as a consequence has increased the proportion of the most complex cases in the open caseload. This has had long-lasting effects as the courts struggle to process that increasingly serious case mix. Since 2019, there has been substantial growth in the number of new cases entering the Crown Court – with a 19% growth in receipts from 2019 to 2024. This is a reversal of the long-term trend: in the 2010s, 'receipts' fell from a peak of 153,000 cases in 2010 to 102,000 in 2019.[111] The output of the courts (as measured by 'disposals') has grown to meet this challenge, but not by enough. As shown in Fig. 2.8, between 2019 to 2024 there were year-on-year deficits between disposals and receipts.[112]

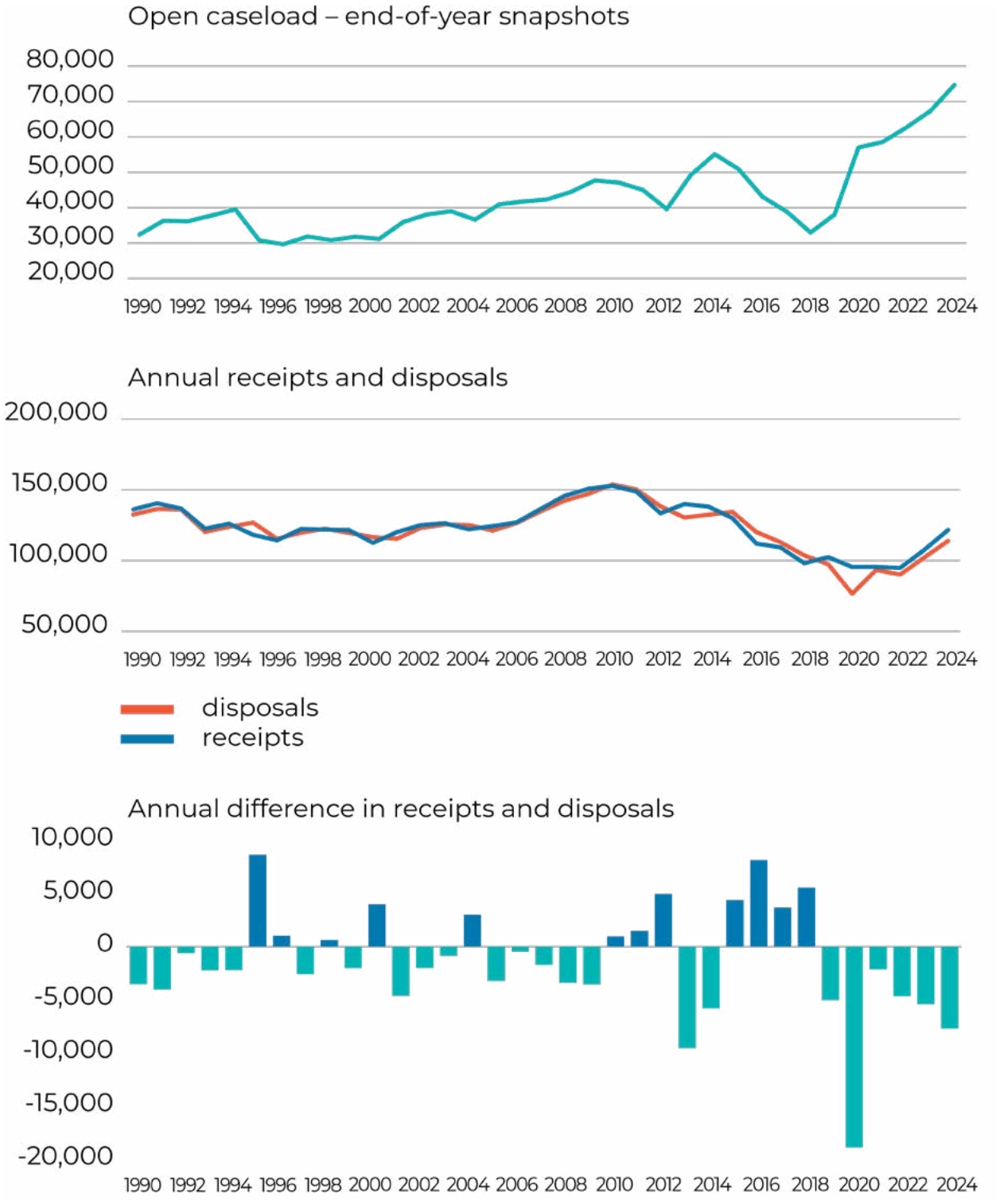
111 See Fig. 2.8: Receipts, disposals and open Crown Court cases.

112 Caseload data for the years prior to 2016 are counted on a slightly different basis than data for the years 2016 and onwards. This is due to improvements to the coherence and accuracy of the MoJ Crown Court statistics, following the One Crown development taken forward by the MoJ and HMCTS in late 2024. This has led to improvements to the underlying reference data which is used to define the status of a case and a change to how transfers are counted in receipts and disposals to better reflect the way that cases are captured in the Common Platform system. This means absolute volumes of Crown Court caseloads from 2016 onwards should not be directly compared to estimates prior to 2016.

Figure 2.8

Annual receipts, disposals, and Crown Court open caseload

Yearly data from 1990 to 2024



Sources: Criminal court statistics quarterly, Oct to Dec 2024; Criminal court statistics quarterly, Oct to Dec 2019; Judicial and court statistics 2006.

45. It is difficult to be more precise about direct causes of the increase: crime and reporting trends are complex and difficult to interpret. The Crime Survey for England and Wales has tracked a broad decrease in overall crime since the mid-1990s, including crimes not reported to the police.[113] At the same time, in the last decade, police recorded crime has increased from around four million in 2013 to around 7 million in 2024 not least due to improvements in the police recording and public reporting of crime.[114] What is clear is that there is considerable public concern about crime, in particular knife crime and violence against women and girls.[115] Successive governments have responded to this through an increased focus on policing. This includes the Conservative government's 2019 commitment to recruit 20,000 more police officers (met in 2023), the impacts of the End-to-End Rape Review and Operation Soteria, and the current Labour government's Safer Streets mission.[116] These developments are combining to drive the rapid increase in the number of new cases, particularly the most serious cases, entering the Crown Court caseload; and has led to an increase in longer sentences with serious impacts on HMPPS.

46. Violence and sexual offences, which take up more investigation and court time, represent a much higher proportion of cases in the caseload than ten years ago. This increase is likely to have been driven by both changes in crime and reporting trends, and in policing itself. As shown in Fig. 2.9, in 2024, violence and sexual offence receipts for trial in the Crown Court reached an eight-year high. Crown Court receipts for sexual offence trials increased from around 5,000 in 2018

113 Source: Crime in England and Wales: year ending December 2024 (Office for National Statistics, April 2025).

114 Source: Historic police recorded crime and outcomes open data tables (Home Office, January 2025); The quality of police recorded crime statistics for England and Wales (Office for Statistics Regulation, March 2025); An inspection into how effectively the police investigate crime (HM Inspectorate of Constabulary and Fire & Rescue Services, March 2025).

115 For a broad definition of violence against women and girls, see: Tackling violence against women and girls strategy (Home Office, November 2021).

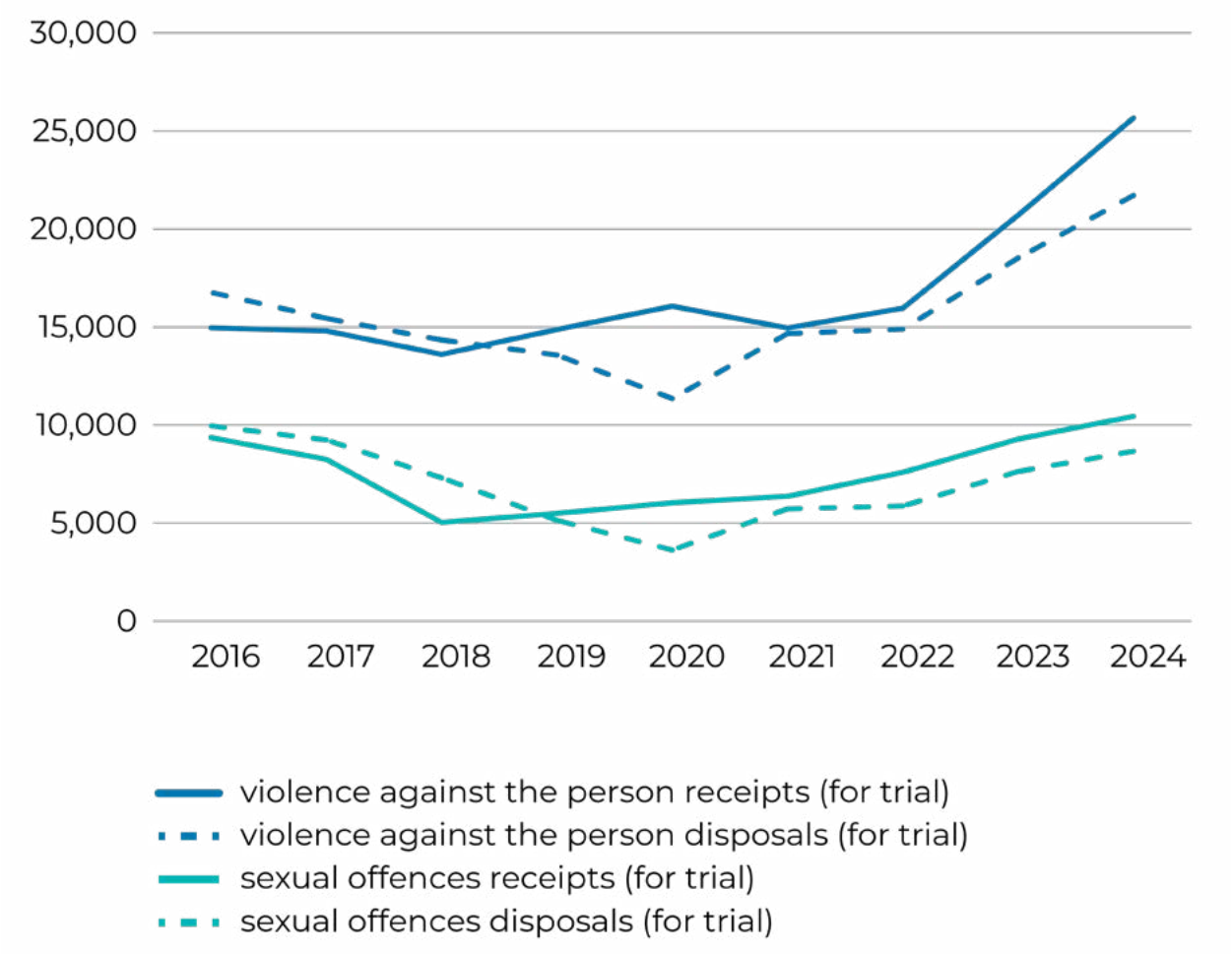
116 Source: Police Officer uplift statistics (Home Office, July 2023); End-to-End Rape Review Report on Findings and Actions (MoJ, June 2021); Rape Review progress update (MoJ, February 2024); Operation Soteria – Transforming the Investigation of Rape (National Police Chiefs' Council); Operation Soteria Year One Report (Home Office, April 2023); Safer Streets: Plan for Change (Prime Minister's Office). The current government's long-term mission includes an ambition to halve violence against women and girls and knife crime as well as drive up confidence in the police. A major milestone in accomplishing this mission is the commitment to placing 13,000 additional police officers, Police Community Support Officers and special constables into neighbourhood policing roles over the current Parliament.

to around 10,400 in 2024 (a 108% increase). Similarly, for cases involving violence against the person, this figure increased from around 13,600 in 2018 to around 25,700 in 2024 (an 88% increase). Sexual and violent offences have some of the greatest deficits between receipts and disposals in the Crown Court. A persistent deficit between receipts and disposals for both offence types emerged from around 2018 which has contributed to the rapid growth in the open caseload.

Figure 2.9

Annual receipts and disposals for trial for violence against the person and sexual offences

England and Wales, 2016 - 2024



Sources: Criminal court statistics quarterly, October to December 2024

47. The impact of rising caseloads has been compounded by the COVID-19 pandemic throughout 2020 and 2021. In the first 2020 lockdown, there was an approximate 45% contraction in receipts (owing to less crime along with less police, CPS and magistrates' courts activity) and a 47% contraction in disposals (largely as a result of restrictions on trials). Post-lockdown, receipts rapidly grew to a three-year high in late 2020 and remained high throughout the subsequent 2021 lockdowns. Disposals also increased but more slowly and not to the same level as receipts, leading the open caseload to grow by around 20,500 cases by the end of 2021.[117]

48. After the COVID-19 pandemic, the situation in the criminal courts began to improve with the removal of lockdown restrictions, and this was aided by the recruitment of more judges and the introduction of Nightingale courts. Between late 2021 and early 2022, the period in which the COVID-19 vaccine rollout began, the open caseload began to shrink. However, the industrial action taken by barristers reversed the trend and contributed to a marked contraction in disposals in late 2022, with the open caseload increasing by 4,100 cases in 2022 overall.[118]

49. The government has made numerous commitments as part of its Safer Streets Mission which are likely to contribute to the continued growth in cases entering the criminal courts in the future. This includes a crackdown on anti-social behaviour and shop theft and a further increase of 13,000 police officers in neighbourhood policing roles as well as the ambition of halving both knife crime and violence against women and girls within a decade. These are laudable goals, but they make it all the more essential that there is a cross-government commitment to an immediate response, with radical action and a route to adapt to future changes. Doing nothing is not an option. Having said that, careful consideration must be given to the impacts of other government department policies to the justice system via closer cross-government working and use of Justice Impact Tests.

117 Source: Criminal court statistics quarterly (2025).

118 Source: ibid.

The Solution

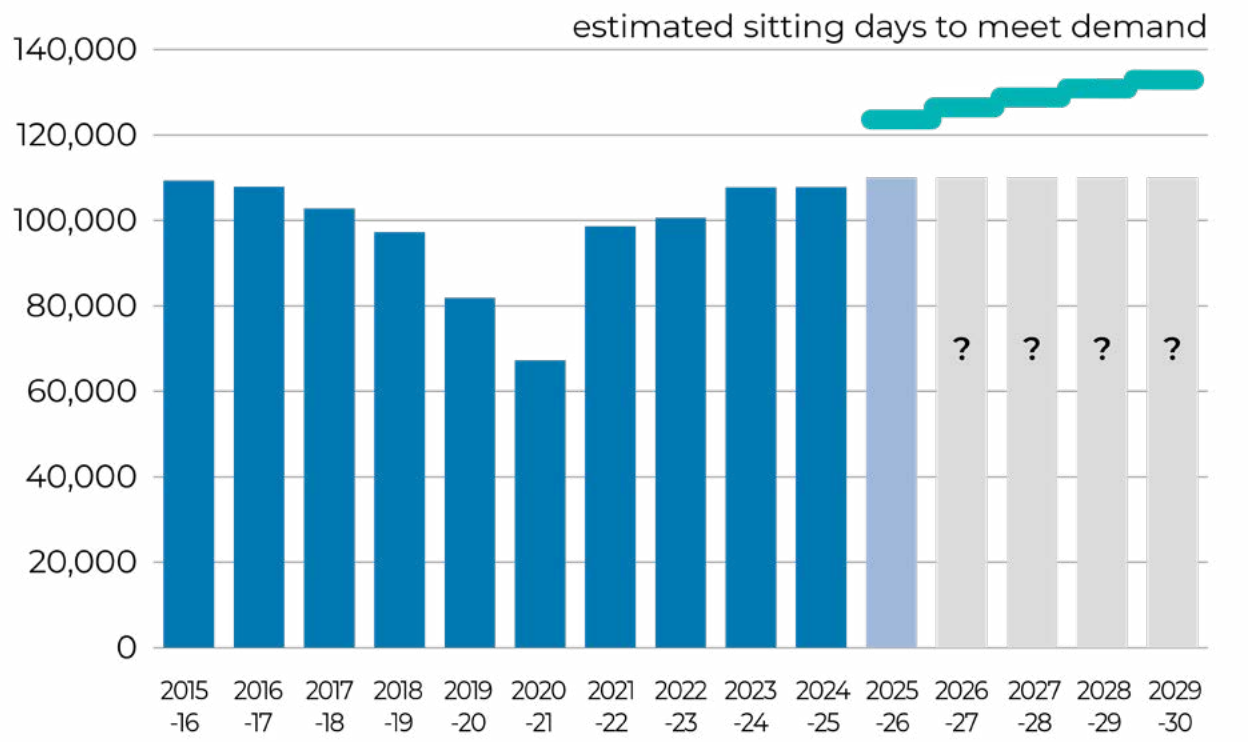
50. In the remainder of this Review and in the Efficiency Review, I will set out my recommendations. The first steps already taken by government are only the beginning of the action needed.

51. As I have already explained, an implausible and unprecedented level of capacity would be needed to solve the crisis through more spending alone. The government has already made concerted efforts to increase investment in the criminal courts. As shown in Fig. 2.10, for 2025/26, the government has funded an allocation of 110,000 sitting days for the Crown Court. This is a record high level, and a 34% increase from the 20-year low of 82,000 in 2019/20. However, to meet the central demand estimate in the MoJ Crown Court projection, sitting days would need to increase to approximately 126,000 in 2025/26 and approximately 131,000 by 2029/30.

Figure 2.10

Total sitting days by financial year

England and Wales, 2015-2025



Sources: Criminal court statistics quarterly, October to December 2024; MoJ Crown Court open caseload projections: 2025 to 2029

52. To deliver this level of capacity would be incredibly expensive – likely costing many multiple billions of pounds over several years. Even more crucially than this, to reach this level of capacity would be effectively impossible to deliver in the current Crown Court structure. Both figures to meet rising caseloads and to reduce the open caseload greatly exceed the current estimated maximum level of Crown Court judicial capacity of 113,000 sitting days and courtroom capacity. Given the speed at which the open caseload is increasing, the relevant criminal justice agencies would almost certainly not be able to scale-up fast enough. It would be especially challenging to expand courtroom capacity, with the physical requirements being greatest for jury trial. Similarly, it would be difficult (if not impossible) for the CPS and the defence community to service the required sitting days. This is why investment alone will not work and structural reform is essential.

53. This being said, for my recommendations to be successful (for example, the introduction of the Crown Court Bench Division (CCBD), explained in Chapter 8), they will require targeted investment to cover additional capacity. As I will set out in more detail, the CCBD and trial by judge alone will be able to sit more flexibly in different court spaces than a jury trial would; would cost less to deliver because of the absence of a jury; trial times would be reduced; and the incentive for defendants to delay trial unnecessarily would be diminished. Only by combining this reform with additional sitting days will the overall level that is desperately needed be achieved. As outlined in Chapter 8, I recommend that 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, a goal which HMCTS should ramp up to over time. I recognise that this will not be easy to deliver and a range of scenarios has been modelled, with the ultimate aim of making a recommendation which balances high ambition with plausible, if challenging, delivery.

54. In my view, it is critical to pursue wide-ranging reform, but it is equally important that this is undertaken in principled way, in line with those principles set out in the Chapter 1 (Introduction).

55. This is all to say, the speed of justice cannot be pursued at any cost. This is why I will not advocate, by way of example, for a reversal of the many safeguards introduced to the justice system or propose that the rights of participation for victims and defendants be reduced or suggest that AI should wholly supplant the role of judges in sentencing, even if this offered the theoretical potential of increasing throughput in the courts.

56. The reforms I propose are designed to send fewer cases to the courts altogether and explore swifter modes of trial. This is the best way to recognise the rising complexity that has resulted from the many improvements made to criminal justice in recent decades. It is also the best way to recognise the pragmatic limits on judicial and estate capacity set out above. Without this, there is no package of measures which is either credible to deliver at the speed required, affordable or capable of meeting the scale of the current crisis.

57. A holistic package of measures is needed to address the many elements of the multiple, overlapping crises I have set out in this chapter. As will be clear in the remainder of this Review, I do not approach these recommendations lightly and they go further than I first anticipated. However, the impact of doing nothing, or of incremental change, will be that the situation will get much worse, and that the risk of total system collapse will quickly become very real. There should be no doubt: this action is essential.

Chapter 3

Diversions

Chapter 3 – Diversions

Introduction

1. In this chapter, I will make recommendations for expanding the use of diversions from the criminal justice system, and in particular Out of Court Resolutions (OOCRs). OOCRs are, as their name suggests, measures used to resolve criminal cases, typically without the need for defendants (or victims) to go to court. They allow the police to deal quickly and effectively with minor offences, often involving first-time offenders, using schemes which target the causes of offending, including mental health issues and alcohol and substance misuse.

2. Expanding the use of OOCRs could play a vital role in addressing the crisis in criminal justice. OOCRs have the potential to have a rapid impact in less serious cases, meaning that victims will see justice being served and defendants receive an outcome more quickly than in the court system. Responding to less serious offences through OOCRs would also benefit more serious cases, allowing the police, the CPS and the courts to focus their time and resources on progressing the many serious and complex cases awaiting trial. OOCR programmes are generally less expensive than traditional court proceedings, and therefore any financial savings from resolving more cases through this route could also be reinvested into wider efforts to reduce the open caseload.

3. Improving the use of OOCRs also has the potential to serve wider justice goals. OOCRs are an opportunity to provide intervention at the early stages in what is or might become criminal behaviour, diverting individuals into rehabilitative services to help reduce the risk of future offending. As diversions often draw on leadership in the community where the offending took place, they also have the potential to strengthen local-level trust in criminal justice, particularly among minority communities.

The Current System

4. OOCRs were used informally until the early 2000s when legislation and formal guidance was introduced.[119] A Penalty Notice for Disorder (PND) was first introduced in the Criminal Justice and Police Act 2001[120] and Conditional Cautions in the Criminal Justice Act 2003.[121] I am not focusing on Fixed Penalty Notices (FPNs) which are used heavily for minor driving offences or on other diversions in motoring cases (such as Speed Awareness Courses).

5. Common types of existing OOCRs include community resolutions, conditional cautions, simple cautions and PNDs, as well as cannabis and khat warnings. A revised model of OOCRs was outlined in the 2020 White Paper 'A Smarter Approach to Sentencing' which considers community resolutions for less serious offending and first-time offenders for certain offences, and conditional cautions for more serious offences and those with a history of offending.[122] The National Police Chiefs' Council (NPCC) informed us that as of December 2024, 71% (30) of the 43 police force areas were noted to have either transitioned or were transitioning towards this model.

6. OOCRs can be issued for a range of offences, although there are certain criteria applicable for each, and whether an offence is eligible differs by type of OOCR – for example: penalty notices;[123] community resolution;[124] simple caution;[125] and conditional caution.[126] Figure 3.1 illustrates that the offences that most commonly received either a community resolution or caution in the year ending December 2024 were low-level drug offences and minor offences of violence.[127] 10% of OOCRs in 2024 were for summary non-motoring offences.

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119 The merits of diversion have long been debated – see, for example, Gavin Dingwall and Christopher Harding, Diversion in the Criminal Process (Sweet & Maxwell, 1998).

120 Section 2 of the Criminal Justice and Police Act 2001.

121 Section 22 of the Criminal Justice Act 2003.

122 A Smarter Approach to Sentencing (MoJ, September 2020).

123 Sentencing Guidelines: 7. Offences for which penalty notices are available (Sentencing Council).

124 Sentencing Guidelines: 6. Community resolution (Sentencing Council).

125 Sentencing Guidelines: 3. Simple caution (Sentencing Council).

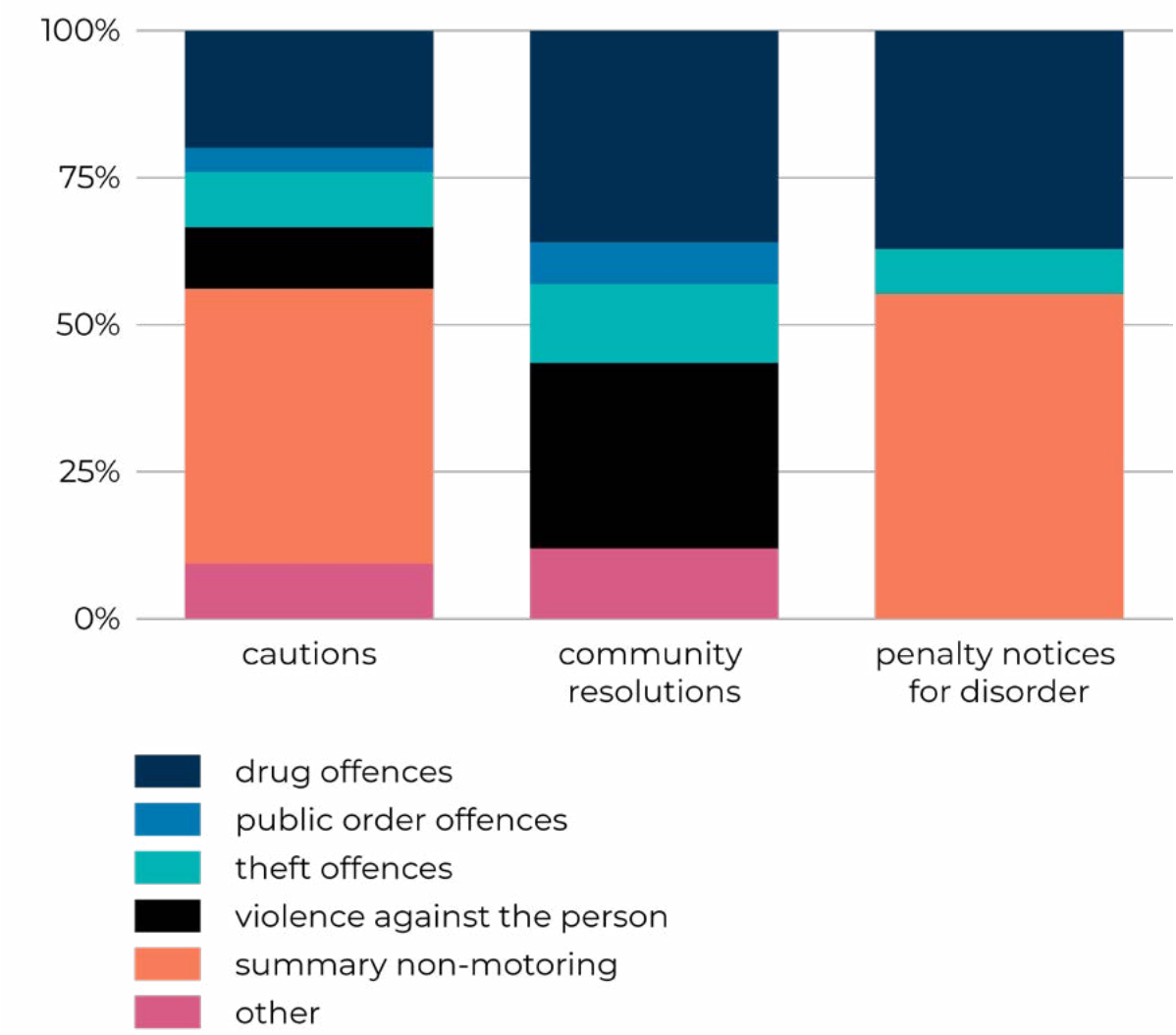
126 Sentencing Guidelines: 4. Conditional caution (Sentencing Council).

127 Source: Criminal justice statistics (MoJ, December2024).

Figure 3.1

Breakdown of out of court resolution types by offence group

England and Wales, 2024



Source: Criminal justice system statistics quarterly, December 2024

7. Some OOCRs require an individual to admit their liability before an OOCR is available. In such cases, there is a possibility that a defendant would still end up in court if they did not fulfil the conditions imposed.

Evidence on the Benefits of OOCRs

8. Promising evidence can be found in other countries for the impact of adopting a more ambitious approach to OOCRs. For example, in Canada (a comparable common law jurisdiction), a much wider variety of programmes is offered than in England and Wales, including addiction treatment and mental health programmes.[128]

9. Multiple studies indicate that OOCRs represent better value for money than courts or, in extreme cases, prison sentences.[129] I recognise that set-up and implementation costs for OOCR programmes remain significant considerations. These include developing tools, officer training and ensuring consistent decision-making and tracking mechanisms. Increasing use of OOCRs will require investment but, at least in my view, it is necessary to look beyond comparing the limited savings (if any) to be made from the use of OOCRs and the avoidance of court proceedings in an individual case.

10. In the course of this Review, I have been made aware of the particular challenges which impact on female defendants. I have been told that women often receive short sentences for low-level crimes, and that often custodial sentences are handed out to pregnant women or mothers because they are unable to fulfil community sentences due to their caring responsibilities. Although sentencing is out of scope of this Review, I note that OOCRs could be of significant benefit to this group as an alternative to custodial sentences.

11. I acknowledge that OOCRs and diversion cannot be seen as a panacea, even in relation to low-level offending. Empirical studies reveal mixed results for the impacts of OOCRs on reoffending dependent on the type of OOCR, the particular study and the sample. Nevertheless, there is some promising evidence. Members of the Revolving Doors charity – a national charity aiming to break the cycle of crises and crime – highlight the transformative impact of OOCRs on their lives.[130]

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128 Evaluation of the Drug Treatment Court Funding Program (Department of Justice Canada, December 2021).

129 Peter Neyroud, Out of Court Disposals managed by the Police: a review of the evidence (NPCC, 2018). Peter Neyroud and Molly Slothower, 'Operation Turning Point: the first interim report' (Unpublished report, Institute of Criminology, 2012). These three UK-based studies on OOCRs found positive results in cost–benefit terms when compared to prison sentences. I recognise the limitations of these studies as in most cases of OOCR the level of offences involved would be unlikely to trigger custodial sentences.

130 With thanks to Annie Fendrich for her submission to this Review.

Evidence from a MoJ and Public Health England report, which linked drug and alcohol treatment and offending records, found that the total number of offences committed by a group of individuals starting treatment fell by 33% in the two-year follow-up period, compared to the prior two years. And that 44% of these individuals who began treatment did not offend at all in the two-year follow-up period. The report found that those who successfully completed treatment or remained in treatment were less likely to reoffend.[131]

12. Multiple studies conclude that victim satisfaction with OOCRs is comparable to, or better than, other prosecution options. An evidence review conducted by Neyroud (2017)[132] found an increase in victim satisfaction in cases resolved using OOCD (now referred to as OOCRs) rather than where offenders were prosecuted. One Randomised Control Trial by Slothower was found to significantly increase victim satisfaction (an increase of 43%).[133]

Barriers to the Use of OOCRs in England and Wales

13. As shown in Fig. 3.2, between 2015 and 2024 there was a 35% decrease in the number of OOCRs issued each year, from 328,000 (2015) to 212,000 (2024).[134] Within this trend, the use of some types of OOCRs has increased – namely community resolutions – whilst others have decreased.[135]

131 Source: The effect of drug and alcohol treatment on re-offending (Public Health England and MoJ, October 2017).

132 Peter Neyroud, Out of Court Disposals managed by the Police: a review of the evidence (NPCC, 2018).

133 Ibid. Peter Neyroud and Molly Slothower, 'Operation Turning Point: the first interim report' (Unpublished report, Institute of Criminology, 2012).

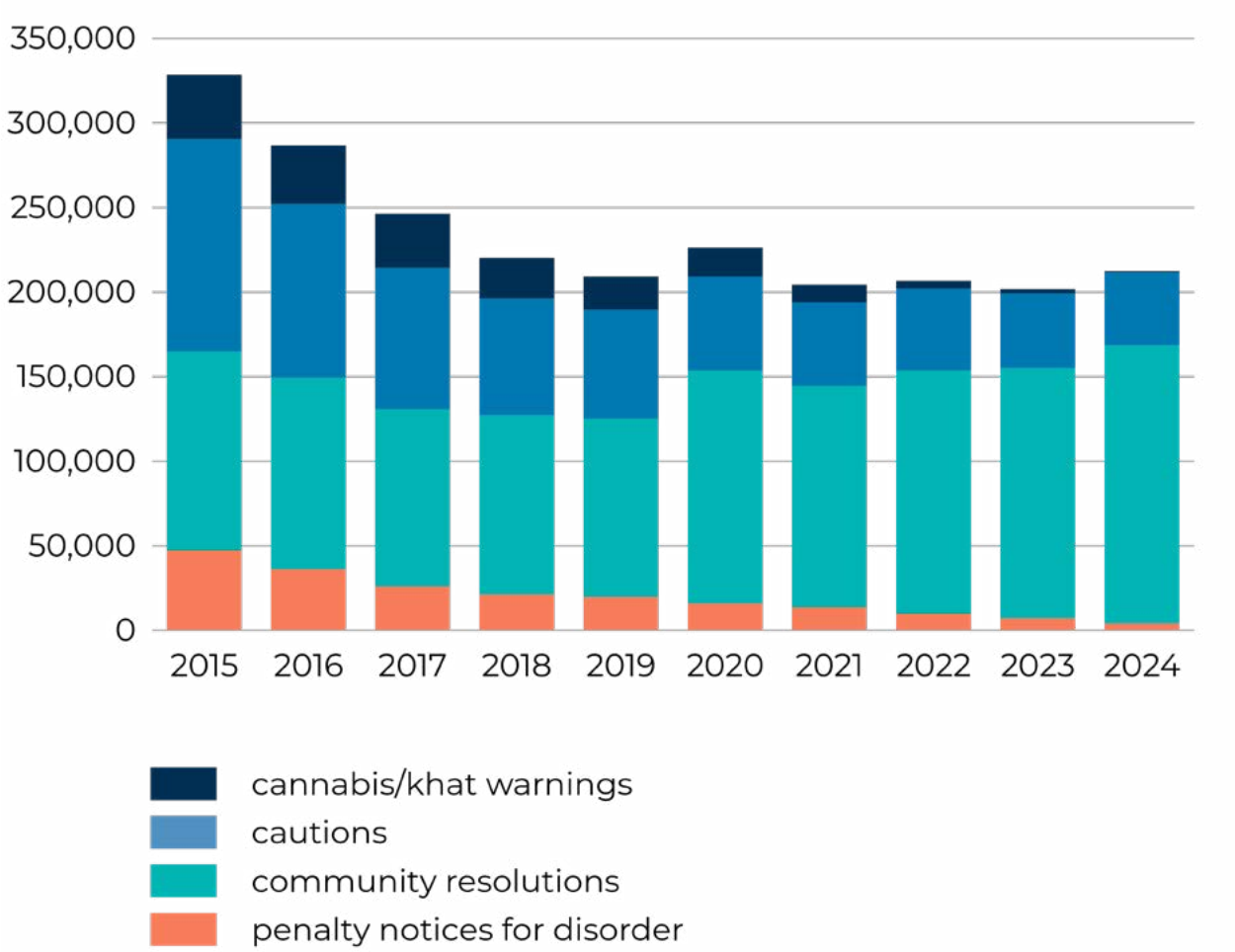
134 Source: Criminal Justice System statistics quarterly: December 2024 (MoJ, May 2025).

135 Simple cautions are available for most offences but are primarily intended for low-level, mainly first-time offending. Community resolutions can include elements of restorative justice, such as offender–victim conferencing or facilitating an apology to the victim.

Figure 3.2

Number of out of court resolutions issued per year

England and Wales, 2015-2024



Source: Criminal justice system statistics quarterly, December 2024

14. The reasons for the change are not fully clear. A likely long-term barrier to the use of OOCRs which has grown in significance is the administrative burden for police forces. While OOCRs are widely used by some forces, I have been told that others find the process too complicated and time-consuming.[136] I have also heard that there is a lack of awareness among some police officers about the available programmes. Adding to this, until recently, an OOCR was not recorded as a positive outcome for the record-keeping of police forces as compared with their decision to charge. These factors have likely

136 How can police forces make better use of diversion and out of court disposals (Transform Justice, July 2022).

been compounded in the last decade by the increasing severity and complexity in crime which is consuming police time and resources.[137] A likely impact of this is fewer resources being available for less serious crime and management of OOCRs.

15. A second possible factor is declining confidence in the quality of programmes and interventions. Financial constraints in government over the past decade have impacted adversely on community services. If the programmes which underpin OOCRs are unavailable or under-resourced, police officers will be less likely to consider the use of OOCRs.

16. A third factor is increasing divergence in the use of OOCRs in different parts of England and Wales. In my engagement with the NPCC, concerns were raised around the inconsistencies between forces. Similar concerns are raised in a Magistrates' Association report (December 2022).[138] There is no legal obligation for a police officer to offer an individual an OOCR, even when the crime type, the individual's offending history (if any) and, potentially, the views of the victim, might all favour this approach. Local police leadership can have an impact with, for example, the Surrey Police having a highly effective central team for OOCRs.[139] An important change in this context has been introduction of Police and Crime Commissioners (PCCs) in 2010 who, somewhat inevitably, take different approaches at local level on OOCRs.

17. Figure 3.3 ranks the top five and bottom five police force areas based on cautions per investigations closed.[140] A score of 0.03 represents three cautions for every 100 investigations closed. These figures show the extent of the variation.

137 See Chapter 2 (Problem Diagnosis) for more detail on changing crime trends.

138 Out of court disposals: Fit for purpose or in need of reform? (Magistrates Association, December 2022).

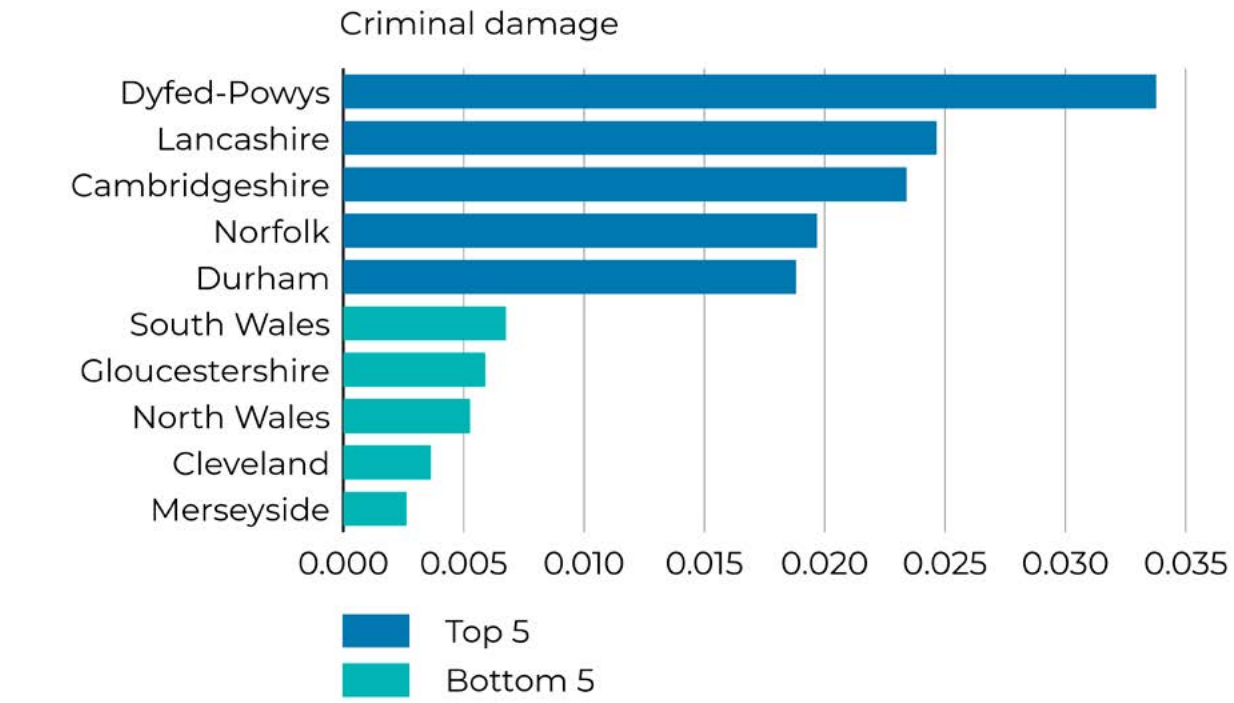
139 How can police forces make better use of diversion and out of court disposals (Transform Justice, July 2022).

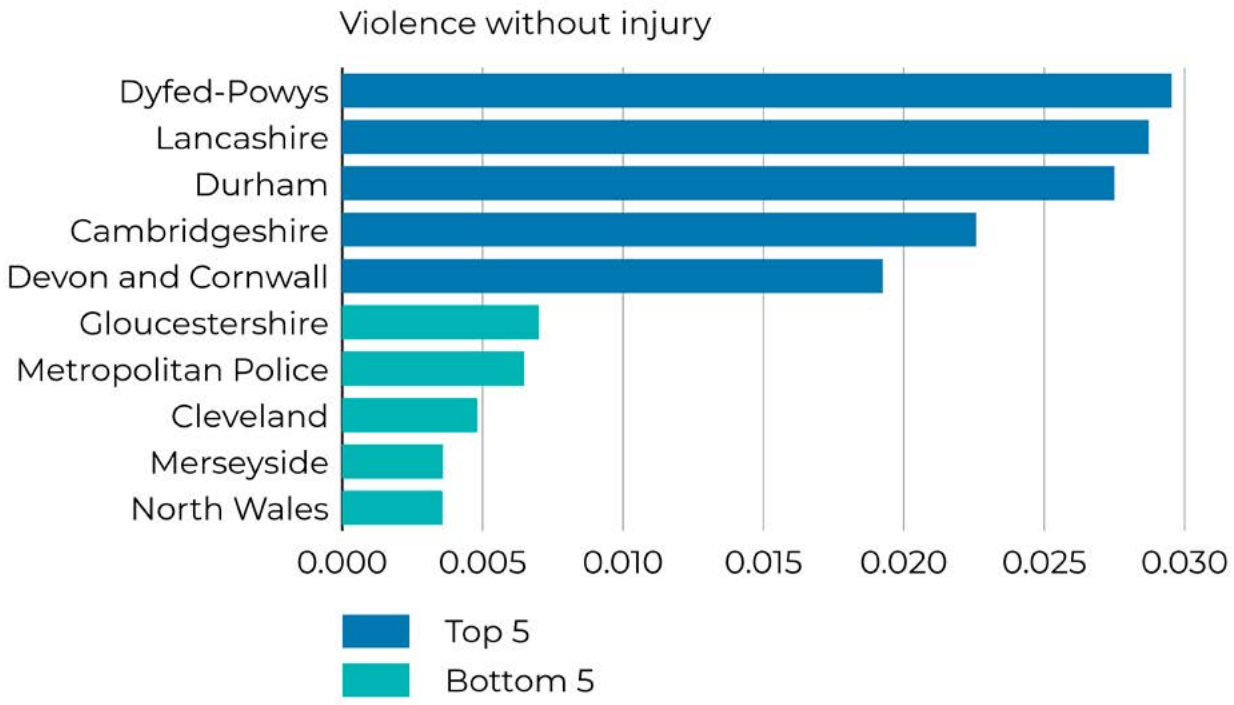
140 Source: Crime outcomes in England and Wales 2023 to 2024 (Home Office, July 2024–January 2025). Note: offence groups are chosen based on the highest use. Ranking is determined by caution rate; number of cautions divided by number of investigations closed. British Transport Police are excluded, and City of London apart from possessions of drugs has been removed due to low investigations closed counts.

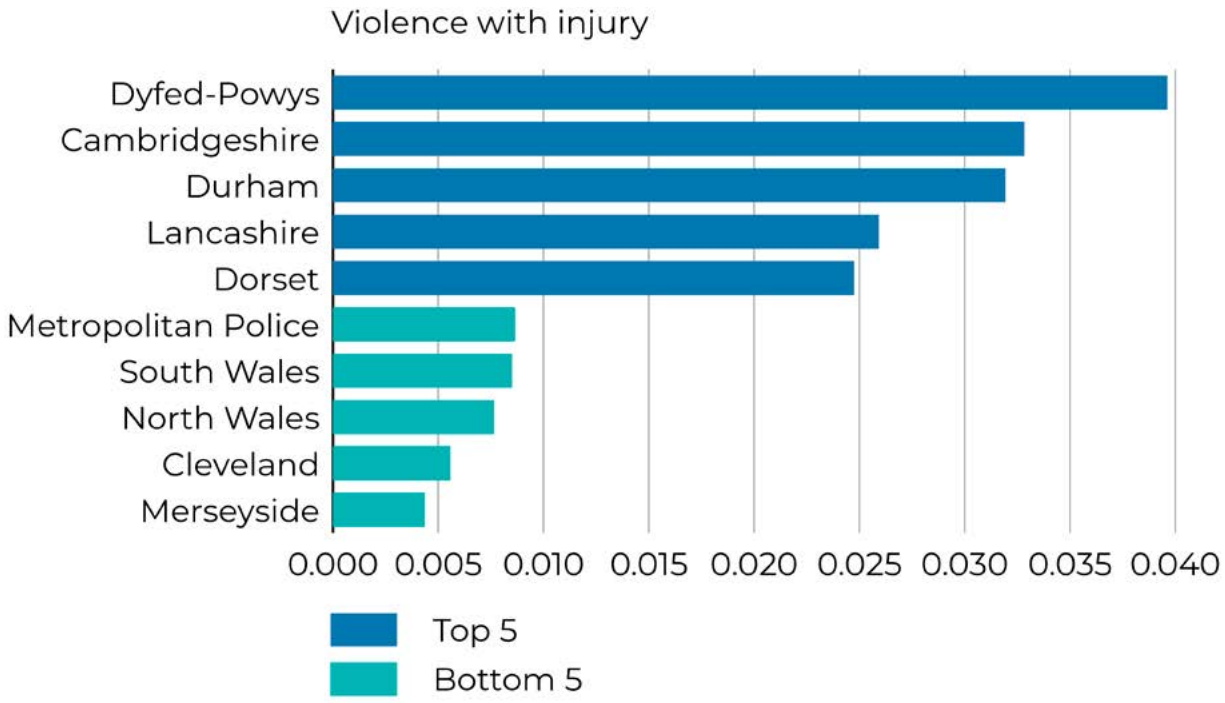
Figure 3.3

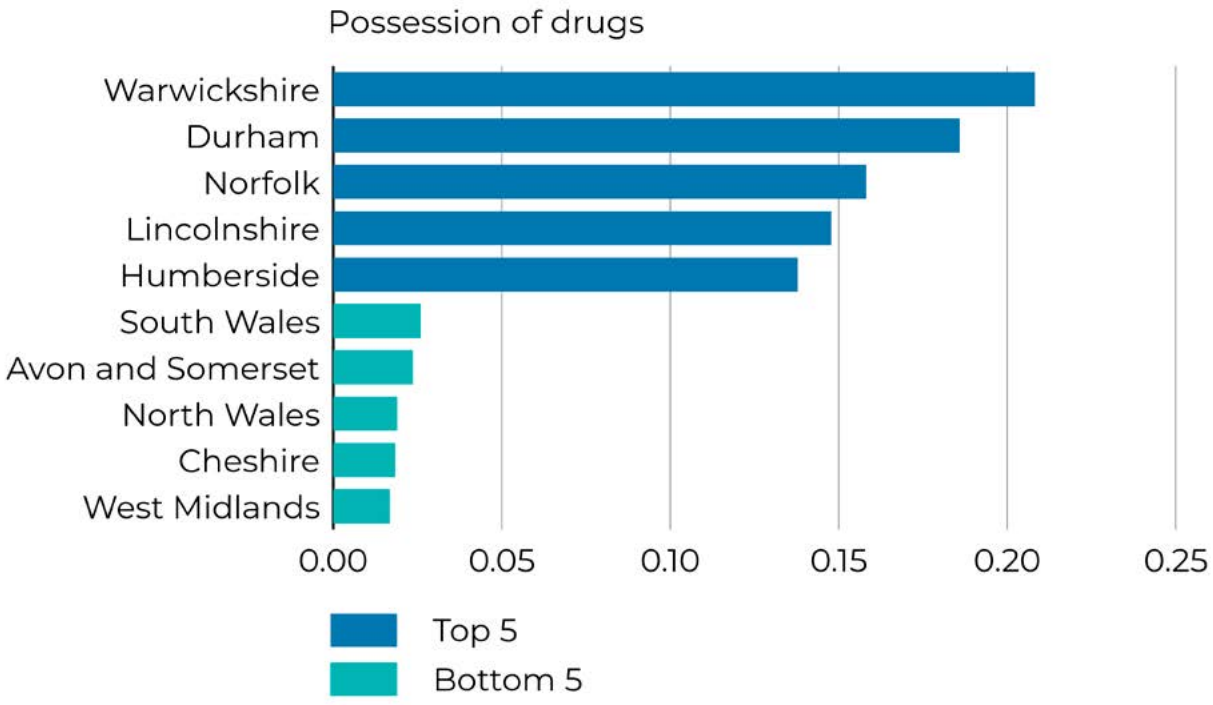
The top 5 and bottom 5 police forces ranked by caution rate (number of cautions per investigation closed) for selected offence types

England and Wales, 2023-2024









Source: Crime outcomes in England and Wales, 2023-2024 financial year

Recommendations

National Approach

18. I am aware that the NPCC is working to ensure all forces adopt a consistent approach and actively promote it operationally. I understand that the NPCC is working with the Home Office to review all digital and OOCR technology, aiming to identify gaps, secure any relevant funding and improve national oversight of resources. I endorse this work and urge swift implementation of national strategies and operational guidance.

Encouraging Offers of OOCRs in Appropriate Cases

19. Although for defence representatives the prospect of keeping their client out of court should be considered a first or primary priority, anecdotally I have also heard that there is a varied level of legal advice on OOCRs offered to suspects in custody. It may be that in some cases, if defence representatives lack familiarity with the process of OOCRs, or that if suspects do not immediately take up the offer of a legal adviser while in custody,[141] they may not engage subsequently with discussions about potential OOCRs. A report by Dr Vicky Kemp on Effective Police Station Legal Advice highlighted the challenges of available legal advice in police stations, particularly out of hours and obstacles with accessing legal advice.[142] Work has been undertaken by the Metropolitan Police to offer training to defence representatives in relation to youth defendants, designed to educate them about OOCRs. I would urge police forces and the NPCC to consider whether this could be extended to training on OOCRs for adult suspects and across all police forces.

20. As well as issues with training, the dwindling availability of criminal law solicitors and, more specifically, duty solicitors since 2017 is also a key challenge. Duty solicitors play a vital role in providing unbiased advice to defendants on whether to accept an OOCR, at the police station when arrested for an offence. There has been a reduction of duty solicitor numbers since 2017, with more than 1,400 having left the sector since then[143] and a concerning 'advice desert' in the criminal courts and at police stations.

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141 Dr Vicky Kemp, 'Digital legal rights: Exploring detainees' understanding of the right to a lawyer and potential barriers to accessing legal advice' [2020] Crim LR 129-147.

142 Dr Vicky Kemp, Effective Police Station Legal Advice, Country Report 2: England and Wales (University of Nottingham, School of Law, April 2018).

143 Criminal duty solicitors: a growing crisis (The Law Society, March 2025).

21. I provide further detail on recommended enhanced levels of criminal solicitor funding in the magistrates' court in Chapter 5 (The Magistrates' Court Process) and whole scale Litigators Graduated Fee Scheme reform in Chapter 7 (Maximising Early Engagement in the Crown Court). However, I note here and endorse the work the MoJ is doing to incentivise more direct legal representative engagement in both the courts and the police station, which could lead to the use of more OOCRs. In particular, I note that the MoJ's ongoing Criminal Legal Aid Solicitor's consultation is intended to improve the rates of duty solicitors. It also recommends a harmonisation of fees paid to providers and firms for the work done in the police station which it is suggested will make this type of work more attractive and support the sustainability of the profession.[144] I will explore duty solicitors and their remuneration in more detail in the Efficiency Review, which will be published later in 2025.

Scrutiny

22. With more widespread use of OOCRs within a national operational framework, there would also be great value in introducing a national scrutiny panel that would bring together experts to assess the effectiveness of a service, and to monitor, gather evidence, report and make recommendations based on its findings. By way of example, material could be put together by Local Criminal Justice Boards (LCJBs) and collated for the National Criminal Justice Board which should have the power to influence policies and decisions where necessary.

23. I acknowledge that some have concerns that OOCRs may be seen as providing the police with too much discretion. I believe that these concerns can be allayed by the introduction of a national strategy and operational framework for OOCR use, coupled with scrutiny panels to provide oversight, ensuring that OOCRs are used appropriately and effectively. That would build greater public trust and ensure that the resolutions were meeting their intended goals. The introduction of a scrutiny panel is vital to the success of wider use of OOCRs by helping to cement public trust.

24. As a further scrutiny safeguard, in cases which progress to the CPS, consideration should always be given to whether the terms of an OOCR are suitable by reference to the Public Interest Test in the Code for Crown Prosecutors.

144 Criminal Legal Aid: proposals for solicitor fee scheme reform (MoJ, May 2025).

25. In implementing an effective system for national scrutiny, the introduction of a single national police point of contact overseeing the scrutiny of OOCRs would help to streamline the process and ensure that a consistent, national approach is adopted and applied by all forces in England and Wales. I recommend that the NPCC consider introducing such a role.

26. Establishing a scrutiny panel, or some equivalent oversight body, would require coordination, training and resources. It would, however, be feasible to implement with proper planning and support. I am also of the view that ensuring better scrutiny of OOCRs would put an emphasis on the value of rehabilitative measures rather than imprisonment in these cases of low-level offending.

27. As with any reform, there are inevitably some risks. These include expenses attached to conducting such an audit, including staffing resources, data collection and analysis. I am also conscious that there is potential for short-term disruption to police and court operations during the audit process. The audit may also lead to a higher workload for staff unless there were additional recruitment, and this might affect other areas of their work.

28. In spite of the risks set out above, I am of the view that this is the right approach to ensure a standardised model and to hold areas accountable for the administration of OOCRs in order to identify patterns and to mitigate any disproportionate outcomes.

29. As I will set out further below, digital tools, including the use of AI, could aid the scrutiny process.

Recommendation 1: I recommend that 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.

Recommendation 2: I recommend that 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.

Retrospective Application

30. To have an immediate impact on reducing the open caseload and to free up court time, it would be valuable to apply OOCRs more effectively to cases already in the open caseload. What I envisage is that police forces together with the CPS should all 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 OOCR. The challenge would be in identifying which of the thousands of cases might be suitable. This would involve securing resources and commitment from the police and CPS to review the cases. If this were to operate fairly, it would involve a national commitment by all police forces to review all relevant offence types in the open caseload. If such a review were undertaken and acted upon, I am confident that courts would benefit immediately from the reduction in the caseload. If such a scheme or review of OOCRs were to be adopted, appropriate remuneration would need to be offered to the defence solicitor for the work undertaken.

31. As the data above illustrates in Fig. 3.2, there is a notable inconsistency in the application of OOCRs across police forces. While some forces are already utilising OOCRs for particular offences, others have yet to adopt this similar practice. Although this may be owing to the lack of available programmes within different police forces and its regions, I strongly encourage all forces to allocate resources towards reviewing their open caseloads. In doing so, they can identify cases where OOCRs may be suitable and ensure a more consistent approach to justice across the board.

Recommendation 3: I recommend that 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.

Digital Tools

32. I am aware that digital tools developed by the third sector are being piloted by multiple police forces which assist in the effective delivery of OOCRs.[145] Tools such as these could be used to foster a national approach to using OOCRs through eligibility screening, assessment tools and condition-setting which would enable officers to make quick, appropriate and defensible decisions.[146]

33. I recommend that the government undertakes an evaluation study in order to consider the use of digital tools across England and Wales that would help streamline the effective use of OOCRs.

34. Such an approach would lead to quicker resolutions for low-level offences by enabling police officers quickly and accurately to determine appropriate resolutions for low-level offences, thereby reducing the overall time from offence to resolution. I emphasise that its value would be in assisting police officers by identifying suitable cases and matching them to available programmes, but that the decision-making would remain that of the individual experienced officer. In combination, digital tools and police officers would produce appropriate outcomes for perpetrators through the use of OOCRs. These efficiency gains could allow more cases to be processed in less time, in turn reducing the pressure on the court system whilst still maintaining fair decision-making.

35. The use of digital tools brings other benefits. There would be improved governance through a digital solution that documents the decision-making process and facilitates supervisory checks or audits. This would enhance consistency and provide the public with greater assurance in the decisions made.

36. I acknowledge that this may be moderately complicated to put into operation in England and Wales because of the need for coordination and training of staff. However, it is worth consideration as a viable solution given the work which has so far been conducted and the positive signs this has revealed. I recognise also that implementing a streamlined OOCR process could involve initial costs for the government. However, it could have immediate benefits in reducing the overall police time and resource spent on the OOCR whilst allowing the police officer to focus on the actual decision-making.

145 How we support the Police - Make Time Count.

146 With thanks to Tim Godwin for his submission to this Review.

37. There are some other risks associated with this option that are worth noting. There is a potential risk that law enforcement could over-rely on such tools to identify OOCRs for expediency, potentially leading to their inappropriate use for more serious offences. They must therefore be designed with eligibility screening features which ensure that officers go through a standardised process.

Recommendation 4: I recommend that the 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.

Outcome 22

38. As I have already set out, until recently, OOCRs were not recorded as a positive case outcome by the police, and thus police officers did not get adequate recognition for their work in using them. I endorse the work being done by the Home Office and other agencies to remedy this, with the introduction of police 'Outcome 22', and encourage rollout at the earliest opportunity.

Recommendation 5: I endorse the decision of the Home Office to amend Outcome 22 (police counting tool for Out of Court Resolutions) so that Out of Court Resolutions are recognised in the same way as other outcomes.

Rehabilitation Programmes

39. As I have already set out, financial constraints and local variations have led to inconsistency amongst the number and quality of intervention programmes available across different regions.

40. Although less expensive than the court process, OOCRs still require a sustained investment in local healthcare and other agencies responsible for administering such programmes across the country. There is also a need for police officers and other professionals to undertake training to identify eligible individuals, understand the range of programmes and refer each individual to the appropriate programme. That training would incur a cost of its own.

41. Establishing and maintaining OOCR programmes requires coordination between police, mental health services, relevant central government and local authority agencies and substance misuse treatment providers. This can be complex but should be feasible with proper planning and collaboration between departments including HMPPS and the Department of Health and Social Care (DHSC).

42. I acknowledge the potential risk that any additional complexities in the process could lead to further inconsistencies in how police forces apply these programmes, resulting in unequal access and varied outcomes for individuals in different police force areas. I recommend that the programmes, and investment in them, be developed alongside a national framework to mitigate against this risk.

Recommendation 6: I recommend 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.

Criminal Records

43. One consequence of the greater use of OOCRs will be to highlight the difficulty that individuals face in complying with their duties of disclosure of a criminal record in future employment and other applications. Formal cautions will appear on the Police National Computer (PNC). Such cautions will remain on the person's record on the PNC until that person is 100 years old, although they will not always need to be disclosed on criminal record checks, subject to rehabilitation periods and filtering rules which are outlined in legislation. In seeking to maximise the use of cautions and OOCRs in appropriate cases, I am keen to see that the impact they have on individuals' lives is proportionate to the offending. I recommend reform of the Rehabilitation of Offenders Act 1974, the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 to address the periods of time before cautions and convictions for low-level offences become spent or protected effectively for all purposes and are therefore never disclosed on any criminal record check. The disclosure system needs simplifying so that offenders and employers have clarity about what can be expected to be disclosed. I would, of course, recognise the importance of retaining information in relation to certain offences (such as sexual assault) which might be relevant

to employment possibilities, and also of such information remaining on the PNC for intelligence purposes. The organisation UNLOCK has called for a fundamental review of the Rehabilitation of Offenders Act 1974 in recognition of the fact that the world has now radically changed since 1974. I would endorse such a review.[147]

Recommendation 7: I recommend that the government reviews the Rehabilitation of Offenders Act 1974 in order to simplify and clarify the system to encourage the recognition of rehabilitation.

OOCRs and Restorative Justice

44. I understand that many police forces are already focused on implementing restorative justice measures. Restorative justice focuses on repairing harm through facilitated dialogue (mediation) between the victim and offender, in comparison to OOCRs that provide alternatives to court proceedings for low-level offences. However, as the restorative justice process is not mandated in legislation, a uniform approach to their application is more challenging to achieve. I have heard anecdotally that restorative justice can be challenging to enforce as a condition, as it requires the full consent of both parties and may fail should the victim withdraw their consent. Nevertheless, I endorse the work that police forces are undertaking to implement restorative justice measures where appropriate.

Recommendation 8: I recommend implementing Out of Court Resolutions alongside restorative justice for low-tier offences such as some thefts, public order offences and drug misuse.

147 The complexity of the Rehabilitation of Offenders Act, 1974 (Unlock, 2024).

Deferred Prosecution Schemes

45. The NPCC is currently working with the CPS to develop a set of guiding principles for police force delivery of a Deferred Prosecution Scheme (DPS) – schemes that allow prosecution to be paused for individuals accused of minor offences, provided they agree to fulfil certain conditions within a set timeframe. There are currently 14 forces already operating a DPS, with one further force in the process of implementation. Whilst the NPCC can provide guiding principles, the decision on whether to implement a DPS lies with the chief officer of each force.

46. There are examples of good practice which demonstrate that deferred prosecutions translate into a reduced rate of reoffending for some groups of offenders. One Metropolitan Police force area found that one year after the referral for a deferred prosecution there was a significant reduction in new charges for young adults (18 to 21).[148]

47. A DPS does not require an admission of guilt, and I acknowledge that it is important to ensure that this does not discourage individuals, especially children, from taking responsibility for their actions. Of course, since DPSs require offenders to meet certain conditions, as is the case with OOCRs, monitoring compliance and ensuring that offenders fulfil their obligations is resource-intensive. However, I am of the view that these schemes should be supported and promoted. Guiding principles on DPSs, combined with amendments to the reporting processes (Outcome 22), will encourage more police forces to implement and use DPSs. Furthermore, an increase in the use of DPSs may lead to a reduction in court cases if the individual is successful in completing the conditions of the DPS. I am therefore keen to endorse the introduction of a legislative amendment to expand DPSs.

Recommendation 9: I recommend an expansion of the Deferred Prosecution Scheme should be introduced by a legislative amendment to the Criminal Justice Act 2003.

148 Katie Harber (principal researcher), Turning Point NW London: A replication randomised trial of police led diversion in NW London.

Eligible Offences Criteria

48. I understand that there is existing MoJ guidance on the eligibility for OOCRs in response to different types of offences.[149] Therefore, I will not recommend the creation of new guidance. Instead, I am highlighting the need for national guidance with minimal regional differences. This may be something I revisit the details of in the Efficiency Review.

49. Furthermore, I anticipate that there will need to be careful messaging about the OOCR schemes that are already in existence and those planned, their aims and benefits before a national scheme is applied. If not properly communicated, the public might perceive OOCRs as being too lenient, which could undermine trust in the justice system. Therefore, transparent communication and positive outcomes would be essential to maintain public confidence. There may also be some operational complexities attached to implementing any tool where significant changes to existing processes and training for law enforcement officials are required. As a result, there may be initial resistance or challenges in adapting to any new system.

50. Despite the risks, this strategy could help improve the justice system. By focusing on fairness and unbiased decision-making, this approach could lead to better outcomes and increased public confidence. The government should consider these factors and necessary safeguards to introduce successfully this recommendation.

Recommendation 10: I recommend that the Crown Prosecution Service and Ministry of Justice agree eligible offences and criteria for Out of Court Resolutions in consultation with the National Police Chiefs' Council.

Magistrates Stationed in Police Stations

51. I have considered the merits of placing magistrates in police stations in order to sentence individuals who plead guilty immediately and/or administer an OOCR, as part of the effort to focus the resources of the Crown Court on the most appropriate cases.

52. The shortage of legal advisers and the need for significant procedural and cultural change make this option impractical. There is likely to be

149 Code of Practice for Adult Conditional Cautions: Part 3 of the Criminal Justice Act 2003 (MoJ, January 2013).

a further concern about the fairness and thoroughness of immediate justice and transparency around administering OOCRs in a police station. The public perception around such a scheme is likely to be negative given magistrates have to be, and be seen to be, independent and impartial judges. I am therefore of the view that this would not be in line with the principles of proportionality, fairness and transparency, and should therefore not be pursued.

53. Whilst this could speed up the justice process by allowing for immediate oversight of OOCRs, allowing immediate sentencing, and ultimately reducing sitting days, it would incur significant costs to train magistrates to operate in a police station and to set up any additional infrastructure.

Conclusion

54. Keeping the principles set out in the Introduction, paragraph 10, at the forefront of my mind, I have no doubt that OOCRs and similar diversions have real value in diverting cases away from the criminal trial process, delivering justice faster for victims and offenders in less serious cases, whilst also enabling criminal justice partners to focus their resources on more serious cases. They can therefore play a vital role in addressing the wider crisis. As I have set out, wider use of OOCRs can also help to break the cycle of offending and draw on the leadership of local communities, helping to strengthen trust.

55. I recognise and endorse throughout the numerous existing efforts of those in national and local government and in the third sector, who are already leading efforts to improve and expand the use of OOCRs. It is vital that there is a coordinated vision to drive further work in this area.

56. I accept that in many cases, diversions will not be possible or appropriate. For those cases which find themselves entering the court system, further solutions will need to be found. However, taking action in this space in an essential starting point to a solution to the crisis in the criminal courts. I therefore urge law enforcement and government to focus efforts on this important and sometimes neglected method of administering justice.

Chapter 4

Investigation and Charging Decisions

Chapter 4 – Investigation and Charging Decisions

Introduction

1. Understanding early decision-making processes involving the police and CPS, and their impact on the volume of cases entering the system, is crucial to addressing the outstanding open caseload. As I said in 2015, 'getting it right first time' is the absolute priority for any efficiency improvements.[150] Getting it right from the outset means, in this context, that those who are charged are charged with the offence(s) most proportionate to their alleged conduct. It means that those who are innocent do not risk being wrongly convicted or brought into the criminal justice system. And it means that the correct decision is made with regard to release pending investigation, bail or remand, both before and after the charge is made.

2. Too often in recent years, policy decisions made in relation to investigation and charge have paid insufficient attention to the consequences for the courts and broader pressures on the system as I set out in Chapter 2 (Problem Diagnosis). In this Review, and in the Efficiency Review, I am looking at the system more comprehensively. When investigations for a case take a long time to reach a charging decision, that time already causes uncertainty for defendants, victims and witnesses. Following the decision to charge, there is then a further period of time as the case awaits trial and becomes part of the growing open caseload. It is for that reason that I chose to review the allocations process in Chapter 4 of my 2015 Review.

3. In this chapter, I will consider the procedural challenges encountered when making charging decisions, as well as those related to bail and remand. I will outline the process and incorporate the perspectives and insights of system users who engaged with me throughout this Review. I have considered options to improve the procedural practices in these areas to enhance fairness, efficiency and timeliness within the system to help reduce the open caseload.

150 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015), p. 9.

4. To improve the pre-charge process, I recommend that RUI should be abandoned and replaced with a rigorous application of PACE 1984,[151] relating to time limits on pre-charge bail. This will impact the open caseload by reducing the delay in cases reaching the point of trial. On charging, I reiterate one of my recommendations from 2015 and focus my new recommendations on those which require legislative change, but changes far beyond this are needed so I will return to these issues in the Efficiency Review.[152]

5. Finally, I make proposals related to the threshold established by section 12 of the Police Reform Act 2002 or the guidance there under – that investigations by Independent Office for Police Conduct (IOPC) when related to bail decisions made by officers should be amended in relation to risk assessments for bail from an 'indication' of behaviour 'in a manner which would justify disciplinary proceedings' to 'reasonable suspicion' of such behaviour. I will start by explaining the current system.

The Current System

6. The current process for a defendant entering the court system is illustrated in Annex E (Courts Process Flowcharts). In this section I am focused on the current system covering pre-charge, charging decision and post-charge bail and remand decisions.

Pre-Charge

7. Where a suspect has been arrested, that individual can be released from police custody whilst their alleged criminal activity is investigated. There are several mechanisms the police can use to manage people who have been arrested on suspicion of committing an offence but when they need more time to investigate before formally charging the suspect or reaching a decision as to charge. These are:

    a. RUI: this arises when a suspect is released from police custody without charge, but (i) their case has not been closed as one requiring 'no further action', and (ii) the police do not wish to release on bail with the procedures which that entails.

151 As amended by s. 63 of the Policing and Crime Act (PCA) 2017 and Sch. 4 to the Police, Crime, Sentencing and Courts Act 2022.

152 Review of Efficiency in Criminal Proceedings (2015), p. 21.

The process is not specified in law, so no time limits apply to the RUI period.[153] Where a suspect is released under investigation, there is no set of pre-conditions imposed, as there would be for someone to be released on bail, so these are cases in which the police conclude that there is no real risk of further offending, or of failing to return to the police station if required to do so.[154]

b. Pre-charge bail, also known as 'unconditional bail': an alternative to custody allowing officers and staff to continue the investigation without the suspect being detained. The difference between unconditional bail and RUI is that unconditional bail provides a specific date and time at which the suspect must surrender to custody and return to the police station (although this may be extended).

c. Pre-charge bail with conditions: this can only be imposed where it is necessary to take precautions seeking to prevent the suspect from failing to surrender to custody; committing an offence whilst on bail; interfering with witnesses; or necessary for the suspect's own protection. When deciding on conditions, the investigator has a duty to engage with the victim as to whether conditions should be imposed and, if so, what those should be.[155]

8. For RUI, it is expected that investigations be conducted expeditiously, but there is no statutory time limit. The investigation log should provide an expected finish date for RUI. Once a suspect has been released under investigation, there should be a supervisory review of the investigation at least every 30 days until it is complete. In reality, I have heard of suspects being subject to RUI for much longer than this – in some cases, for one year or more.[156] A survey (2019) on RUI by the London Criminal Courts Solicitors' Association found that of 109 lawyers surveyed, 69 responded that they have RUI cases which have

153 Prior to the amendments to s. 47 of the Police and Criminal Evidence Act 1984 (by s. 63 of the Policing and Crime Act 2017), release was on bail (which might be unconditional save only to return to the police station on a specified date. After s. 63, however, because of the onerous time conditions then prescribed, a non-statutory mechanism of release under investigation was devised whilst the police continued to investigate. This mechanism had no time constraint and there is no statutory system of review.

154 Pre-charge bail: Statutory guidance consultation (College of Policing, 2022), para. 5.3.

155 Pre-charge bail statutory guidance (Home Office, June 2023), sections 9, 10 and 13.

156 Anthea Hucklesby, Pre-charge bail and Release Under Investigation: an examination of their use, effectiveness and impact on suspects' and victims' rights and confidence in the criminal justice system (University of Birmingham, September 2024), p. 46; Pre-charge bail and released under investigation Striking a balance (HM Crown Prosecution Inspectorate, December 2020), p. 1.

lasted between 18 months and two years.[157] However, specific data is difficult to identify because police forces measure and report on bail and RUI in different ways.

9. The PCA 2017 as amended sets out specific time limits in respect to pre-charge bail. The custody officer can bail a suspect for up to three months. Any extension beyond this, up to six months, must be with the approval of an inspector. Any extension up to nine months must have the approval of a superintendent. Any extension beyond ten months is for the magistrates' court to determine.[158] The magistrates' court can grant extensions up to 12, 18 or 24 months (for exceptionally complex cases only).

Charge

10. The CPS and police have shared responsibility for making charging decisions. When a crime is reported to the police, an investigation commences to gather evidence to understand the facts of the case. All the evidence is documented, and witness statements are considered. The investigation includes gathering evidence such as CCTV footage, forensic evidence such as fingerprints, medical records and digital evidence such as text messages, as well as interviewing witnesses and the defendant. The specific evidence sought depends on the details of the case in question.

11. The police can decide that the evidence does not justify any further action being taken, in which case the investigation is brought to an end with no further action (NFA). The police decision to charge only arises in circumstances where there is enough evidence to justify charging the suspect, rather than provide them with written notice of NFA.[159] The police have the power to make charging decisions without input from the CPS in limited circumstances. The police can charge a suspect for any summary only offence, retail theft, and either way offences where it is anticipated that a guilty plea will be made and the case will be heard by the magistrates' court, though there are some exceptions.[160] In all such cases, the police apply the CPS Code for Crown Prosecutors on charging which I discuss below. If, in these

157 Top Findings for Released Under Investigation (RUI) Survey May 2019 (London Criminal Courts Solicitors Association, 2019), p. 1.

158 Section 47ZF of the Policing and Crime Act 2017 (as amended).

159 Director's Guidance on Charging, Sixth edition (CPS, December 2020), para. 4.30.

160 Ibid.

circumstances, the police decide a prosecution is appropriate, they will charge the suspect and send the case to the CPS.[161] The police may, alternatively, decide to deal with the offence by way of diversion (see Chapter 3, Diversions) and without reference to a prosecutor, which means that the offender is not formally charged or prosecuted as an alternative means to resolve the situation.

12. In all other cases where there is no decision to divert the case and the police have not charged an offence, a CPS prosecutor will make the charging decision based on the DG6 Director's Guidance on Charging. DG6 is a step-by-step guide for police officers and prosecutors, guiding them logically through the charging process. The CPS makes charging decisions in all cases not allocated to the police, which can include, but is not limited to, a case requiring consent to prosecute from the Director of Public Prosecutions (DPP) or a Law Officer; a case involving a death; a connection to terrorist activity; a case of harassment or stalking; an offence of violent disorder or affray; causing grievous bodily harm, wounding, or actual bodily harm; offences committed under the Sexual Offences Act by or upon a person under 18; and an offence under the Licensing Act 2003.[162] It provides extensive detail for prosecutors and police on their specific responsibilities, in addition to the material and information required for a charging decision.[163] From October to December 2024, the CPS charged the suspect in 80% of cases that were sent to it.[164]

13. There is a two-stage charging test that the CPS carries out in every case to determine whether or not the suspect should be charged. This is set out in the Code for Crown Prosecutors ('the Code') – a public document which seeks to ensure consistency and transparency in decision-making. The full Code test has two stages:

    a. Evidential Stage: determines if there is enough credible and reliable evidence for a realistic prospect of conviction. Prosecutors assess all evidence, including any that may undermine the case or support the defence. If the case does not pass the first stage, then it cannot move to the next stage and the suspect will not be prosecuted.

161 A guide for victims - What happens when a case comes to the CPS (CPS).
162 Director's Guidance on Charging, Sixth edition (2020).
163 Ibid.
164 Source: CPS data summary Quarter 3 2024-2025 (CPS, April 2025).

b. Public Interest Stage: considers if prosecuting is in the public interest, weighing factors like the seriousness of the offence, harm to the victim and the suspect's age and maturity.

14. If both stages are satisfied, the suspect is charged. If not, the case may be returned to the police for further investigation. In making charging decisions, prosecutors assess the evidential material and other information provided by the police in accordance with the Code. When assessing the evidence and deciding whether there is sufficient evidence to prosecute in accordance with the Code, prosecutors (or the police in police-charged cases) must consider whether there is any other material or information which might affect this decision, by either strengthening the prosecution case or by undermining it.[165]

15. For the sake of completeness, I note that in certain offences of sensitivity Parliament has stipulated that the decision on charging can only be made personally by the DPP; where relevant, by the Director of the SFO; or by the Attorney General. The same code test is applied. Finally, I note that there is a common law power for individuals, including companies, to bring private prosecutions. They are not subject to the same review by the CPS, although the CPS can step in to take over any private prosecution to discontinue the prosecution where that is appropriate. I mention private prosecutions in Chapter 5 (The Magistrates' Court Process).

Post-Charge

16. Once charged with a crime, the police can place the defendant on police bail or remand them to custody. On the charge sheet, the decision whether to release the suspect on bail or remand them to custody is formally recorded. This is legislated for in PACE 1984. The granting of bail in these circumstances is different to bail being granted by the magistrates' court which is governed by the Bail Act 1976 (as heavily amended), which I come to in paragraph 19. When the police bail a suspect, that means that they are released from custody and must await their first hearing in the magistrates' court. There may be certain conditions attached to the bail such as living at a particular address (but not at an approved accommodation), not contacting specific individuals or surrender of their passport. Failure to comply with these conditions may result in arrest and being remanded into custody.

165 Director's Guidance on Charging, Sixth edition (2020).

17. As an alternative to bail, the police can decide that the suspect should be remanded into custody. The suspect would be held in police custody until they appear at the next available magistrates' court, which is when the judge or a magistrate reviews the bail status, and the defence can apply for bail.[166] The magistrates' court can decide to release the suspect on court bail or remand them to custody, usually to a 'reception prison'.

18. Bail and remand decisions are made in the magistrates' court by either a bench of magistrates or a District Judge (Magistrates' courts) who is a professional salaried judge. At the first hearing in the magistrates' court, a decision is made either to remand the defendant or to release them on bail in circumstances where another court hearing is needed; where a guilty plea has been entered but the court requires more information before a sentencing decision can be made; or if the case has been sent to the Crown Court for trial or sentencing. The court hears representations from the defence representative applying for bail, and from the CPS prosecutor if bail is opposed. It is then up to the court to make the final decision regarding bailing or remanding the defendant in custody. Generally, if a defendant has been placed on post-charge bail by the police, it is common practice for the bail status to remain unchanged. However, the magistrates' court does still have the power to remand a defendant into custody.

19. The decisions on bail or remand in the courts are governed by the Bail Act 1976 (as amended). The Act sets out the statutory rules to inform judicial decision-making on whether to grant bail or to remand in custody and provides a presumption in favour of bail for defendants awaiting trial, thereby recognising that a person should only be deprived of their liberty where it is necessary for public safety or the interests of justice. There are exceptions to the presumption of bail. In addition to cases in which there have been breaches of bail, these include a conclusion by the court that the defendant may not attend their court hearing; may commit a crime whilst on bail; may interfere with witnesses or otherwise obstruct justice; or for their own protection.

20. When it is alleged that a defendant has committed an offence whilst on bail for a different offence, their original bail may be withdrawn. Some commentators believe that the law should be amended to

166 In relation to certain offences such as murder, any decision as to bail has to be made by a Crown Court Judge.

provide greater clarity as to when bail may still be granted where the suspect had breached bail by committing an offence.[167] It will also be immediately apparent that the absence of a fixed address (or the impact of not being able to return to a home address) will impact on the bail/custody decision: the lack of approved accommodation for those on bail without a fixed address is an issue to which I will return in the Efficiency Review. Suffice to say that it remains a fundamental tenet of English law (reflected also in Article 5 of the European Convention on Human Rights), which I both endorse and underline, that remand into custody should be used as a last resort: no one should be deprived of their liberty unless it is necessary.[168]

Challenges

21. There are several problems which are impacting adversely on the time it takes for a case to progress from the point of arrest or first engagement, and the first hearing. I will now outline these challenges which I believe should be addressed through legislative change, to improve the experience of individuals who are entering the criminal justice system and improve case progression. In addition, I reiterate one of my recommendations from 2015 in relation to proportionate and appropriately timely charging decisions, which as I understand continue to pose challenge. I acknowledge that I am not able to address fully all of the issues I will outline at this stage, however I summarise the challenges here to provide context, and I hope to consider them in more detail in the Efficiency Review.

Pre-Charge

22. As I have explained, following the PCA 2017, a practice has developed whereby suspects can be, and frequently are, released under investigation whilst the crime is investigated by the police. Pre-charge bail, like post-charge bail, can have conditions attached whereas RUI is less formal. The PCA 2017 introduced a presumption against the use of pre-charge bail unless it is necessary and proportionate, to address concerns that suspects were on pre-charge bail for too long. It also introduced the requirement for judicial oversight of pre-charge bail in cases where it extends beyond three months. The RUI process should

167 With thanks to Professor Anthea Hucklesby from the University of Birmingham for her submission to this Review.

168 The detailed provisions relating to bail and the possible conditions that may be imposed are set out in the Bail Act 1976 (as amended).

withstand similar scrutiny to bail, with due regard to proportionality and necessity, but instead has been used as an alternative to bail without (and possibly to avoid) the statutory protections then introduced.

23. Since the introduction of RUI, the number of suspects released under investigation appears to be significant. In the year ending March 2024, there were approximately 116,000 individuals whose RUI had concluded within that financial year (note that this is data from only 39 out of a possible 43 territorial police force areas in England and Wales).[169] Despite the lack of robust historical data, I believe the true numbers to be far higher as not all police forces report this data and I am aware that in many cases RUI extends beyond the financial year. Concerns have been raised by organisations such as the Law Society and JUSTICE as to whether the extent of RUI usage is appropriate.[170] Where an individual is released under investigation, there is not the same pressure of time on the police and that can lead to investigations of RUI cases taking longer and lacking the same scrutiny that is afforded to bail cases. The result is that this leaves suspects and victims in a longer period of limbo. In the financial year ending 31 March 2024, 71% of individuals whose RUI concluded had been on RUI for three months or more where duration is known.[171] I acknowledge the safeguard that investigations in RUI cases should have a documented supervisory review at least every 30 days. I will now explore these challenges further but will return to this in more detail in the Efficiency Review.

Amend Policing and Crime Act 2017

24. I am concerned about the provisions of the PCA 2017 which resulted in the mechanism that is RUI. Although guidance has been issued which covers RUI, as I have said, it is not an option provided by legislation, and there is no statutory provision or guidance as to how it should operate in practice; it has fallen to individual police forces to establish formal mechanisms for its use.[172] Concerns have been raised that police have been too readily using RUI instead of pre-charge bail, and this is of particular concern in serious cases such as domestic abuse,

169 Source: s. 2 of Police custody and pre-charge bail, year ending March 2024 (Home Office, February 2025).

170 Release under investigation and pre-charge bail (The Law Society, June 2021); Police Powers and Bail Government Consultation (JUSTICE, May 2020).

171 Source: s. 2 of Police custody and pre-charge bail, year ending March 2024 (February 2025).

172 Pre-charge bail statutory guidance (accessible) (Home Office, updated June 2023), para. 11.13.

sexual offences and offences against children. The Law Society has lobbied the government on the issue of whether RUI is leading to a lack of timeliness in criminal investigations processes.[173] RUI may also lead solicitors to avoid challenging delay and inactivity by the police in relation to an investigation for fear of provoking a negative police response in the form of a charge.

25. In particular, I am concerned that the option of RUI could also be leading to a perverse incentive for the police to use RUI instead of bail, even where bail would be more appropriate, because the police seek to bypass the administrative issues that arise with the time limits that would apply in bail along with the additional burden that places on police work. As the police are unable to impose any conditions and there are no time limits on the use of RUI, concerns have also been raised about safety for victims and the prospect of leaving suspects with uncertainty.[174] This is in clear contrast to pre-charge bail where there are specific time limits and conditions to be applied in order to protect vulnerable victims, witnesses and even the suspect themselves.

26. That said, the argument put before me by the NPCC is that bail extension applications in the magistrates' court are being delayed to the extent that the first application case is unable to be heard before the second application is due. I propose these applications should be heard as soon as possible but that the position of the police is protected by requiring the application for an extension to be made and served on the suspect by the specified return date which then itself extends the bail conditions until the application is heard whether or not that is before the return date specified in the notice. I consider bail in the context of the magistrates' court further in Chapter 5 (The Magistrates' Court Process).

27. On the other hand, in 2019, a joint inspection of six police forces by HM Crown Prosecution Service Inspectorate (HMCPSI) and HM Inspectorate of Constabulary and Fire & Rescue (HMICFRS) found that investigations of suspects on RUI took longer and were subject to less scrutiny than those released on bail.[175] Suspects then face an extended period of uncertainty where their lives are on hold awaiting

173 Release under investigation and pre-charge bail (2021).

174 Lauren Nickolls, Police powers: pre-charge bail and release under investigation (House of Commons Library, January 2023).

175 Pre-charge bail and released under investigation: striking a balance (HMCPSI and HMICFRS, December 2020), p. 1.

the outcome of whether they are charged, often with few updates from the police. This is in complete contrast to bail where an end date should be provided, and if extended is subject to the scrutiny and permission to extend via the courts.

28. I am also concerned about the impact on victims of the extensive use of RUI. The same inspection found that in many cases (62 of the 140 they examined), RUI had been used when bail with conditions would have been more appropriate to ensure better protection for the victim. Some of these 62 cases were domestic abuse, sexual offences and offences against children where there are identifiable risks to victims' safety.[176] Beyond the impact on individual victims in particular cases, more generally, indefinite periods of RUI can also mean that victims lose confidence in the process and withdraw from the investigation.

29. I recommend that use of RUI be terminated. It may be that it would be sufficient for the College of Policing to make it clear that RUI is no longer an appropriate mechanism to deal with those in police custody and that the only mechanism for releasing a suspect from the police station while an investigation continues should be bail, whether unconditional or subject to conditions. Alternatively, or if that is not considered sufficient, I recommend the introduction of a legislative mechanism to achieve the same result, which would involve the introduction of time limits and approvals for those released under investigation, identical to those in place for pre-charge bail (thereby rendering their use as being of no advantage). This could be done by amending the PCA 2017 to include provisions relating to RUI, in line with the bail provisions in section 63 of that Act. The time limit provisions on bail allow for pre-charge bail to be extended up to nine months by a superintendent and any further extensions are required from the courts. The magistrates' court has the flexibility to grant extensions in bail cases up to 12, 18 or 24 months (for exceptionally complex cases only). It should have the same powers for RUI.

176 Ibid, p. 11.

30. Although an important step in the criminal process, I recognise that bail can be a bureaucratic and time-consuming process which results in additional work for the police, which has been outlined to me by a letter from Chief Constable Sacha Hatchett of Lancashire Constabulary.[177] Abolishing RUI, and therefore more time spent working on bail, will likely bring a higher administrative burden to the police, but this is justified by the increased timeliness I expect of cases moving through the system.

31. If RUI is to remain, introducing the same (or similar) time limits for RUI would also ensure that the police are required to justify extended periods of RUI, including before a court of law in some instances, and could result in more timely case progression. This would be a more proportionate and fair response for suspects as less time would be spent in a position of not knowing the outcome of the police action.[178] Victims' experiences of the justice system should improve, as the period of uncertainty they face whilst awaiting a charging decision should reduce, with a clear end date in sight, and they would have more hope that the case would have a thoroughly investigated resolution. As currently stands, cases are in the system for a significant time from the point at which the offence has been committed before they reach the courts, so reducing this at the early stages would mean improved timeliness of case progression through the criminal justice system. It could also lead to a more proportionate use of RUI compared to bail, where the same time limits exist, but that bail allows for protections of victims and suspects, where necessary.

177 With thanks to Sacha Hatchett for her contribution to this Review.

178 Jill Peay and Elaine Player, '"Not a stain on your character?": The finality of acquittals and the search for just outcomes' [2021] Crim LR 921–944. This article discusses the emotional costs to defendants who are acquitted. Footnote 25 outlines further research in the context of bail.

Recommendation 11: I recommend that the College of Policing make 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.

Charge

32. The current charging landscape is complex, and its application lacks consistency. This can lead to inappropriate and inconsistent charging decisions that undermine the efficiency and fairness of the criminal justice system. These errors may involve overcharging, where a more serious offence is pursued despite limited evidence, or undercharging, where the gravity of the offence is not adequately reflected in the charge.[179] Such decisions often lead to cases being ineffective or 'cracking' at court, delayed or unnecessarily escalated to the Crown Court when they could have been dealt with more proportionately in the magistrates' court. More could be done to ensure the appropriate charges are selected first time. I acknowledge that there will always be cases where that does not occur, but ideally any errors in the charging decision should be identified and addressed at the earliest opportunity.

33. While not always foreseeable, it is not uncommon for issues to arise when a case reaches court, resulting in cracked or ineffective trials. This can occur, for example, when the CPS decides to discontinue the case due to insufficient evidence or other prosecutorial considerations. Reasons for this include that the defendant pleads guilty to an alternative (lesser) charge that was previously rejected by the prosecution, or the defendant initiates resolution by offering a plea to a lesser charge. In some cases, it may also be that the prosecution

179 One example might be that the theft of a mobile device on the street is charged as robbery (indictable only and subject to up to life imprisonment), but it should be charged as theft from the person (an either way offence, subject to a maximum of seven years in custody).

acknowledges the insufficiency of evidence on the charge at the hearing, although it is necessary to recognise that this may not be a result of overcharging, but rather a consequence of the unwillingness of victims or critical witnesses to give evidence. These cases have substantial negative impacts on defendants and victims in the case, and obvious knock-on consequences for listing and court resources more widely.

34. Too many cases are in the Crown Court unnecessarily: I have heard that one cause may be overcharging. It has been reported by various academics who have shared their research with the Review that there may be instances of overcharging causing an unnecessary burden to the Crown Court.[180] In highlighting the possibility that in some cases there is overcharging by bringing weak cases to court, I am not suggesting that the CPS or police should not rigorously pursue the prosecution of cases. It is, however, important to emphasise that by bringing insufficiently evidenced cases to court, prosecutors can risk undermining the credibility of the justice system. If the presentation of weak evidence results in acquittals, this too risks undermining confidence in the justice system among the public, as some I have engaged with suggest. Overcharging can also result in significant financial costs and emotional distress which have a considerable impact throughout the lifecycle of a criminal case.

35. I understand the police and the CPS are making efforts to improve the quality of their charging decisions and I acknowledge that charging decisions may be more difficult than they once were. There is a greater range of offences, many of which are overlapping. The correct charge selection can also be rendered more difficult by an inadequate appreciation of the true gravity of the incident being investigated. The nature of crime(s) being committed is becoming more complex and therefore the landscape of the criminal justice system is constantly evolving. To meet these challenges, procedures must be applied correctly but also adapted where needed, in that as cases continue to be investigated, they may be found to be more complex or serious than originally charged, and therefore the initial charging decision should be revisited. This should ensure that appropriate and fair

180 With thanks to Dr Steven Cammis, Birmingham Law School at University of Birmingham; Professor Brian Doherty, School of Social, Political and Global Studies at Keele University; Dr Joanna Gilmore, York Law School at University of York; and Dr Graeme Hayes, School of Law and Social Sciences at Aston University for their submissions to this Review.

decisions are made that reflect the nature of the offence and its potential impact on those involved before it reaches the court. Further, it would ensure that the decision-making process for charging meets the expectations of defendants, victims and witnesses for a fair and prompt hearing of allegations by an independent tribunal in a forum proportionate to the appropriately charged offences.

36. In 2021, the Public Accounts Committee highlighted how inappropriate charging decisions and poor case progression were contributing to the growing open caseload in the Crown Court. The overcharging often escalated cases that could have been resolved more quickly and efficiently earlier in the process, i.e. at the magistrates' court.[181] I note that this report was written in the context of and related to the courts during the COVID-19 pandemic, so may be somewhat skewed by the context. Misjudgements for whatever reason, however, not only waste valuable court resources, but also affect victims, witnesses and defendants, potentially eroding public trust in the criminal justice process.

37. Concerns about overcharging have been raised for several years, and I acknowledge the work reflected in the HMCPSI reports and the steps taken by the CPS in response. These findings are significant and will be revisited in detail as part of the Efficiency Review, where I intend to assess the extent of progress and identify further opportunities for improvement.

38. The CPS has collaborated extensively with the police to enhance communication between investigators and prosecutors in relation to action plans on appropriate charging. This collaboration aims to streamline the decision-making process and ensure that cases are handled efficiently and effectively. Specific actions have been taken to improve the approach to action plans, including the implementation of real-time case conversations that support case strategy and facilitate immediate feedback.[182] These conversations allow for dynamic adjustments to be made as new information arises, ensuring that the case strategy remains robust and responsive. Alongside other efforts, I applaud their approach which underscores the commitment to maintaining high standards and fostering a culture of excellence within both the police and the CPS.

181 Reducing the backlog in criminal courts: Forty-Third Report of Session 2021–22 (House of Commons, Committee of Public Accounts, March 2022).

182 Domestic Abuse Joint Justice Plan: National Police Chiefs' Council and Crown Prosecution Service (NPCC and CPS, November 2024).

39. Through engagement for this Review, I have become aware of the mixed police reaction to the issuing of DG6. This introduced a new Criminal Procedure and Investigations Act (CPIA) Code of Practice to provide schedules of unused material (and rebuttable presumption material) at an earlier stage in proceedings than had previously been the case. I am aware, however, that both the police and the CPS are jointly reviewing opportunities to rationalise DG6 to make it easier for police officers to understand and digest the requirements for a file submission to the CPS. I endorse the recommendation for the government to conduct an urgent review of the guidance and practices concerning the submission of case files by the police to the CPS, with the specific objective of enhancing time efficiency and productivity. Again, I shall explore the details for reform options further in the Efficiency Review.

40. I urge that more be done to reflect on the current state of the system when making charging decisions. Improving the charging decisions made by the police and the CPS can significantly enhance participation in the justice system. Better charging decisions ensure that defendants face charges that are both appropriate and backed by sufficient evidence. This ensures that defendants can participate effectively in their defence, knowing that the charges are fair and justified. This would also balance the rights of defendants, victims and witnesses by ensuring charges are proportionate and supported by sufficient evidence. To my earlier point, as crimes become more complex, improving the decision-making process helps maintain the integrity and effectiveness of the criminal justice system, ensuring timely and fair trials for all involved. This would enhance the confidence victims and witnesses have, ensuring that crimes are charged appropriately and, if found guilty, convictions label the offender appropriate to the offence(s) committed.

41. Unlike many other recommendations, this does not require new legislation or amendments to procedural rules or directions. Instead, I am simply advocating a thorough review of existing rules and regulations to ensure their proper implementation and adherence. While I am unable to quantify the precise impact this measure may have, I am confident that, when implemented in conjunction with my other recommended changes, it has the potential to enhance significantly the handling of cases. I will return to this and a more thorough consideration of police and the CPS processes in the Efficiency Review.

Recommendation 12: I recommend that the 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 decision-making and improvement of their decision-making process.

Post-Charge

42. In this section, I will explore whether the decisions made in respect to post-charge bail and remand are appropriate, fair and proportionate and the extent to which they may be influenced by the risk-averse decision-making of the police. It is necessary for some individuals awaiting trial to be remanded in custody. That is essential for the protection of victims and witnesses, and even wider society. But decisions about when this significant step is to be applied must be proportionate and principled, and not because of a risk-averse culture that fails to pay due attention to the facts of the case which should influence police decisions. I have not considered recommendations regarding remand in detail for the Policy Review beyond the context set out in this chapter and Chapter 5 (The Magistrates' Court Process), but it is something I may return to for the Efficiency Review. I also look forward with great interest to Dame Anne Owers' Independent Review of Prison Capacity (Prison Capacity Review), which I understand will discuss remand and its impact on the courts, which the government should consider alongside my recommendations here.[183]

43. Once charged, the police must decide whether to grant bail or to remand the defendant to custody. If they are remanded to custody, the defendant will appear before the magistrates' court as soon as possible. The court will then decide whether to remand in custody or grant bail (known as court bail which I discuss further in Chapter 5 (The Magistrates' Court Process). I make mention of this here as the decision-making by the police has consequent impacts; the magistrates will tend to take a steer from the police on the basis that at that early stage in proceedings the police know more both about the case and the defendant than anyone else. Any risk aversion by the police can affect decisions later down the line, so I recommend changes to the IOPC threshold for investigation of misconduct in an attempt to reduce this risk aversion.

183 Review into handling of prison capacity: terms of reference (MoJ, February 2025).

Amend threshold for IOPC investigation

44. A central theme of this chapter is that, in an ideal world, the police should be 'getting it [decisions on bail] right the first time,' along with all others involved in that decision-making process. Getting it right from the start would mean that only those who need to be, are remanded to custody, and those who meet the threshold for bail are bailed appropriately: this would align with legislative provisions that bail be 'necessary and proportionate'. However, it is understandable that this does not always happen and that may be because of circumstances outside the control of the police, including the decision-making of others in the bail and remand process. Decisions on court bail, for instance, are also guided by submissions from the CPS based on recommendations from the police, and the magistrates' court would make final decisions in those cases post-charge, where necessary.

45. One pressure that may influence sound decision-making on bail is, however, unique to the police. This is the fact that a police officer can face the prospect of an IOPC investigation into their decision if the suspect to whom the officer has granted bail subsequently goes on to offend while on bail. This risk of investigation may be affecting police decision-making processes when considering whether bail should be granted.

46. The IOPC oversees the police complaints system in England and Wales. Section 12 of the Police Reform Act 2002 sets the threshold for investigation into a police officer's conduct (in all cases, not simply those relating to bail decisions) as being an 'indication that a member of a police force … behaved in a manner which would justify the bringing of disciplinary proceedings'.[184] That sets a relatively low threshold as the High Court has acknowledged.[185] One consequence of that low test is that where an officer makes a decision to grant bail and the suspect then commits another offence whilst on bail, the threshold could be met and that officer would be investigated by the professional standards body and where necessary referred to the IOPC. This could be via referral from the respective police force or because of a complaint by the victim or witness affected (in these instances, any officer who has come into contact with that victim or witness is subject to an investigation). Whilst multiple parties in the criminal justice system bear some responsibility for decisions

184 Section 12(2)(b) of the Police Reform Act 2002.

185 *R (Yavuz) v The Chief Constable of the West Yorkshire Police* [2016], CO/4070/2015, QB (Administrative Court), para. 46, n. 34.

on bail, each making comparable decisions (completion of risk assessments, following due procedure for bail, and so on), the police are unique in being subject to the oversight of the IOPC. The previous government commissioned an independent review of the systems of accountability for police officers (including the thresholds for the IOPC) (Accountability Review) and though the independent review commissioned in 2023 was not completed before the General Election, the current government decided to continue this work.

47. Following the Accountability Review, the Crime and Policing Bill 2025 seeks to align the threshold for CPS referrals to the IOPC to mirror those used by police when referring cases involving members of the public and subsequent charging decisions.[186] This would allow for a more consistent approach for the police and for the public when a criminal offence is alleged to have been committed by a police officer, namely whether there are 'reasonable grounds to believe the person has committed a criminal offence'. The position of the Home Office is that this would prevent the system being overwhelmed with cases, allowing greater focus and swifter resolution of those that are referred and improving the rights of victims.[187] This is a commendable reform and one which I endorse. I recommend further alignment, and that a similar amendment is made to align the thresholds used to warrant IOPC investigations into police decisions made in respect of bail (where there is no allegation that the officer committed a criminal offence by the bail decision, but rather that the decision by the police officer might amount to misconduct).

48. The starting point is that the police are responsible for making decisions on bail that are 'necessary and proportionate', in line with the factors set out in section 50A of PACE 1984.[188] An evaluation of these factors is performed by the custody officer (usually a sergeant responsible for the operation of a police custody suite), who then makes the subsequent decision on bail or remand and advises the magistrates' court on this decision where necessary. There may be occasions where, in hindsight, a decision on bail was incorrect and the suspect goes on to commit other crimes or even poses a threat of or actual violence towards a victim or witness involved in the original allegation against them.

186 Crime and Policing Bill: Policing accountability and integrity factsheet (Home Office and MoJ, February 2025).

187 Ibid.

188 Section 50A of the Police and Criminal Evidence Act 1984.

49. Some suggest that, in many ways, such a prospect leads the police to be more risk averse when it comes to bail and remand decisions as a result of which a greater number of defendants could be unnecessarily remanded to custody. This is on the basis that an objection to bail can never be criticised (in the sense that in custody no offence will be committed) whereas an absence of objection which leads to bail could give rise to criticism if the bailed defendant later commits another offence.[189] This, therefore, can contribute to the challenges posed by the remand population on both the open caseload and the prison capacity crisis.

50. It is argued that because of the threshold for an investigation by the IOPC is set at a low level, this threshold has, albeit inadvertently, become a factor driving more risk-averse decisions on bail. That therefore brings into question whether these decisions remain 'necessary and proportionate' in line with the conditions set out in PACE 1984. I am not calling into question the thorough work the police undertake when making and advising on bail decisions. However, whilst any misconduct investigation is in progress it places an officer's career on hold whilst they await the outcome. As the Metropolitan Police Commissioner explained in his submission to the Review, 'the length of time, as well as the impact of these investigations, are detrimental to those officers and staff affected'. With such a prospect of investigation and the unfathomable impact on an officer's life should an investigation be pursued, it would not be surprising if this is driving the police to be more risk averse on bail (subconsciously or not), particularly in cases involving more serious offences. It is a prospect that may not be felt or appreciated by those elsewhere in the criminal justice system and is potentially having unintended consequences on the open caseload, prison population and, indeed, the ability to 'get things right the first time'.

189 This was a concern specifically identified by a number of those responding on behalf of the police. The IOPC does not accept that the guidance leads to police officers taking an overly cautious approach.

51. I note the suggestion made by the Metropolitan Police Service that in the context of bail decisions, the threshold for initiating such IOPC investigations be changed from where there is 'an indication of behaviour' by the officer, to a more proportionate threshold such as where there is 'reasonable suspicion'. I note also that the IOPC suggests that the current threshold set at 'an indication' is important to allow for the most serious derelictions of duty to be referred to it and investigated, and that police officers may perceive any change of wording to 'reasonable suspicion' as a material difference when this is not the case. The IOPC made clear to me that in its experience the professional standards departments of police forces and the IOPC would rarely, if ever, investigate cases criminally or under misconduct notice where a risk assessment on bail had failed, unless a police officer had fallen far below the standards that could be expected. That might be, for example, where an officer knowingly made a false representation of facts, took into account wholly irrelevant material, or failed to conduct any risk assessment at all.

52. Whether it is appropriate to change the statutory test may well go beyond the terms of this Review and, depending on other considerations, I accept that it may be necessary for the statutory test to remain in place. In that event, however, I recommend that the statutory guidance under which the IOPC operates, and its own internal guidance, should make explicit the manner in which that test will be applied in practice. In the context of bail, it would only trigger an investigation where the officer's failing was egregious in the way that I have described.

53. I do not seek to change the decision-making process of the IOPC to pursue disciplinary proceedings against an officer. As an independent body, it is for the IPOC to determine whether a case warrants further investigation, and changes to its process regardless have no bearing on this Review. However, the clarification of the way in which the IOPC applies that threshold test will do much to reassure police officers and to reduce the risk of unnecessarily risk-averse decisions being made.[190]

Recommendation 13: I accept that the statutory threshold for 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.

Conclusion

54. A key concern relating to this point of the criminal justice process is the length of time it takes for a criminal case to progress through the early procedural stages. As I have outlined, uncertainty for defendants and victims is amplified when there is no clear end in sight in the form of a court hearing. If appropriate decisions are made from the beginning, based on a fair appraisal of sufficient evidence, delay can be reduced and a case can more effectively proceed to court. To encourage this, I recommend that:

190 The concern expressed by the Metropolitan Police Commissioner went beyond bail decisions into the threshold for IOPC investigations generally. As such, it extends beyond the Terms of Reference of this Review. There does, however, seem to be considerable force to the argument that, leaving the statutory test in place, although there may be an indication of criminal conduct or behaviour which may justify the bringing of disciplinary proceedings and so merits investigation, that investigation should not itself trigger adverse consequences to the officer unless and until there is reasonable suspicion of the commission of a criminal offence or of conduct justifying disciplinary proceedings. As with the Commissioner, I also see real advantage in the guidance making it clear that the officer's activities should not be affected until reasonable suspicion is established, and if what is being alleged is inherently unlikely or is contradicted by evidence, such as CCTV or documentary evidence, there is unlikely to be an indication that an officer may have committed a criminal offence or behaved in a manner that would justify the bringing of disciplinary proceedings. This would deal with his point that there are many cases where officers have spent a long time (sometimes years) under intense scrutiny, often in the public spotlight, only for the investigation ultimately to exonerate them.

a. RUI should be time-limited in legislation to ensure suspects are charged or subject to no further action in a more timely manner;

b. the police and the CPS must follow established guidance to guarantee accurate and fair charging decisions via clearer communication channels; and

c. the IOPC should clarify the application of the existing threshold for investigation to ensure that misperceptions about the test are not a factor that is making police officers more risk averse when making decisions on bail.

55. Of course, timely access to justice is a key factor; however, these recommendations also consider my other principles. It is essential that decisions regarding RUI, charging and bail and remand are made proportionately to the severity of the crime, the impact on the public and justice. To support this, it is essential that prosecution guidance is being followed consistently. This ensures that charging decisions are made fairly and appropriately, and this should extend to RUI and questions relating to bail.

56. I would add that the concern that the police will be risk averse in relation to bail also applies when it comes to objections to bail in the magistrates' court, when the CPS and the court will rely heavily on the way in which the police articulate objections to bail when making remand decisions. I shall return to this issue in Chapter 5 (The Magistrates' Court Process). Suffice to say that appropriate decisions must be made at all these stages, thereby ensuring that both victims and defendants do not spend unnecessary time waiting in the investigation stage. These recommendations should also lead to defendants being able to participate more effectively in their defence (which is more difficult if on remand) while victims and witnesses can remain engaged in the criminal justice process to support the prosecution.

57. I would like to reiterate that this chapter has identified several areas that warrant closer examination. These issues are not only significant in their own right but also indicative of broader systemic inefficiencies. As such, they will be subject to thorough consideration as part of the Efficiency Review, where I will explore opportunities for reform and improvement across the criminal justice process.

Chapter 5

The Magistrates' Court Process

Chapter 5 – The Magistrates' Court Process

Introduction

1. More than 90% percent of criminal cases in England and Wales are dealt with in the magistrates' court.[191] Public confidence in the justice it delivers is therefore critical. Despite its vital role in managing the majority of criminal cases, from initial hearings to final adjudications, perception and public confidence around the magistrates' court is often varied. This imbalance has contributed to widespread views that often fail to reflect the importance and complexities of its work.

2. In this chapter, I make recommendations to help overcome the perception of some that lesser quality of justice is being delivered in the magistrates' court. I do not accept that this perception corresponds with reality, and I reposition the magistrates' court as an institution that is capable of being efficient, accessible and of delivering justice swiftly, fairly and at scale. I will first explain how the magistrates' court operates in practice, the types of offences it deals with, the applicable legal aid scheme, allocation decisions and the unique strengths it brings to the justice system. I will also address the issue of remand. As the open caseload continues to grow, defendants are facing longer waits for their trials, which likely results in extended periods spent on remand. Throughout, I have been influenced in my view for the future role of the magistrates' court by its ability to deal with more complex caseloads following the recent parliamentary recognition of its capacity to deal with more serious cases up to a maximum custodial sentence length of 12 months.

191 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025). Note that this contains a double counting of cases in the magistrates' court that were sent straight to the Crown Court. Magistrates' disposals in 2024 comprised 19% for trial (either way and indictable only offences), 44% summary motoring, 34% summary non-motoring and 4% breaches. The figure includes all low-level offending, including the Single Justice Procedure which the magistrates deal with. Excluding summary motoring (i.e. removing from the magistrates' court count but keeping in the total), the magistrates' court deals with 52% of all criminal cases. About Magistrates' courts (Courts and Tribunals Judiciary).

3. I also explore recommendations on the right to elect to be tried in the Crown Court and the reclassification of certain either way offences to summary only offences. This examination is essential following the change in magistrates' sentencing powers to 12 months. I consider which offences might be reclassified and whether the right to elect to be tried in the Crown Court might be restricted for either way offences carrying a maximum sentence of two years and other offences where appropriate. In light of these recommendations, I then consider current perceptions, and outcomes in the magistrates' court – in particular, how these might impact on the effectiveness of, and be affected by, a greater and potentially more serious caseload being retained in the magistrates' court. I have also outlined the assumptions underpinning the data modelling to provide clarity and context for the analysis.

4. In this chapter, I have also proposed that all hearings and proceedings in the magistrates' court should be audio recorded, ensuring a reliable record of proceedings that can be easily reviewed. Equally, I consider ways to improve consistency; the diversity of the magistracy; public confidence in the courts' decision-making; and how to enhance the training, tools and policy environment necessary to reflect its elevated status. I then turn to magistrates' court legal aid fees, bearing in mind the impact that more serious cases being retained in the magistrates' court might have on the workload of legal practitioners.

5. In summary, this chapter marks the importance of the magistrates' court; its recently enhanced role in the criminal justice system; the challenges it faces; and the opportunities for reform that could unlock a more balanced, modern and effective criminal justice system. I have not addressed areas currently under the remit of other independent reviews, such as the Independent Sentencing Review. Nevertheless, I strongly encourage the government to consider the cumulative impact and interdependencies of my recommendations alongside those of other ongoing reviews.

The Current System

6. Decisions in a magistrates' court are made by a District Judge (Magistrates' courts) (DJMC), who is a salaried judicial office holder, a fee-paid equivalent known as a Deputy District Judge (Magistrates' courts), or, for most purposes, either two or three magistrates (also known as Justices of the Peace), who are not legally trained but receive special training and are supported by dedicated legally qualified advisers (employees of HMCTS). Unlike juries, magistrates are volunteers who sit a minimum of 13 full days (or 26 half days) for a minimum of five years up to the age of 75, bringing to the system their public-spirited commitment and procedural knowledge and experience.[192]

7. The court hears charges involving a vast array of offences, with almost all crimes theoretically eligible to be tried in that court. In terms of its trial work, the magistrates' court plays a crucial role in the criminal justice system, dealing with a wide spectrum of cases ranging from minor infractions to more serious offences. The sheer volume and diversity of cases necessitate a robust and efficient judicial process. The magistrates' court is able to pass sentences of up to 12 months' imprisonment, a fine, community sentence or a series of other ancillary orders, including specific road traffic penalties and disqualifications.[193]

8. In addition, the magistrates' court has an important case management duty to ensure that cases use only such court resources as are necessary, including Crown Court time. In this regard, the court's vital functions begin well before any trial. The first is in relation to bail and remand, which I examined in Chapter 4 (Investigation and Charging Decisions) at the investigation stage, and will be covered later in this chapter. When an individual is charged with a crime and makes their initial appearance before the magistrates' court, the court will determine whether to adjourn or release the individual on bail, with or without conditions, or to remand them in custody pending their trial.[194]

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192 HMCTS (n.d.), Become a magistrate: Who can be a magistrate.

193 Save in relation to homicide and grave crimes (on which see: R ('H', 'A', and 'O') v The Southampton Youth Court [2004] EWHC 2912 (Admin)). The Youth Court retains jurisdiction for all offenders under 18 and can sentence up to two years in a Young Offender Institution. The role of the magistracy in dealing with youth trials cannot be underestimated. Magistrates sitting in the Youth Court provide an appropriate and proportionate forum for such cases.

194 The role of adult custodial remand in the criminal justice system: Seventh Report of Session 2022-23 (Justice Select Committee, January 2023).

Decisions about whether to remand an individual in custody or release them on bail are largely governed by the Bail Act 1976. This legislation outlines the criteria and conditions under which bail may be granted or denied, emphasising the need to balance the rights of the accused with the protection of the public and the integrity of the judicial process.[195] The magistrates' court plays a crucial role in this process, as it is the first point of contact with the criminal courts for defendants and the court is responsible for making initial bail decisions in all cases, except murder.

9. As outlined in Chapter 2 (Problem Diagnosis), the number of defendants on remand has increased significantly in recent years, with the length of time prisoners spend on remand before trial is also growing. The majority of defendants on remand are alleged to have committed an indicatable only and/or either way offence. In 2024, around 17,000 defendants were remanded in custody, compared to around 12,000 in 2020 (an approximate 42% increase).[196] In the same time period, there was an increase in the volume of indictable only and either way receipts (around 61,000 vs 73,000, an approximate 20% increase).[197] Although this may go some way to explaining the higher numbers of defendants on remand, the scale of the increase in the remand population is much higher than the increase in indictable only and either way offences. The increasing volume of cases, and often more serious ones, entering the courts is driven in part by more police activity and a greater focus on knife crime and violence against women and girls. However, I consider that the increase in numbers on remand is also a function of the open caseload and the greater number of receipts of cases into the court system, both of which result in longer times spent awaiting a Crown Court trial.

10. Cases involving defendants on remand must meet the custody time limits – there is a statutory limit on the time that a defendant can be kept on remand before trial.[198] That results in remand cases being

195 Bail Act 1976.

196 Source: Offender management statistics quarterly: October to December 2024 (MoJ and HMPPS, April 2025).

197 Source: Criminal court statistics quarterly (2025).

198 Custody time limits (CTLs) are in place to ensure unconvicted defendants are not held in pre-trial custody for an excessive time period. A CTL applies to each individual charge and not the offender. The length of CTL depends on the type of offence, for example for summary only offences the CTL is 56 days, and for indictable only offences it is 182 days. Further information can be found here: Custody Time Limits | The Crown Prosecution Service.

prioritised in the Crown Court. As more people are placed on remand, there are more cases that have to be prioritised in this way, and this results in cases where the defendant is on bail being delayed ever longer. All this together is resulting in a growing remand population and subsequent pressures on the prison estate and PECS. This underlines the importance of bail and remand decision-making in the magistrates' court.

11. A second function that the magistrates' court performs before trial is in relation to 'allocation'. All offences are divided, by statute, into three distinct categories. The classification determines the pathway of the journey for cases through the criminal courts, with the magistrates' court playing an important role in allocating many of these cases to the most appropriate level of court based on the seriousness of the offence type:

    a. Summary only offences: these cases are the least serious, are only heard in the magistrates' court and usually have a maximum sentence of six months' imprisonment or a fine. Examples include most motoring offences, common assault, criminal damage under £5,000, assaults on police officers (distinct from assaults on emergency workers), some public order offences, certain benefits frauds, drink driving and breaches of health and safety and licensing regulations. Prosecutions for almost all summary only offences must be commenced within six months of the offence being committed.

    b. Either way offences: these cases can be tried in either the magistrates' court or the Crown Court and require what is known as an allocation decision. All such cases start in the magistrates' court. First, the magistrates will decide whether a case warrants a Crown Court hearing, applying the Sentencing Council guideline and having regard, in particular, to the likely sentence for the allegations, and bearing in mind that the maximum sentence in the magistrates' court for either way offences is now 12 months. The magistrates will also have regard to the fact that if they retain a case for trial in the magistrates' court, and there is a conviction, they have the power to 'commit' the case to the Crown Court for sentence should they then reach the conclusion that their 12-month limit is inadequate to reflect the gravity of the offence. The Crown Court will be able to sentence such an offender up to whatever maximum has been set for that offence by Parliament. If at the allocation stage the magistrates decide that the case is suitable

for trial in the magistrates' court, then the defendant can exercise their right to elect to be tried in the Crown Court. In that way, the defendant can override the magistrates' determination and require their case to be heard in the Crown Court with a jury (see Chapter 8, Crown Court Structure). In the Crown Court, the maximum penalty will be that stipulated by Parliament for the particular offence. This allocation decision can impact significantly on the proceedings, the time taken, the cost, the sentence imposed and, crucially for the purposes of this Review, the delay before the trial takes place. The pool of either way offences includes more serious offences such as offences against the person, possession and supply of drugs, fraud, theft, sexual assault, most public order offences and burglary.

c. Indictable only offences: these cases can only be tried in the Crown Court but start with a formal appearance in the magistrates' court which makes the first decision about whether a defendant should be granted bail (except in murder). Examples of indictable only offences include murder, manslaughter, conspiracies, grave assaults resulting in injury, serious sexual offences, robbery, aggravated burglary and firearms offences.

12. It is also worth mentioning that the magistrates' court deals with cases in the Single Justice Procedure (SJP), with SJP cases making up 68% of its disposed cases in Q4 2024.[199] This is a legal process in England and Wales where a single magistrate, supported by a legally qualified adviser (a member of HMCTS staff) tries adult, summary-only, non-imprisonable offences on paper, without a formal court hearing. The SJP is used to deal with minor offences, such as road traffic offences like speeding and driving without insurance; failure to pay TV licence fees; and similar offences that do not attract a prison sentence. It is considered an important mechanism for ensuring that such low-level cases can be heard swiftly, and if the magistrate concludes that an offence was committed a fine can be imposed.

13. I note that a wider MoJ review of the scope of SJP powers is ongoing, with a public consultation on private prosecutors earlier this year (which closed in May 2025).[200] Until that review is concluded, I do not intend to make any recommendations on this topic.

199 Source: Criminal court statistics quarterly (2025). An overview of the SJP can be found here: Inside HMCTS: Explaining the Single Justice Procedure in the magistrates' court.

200 Oversight and regulation of private prosecutors in the criminal justice system (MoJ, March 2025).

However, if more evidence comes to light, it may be that I consider it during the Efficiency Review.

14. Prosecutions for offences in the magistrates' court are typically undertaken by the CPS or another government prosecuting agency (e.g. the SFO), but the power for a private prosecution also exists. As noted above, the MoJ is conducting a review on private prosecutors which it aims to complete by the end of summer 2025**.** In the course of this Review, I have heard of the potential for private prosecutions to be misused and impose a significant burden in the Crown Court. I would endorse the need for a review of the conditions under which a private prosecution can be brought, by which individuals and subject to what authorisation. Pending the MoJ review, it is not appropriate to say more at this stage although I may return to the topic in the Efficiency Review.

Challenges

Magistrates' Court

15. The pace at which cases are resolved in the magistrates' court compared to the Crown Court is striking. Most magistrates' court cases are completed on the same day as their first listing, and overall timeliness in this jurisdiction has remained relatively stable over time (as shown in Fig. 5.1). In contrast, the Crown Court has seen a significant increase in the average time taken to resolve cases, particularly those that proceed to jury trial.[201]

16. This difference is shaped by a range of factors beyond court efficiency. Magistrates' courts tend to handle less complex cases and see a higher proportion of guilty pleas, both of which contribute to shorter durations. The more complex nature of Crown Court cases, along with a higher likelihood of contested trials, naturally leads to longer timelines. This should not be interpreted as a fully causal relationship, however, it also demonstrates that the magistrates' court is reasonably efficient in its disposal of justice and is not adversely impacted by factors affecting timeliness in the Crown Court.

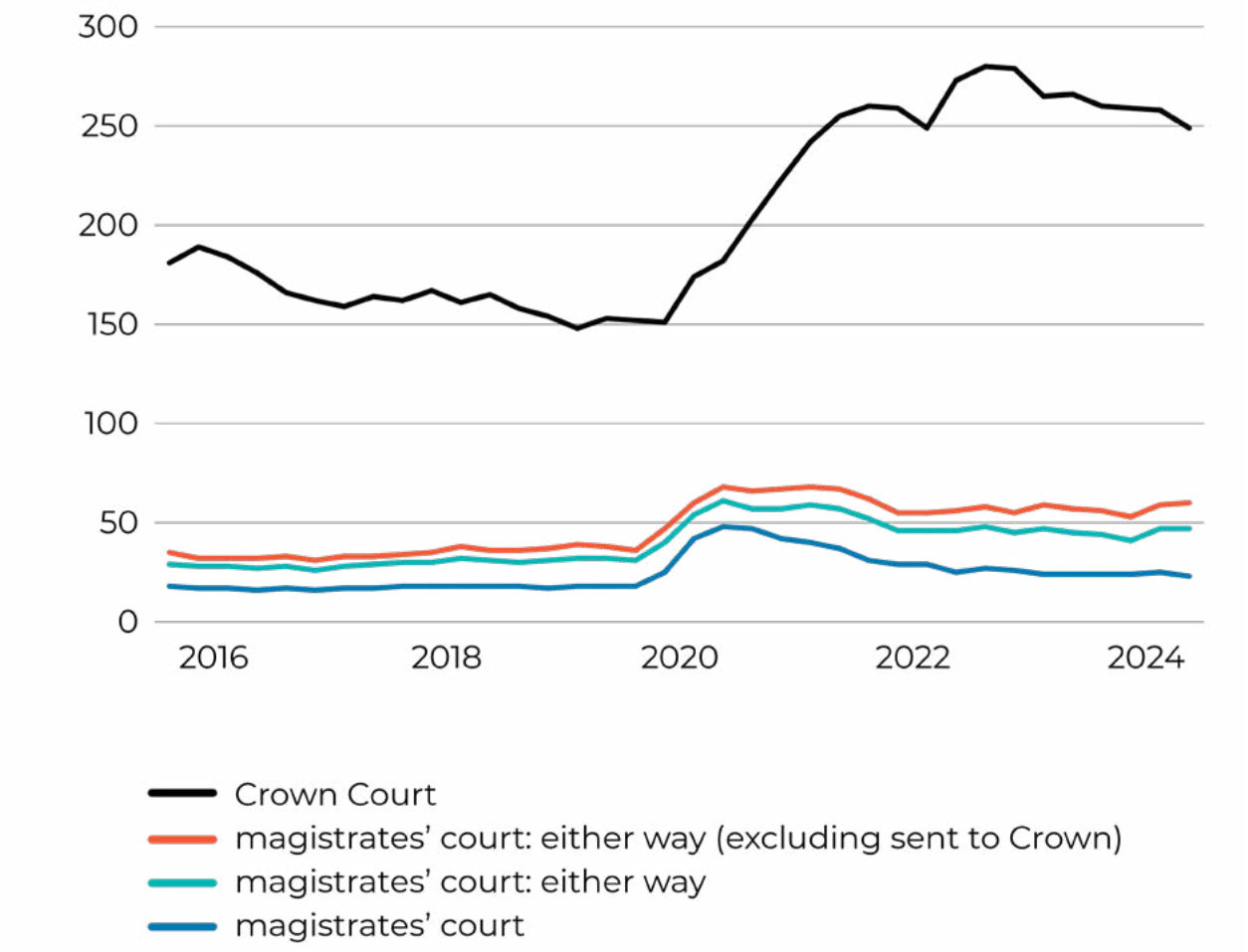
201 Source: Criminal court statistics quarterly (2025). Note: identical information is not available in relation to the magistrates' court, however, first listing to completion is used as an 'at court' comparison.

17. With the magistrates' court being able to dispose of cases more quickly compared to the Crown Court, and bearing in mind their power now to sentence up to 12 months' custody, one of my aims is to ensure a more proportionate distribution of criminal cases. Looking only at the average sentences for different types of offence, the statistics show that the magistrates' court would be the most appropriate trial forum in the majority of either way cases as the gravity of the offence is proportionate to the sentence that the magistrates' court can pass, and it can be disposed of more quickly in relative terms.

Figure 5.1

Quarterly averages of days from receipt to completion at Crown Court and magistrates' court

England and Wales, 2016-2024



Sources: Criminal court statistics quarterly, October to December 2024

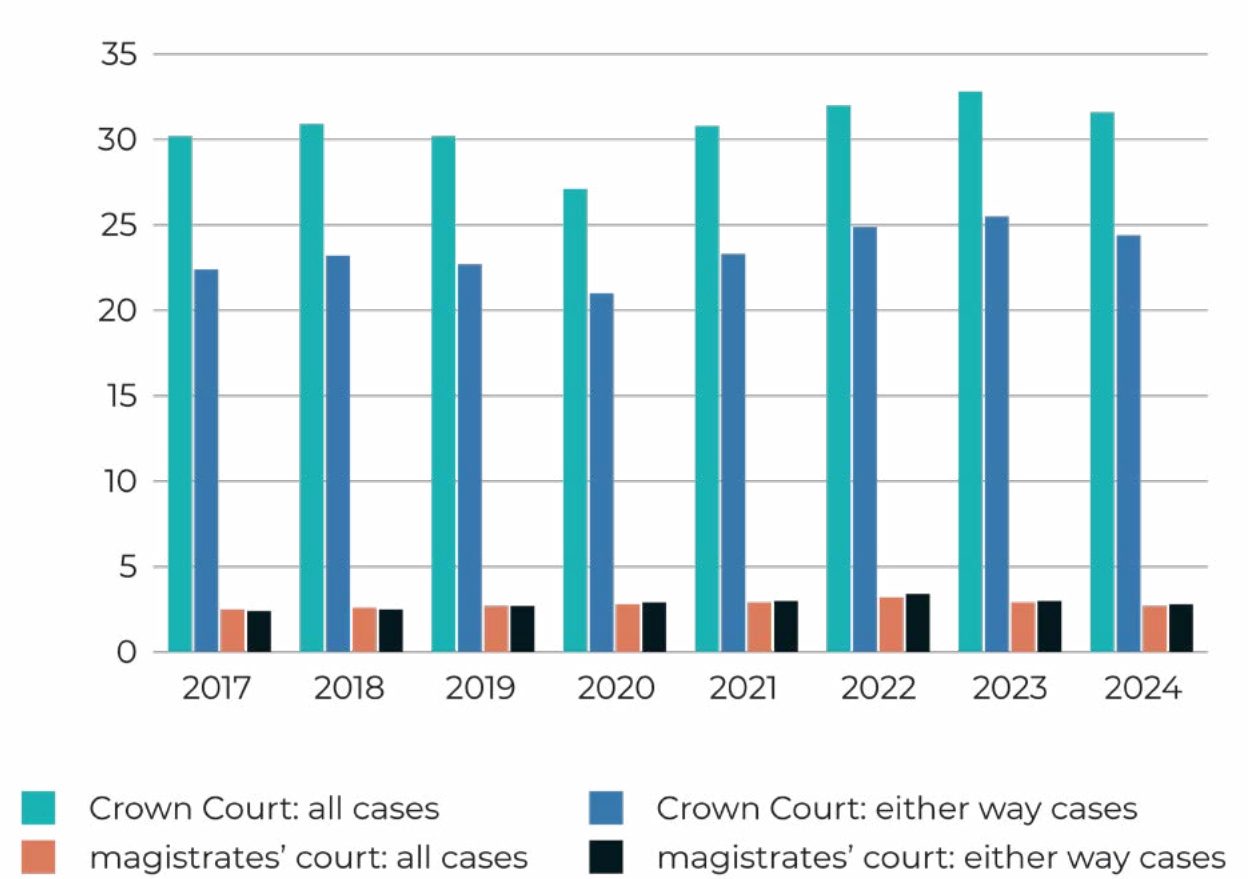
18. I acknowledge that there are factors other than simply the average sentence length for an offence that influence the question whether a case may merit a Crown Court trial and, furthermore, that there are important public perceptions and expectations about the role of the Crown Court. However, this comparison of recent statistics for cases that could be tried in either court demonstrates, strikingly, the benefits of magistrates' court trials in delivering timely justice. My aim in redistributing the caseload between the Crown Court and magistrates' court is to result in fewer, less serious offences forming part of the open caseload in the Crown Court, ensuring it is safeguarded to deal with only the most serious cases, with those offences then being capable of being disposed of more quickly. Throughout my engagement with many of those working in criminal justice, including the judiciary, it has been emphasised that far too many cases that fall within the new, higher sentencing powers of the magistrates' court are still being heard in the Crown Court. Judges and other professionals have expressed agreement on this matter and believe that Crown Court time is being used unnecessarily whilst under-utilising the capacity of the magistrates. Whilst I agree that the time of the magistrates' court must be protected and ensure justice is delivered by a proportionate panel to the case at hand, it is also important to protect the time in the Crown Court and ensure its use is proportionate to the gravity of the allegation and all the circumstances.

19. In order to understand the current distribution of work between the magistrates' court and the Crown Court, it is important to examine the relative gravity of the cases dealt with in those courts at trial. Either way offences heard in the Crown Court tend to be more serious and result in longer custodial sentences. As shown in Fig. 5.2, the average custodial sentence length for offenders of either way cases heard in the Crown Court has consistently been higher than those sentenced in the magistrates' court – in 2024, this was 24.4 months in the Crown Court compared to just 2.8 months in the magistrates' court.

Figure 5.2

Annual averages of custodial sentence length (months) by court and case type

England and Wales, 2017-2024



Sources: Criminal justice system statistics quarterly, December 2024

20. This data covers the period when the magistrates' court was mostly limited to a maximum sentence of six months' imprisonment. However, I note that in 2024, of the 85,082 sentences passed by the Crown Court, 17,577 were sentences of 12 months or less (approximately 21%). Now that the maximum in the magistrates' court is 12 months, I would expect the average custodial sentence length figures from the magistrates' court to be much higher, as the court can retain cases of greater seriousness. That, in turn, should have an impact on the workload of the Crown Court. I acknowledge that the average sentence for either way offences in the Crown Court will always be significantly higher than for the same either way offences in the magistrates' court. That flows from the fact that the more serious either way offences would always be tried in the Crown Court. Moreover, even

if a comparison were made of the disposals for the same either way offence (e.g. theft) in the magistrates' court and Crown Court, the median sentence in the Crown Court would always be significantly higher because the pool of theft cases being tried in the Crown Court would be the more serious ones. Nonetheless, I consider that the table illustrates the potential for many more either way offences to be tried in the magistrates' court to fulfil that court's potential now that it is empowered to sentence to a maximum of 12 months' custody. The recommendations I make below seek to maximise the opportunity for the magistrates' court to fulfil this potential and in doing so alleviate the burden on the Crown Court to try less serious either way cases.

21. It is worth emphasising the differential in resource implications if an either way case is dealt with in the Crown Court rather than being retained in the magistrates' court. As I have already set out, Crown Court cases take considerably longer to process from charge to disposal. In 2024, it took 264 days on average for an either way case to reach completion in the Crown Court from receipt, compared to just 45 days in the magistrates' court for first listing to completion.

22. The government's decision to reinstate magistrates' sentencing powers to a maximum of 12 months has significant potential to help victims receive justice more quickly. By increasing the jurisdiction of magistrates, thereby permitting the imposition of longer sentences than before, there is a greater opportunity for the judicial process for less serious offences to be dealt with in the magistrates' court, ensuring swifter resolutions for those affected.[202] Given the challenges to the system, in my view there is an imperative for the magistrates' court to retain far more cases. This would reflect the need for justice to be delivered in a timely fashion, to the benefit not only victims and witnesses but also defendants who should not have proceedings hanging over them for an unnecessarily extended period of time. In short, with magistrates having been provided by Parliament with this increased sentencing power, I am very keen to encourage them to exercise it by retaining either way cases that are likely to be within that sentencing range. That should enhance the delivery of justice for victims, witnesses and defendants. It should also help to tackle the open caseload and save valuable time in the Crown Court.

202 Increased sentencing powers for magistrates to address prisons crisis (MoJ, October 2024).

23. As I set out in paragraph 8, when an individual is charged with a crime and makes their initial appearance before the magistrates' court, the court will determine whether to release the individual on bail, with or without conditions, or to remand them in custody pending their trial. The number of defendants on remand awaiting trial is at its highest in 50 years.[203] This increases the open caseload which means that defendants are waiting longer for their trial. This may create a disincentive for defendants to plead guilty at an earlier stage in the hope they can avoid their trial for an extended period, during which time the case may collapse because of the attrition of victims and/or witnesses. This itself compounds the problem with cases remaining in the open caseload, adding further to delay. I explain this in more detail in Chapter 7 (Maximising Early Engagement in the Crown Court).

Bail Decisions

24. Not all defendants are keen for their trial to be delayed. For some, if not many, the prolonged uncertainty and inability to move on with their lives creates real difficulty. Data on the increasing time spent on remand in custody is not currently publicly recorded. However, as I set out in Chapter 2 (Problem Diagnosis), there is recognition from a number of government organisations that this is the case.

25. I also note with concern the disproportionate outcomes faced by non-white defendants in relation to decisions on bail and remand. Research by JUSTICE (2023) of 742 magistrates' court hearings involving pre-trial remand proceedings found that for the most serious offences (those which attract sentences of over 365 days), non-white defendants were found to be 50% less likely to be granted unconditional bail than their white counterparts. In contrast, white and non-white defendants were about equally as likely to receive bail or remand for low to moderate severity offences. To note, other factors which may have influenced this, such as individual and court-specific factors, were not identified in the research.[204]

203 Source: Offender management statistics quarterly: 0% 2024 (MoJ and HMPPS, April 2025).

204 Remand Decision Making in the Magistrates Court (JUSTICE, November 2023), p. 32.

26. Of course, reducing the open caseload would not eradicate the numbers of defendants remanded in custody. Many of those currently on remand are there on reasonable grounds and would require a custodial sentence should they be found guilty at trial. I also note that in some cases defendants are released directly from court when they attend for sentencing as their sentence has already been served (or exceeded) whilst on remand. I have heard from the Prison Capacity Review that local prisons they visited were concerned about the volume of remand prisoners released directly from court. They said that one London prison, which released about 70 prisoners per week, found that regularly 20 to 25 of these were immediate releases from court. Often those released will have had no pre-release resettlement support, so issues like housing, benefits, continuing healthcare or drug and alcohol support cannot be addressed.

27. I note the recent interventions that the MoJ has made to address the challenges that bail and remand currently pose as outlined in Chapter 2 (Problem Diagnosis).[205] Steps have been taken to raise awareness and encourage the use of bail as opposed to remand, for example through the rollout of the Bail Information Service this year, which provides courts with information to support their bail and remand decision-making. The MoJ has also increased the capacity of Community Accommodation Tier 2 to provide accommodation to those who would not otherwise have a suitable address to be bailed. Whilst these measures go some way to tackling the challenges, I believe that greater action is required to respond to the scale of the problem, including legislative changes to address the unfair and unequal impact the current approach has on defendants and victims, and to mitigate the effect the open caseload has on the remand population and vice versa.

Legal Aid Fees

28. Another important dimension to the distribution of work between the magistrates' court and the Crown Court is the matter of legal aid fees. It is helpful to have an understanding of the way this may impact on choices in the allocation process. I will first set out the context to legal aid fees in the magistrates' court, including the current work that the MoJ is already pursuing on this topic. I will turn to my recommendations on this later in the chapter.

29. Legal aid can help a defendant to meet the costs of legal advice and

205 Information provided by the MoJ.

representation in a court, in eligible cases, where that defendant could not otherwise afford those costs.[206] As I explained in the Executive Summary, one of the principles governing this Review is the aim of enhancing defence participation in the criminal process where possible. It is obvious that legal aid maximises participation in criminal court proceedings by ensuring defendants have the legal advice and information they need to make informed decisions about their case and to understand the nature of the proceedings into which they are drawn. The benefit of legal advice and representation also speeds up the process of any hearing.

30. In the context of the magistrates' court and bearing in mind the significant range and volume of matters heard in that court, the provision of legal aid is particularly important. This is not least to ensure that defendants are able to engage well with what can be a complex system while, at the same time, ensuring that their rights to a fair trial are being upheld.

31. The current legal aid fees system is complex and can create both incentives and disincentives for practitioners and defendants – influencing decisions from which cases practitioners take on, to how defendants are able to defend themselves against allegations of criminal wrongdoing. It is my view that some of these incentives have become perverse in the sense that they have the potential to encourage cases to proceed to trial and discourage early guilty pleas. I welcome the government's consultation on legal aid as a welcome development in laying the groundwork for further legal aid reform, but more is needed. In relation to the Crown Court, I shall explore this issue in Chapter 7 (Maximising Early Engagement in the Crown Court).

32. It is important from the outset of this discussion to note that the MoJ, in a welcome development on 19 December 2024, announced that criminal legal aid solicitors would receive up to £92 million more a year in funding for criminal legal aid fees.[207] The MoJ is consulting on fee increases to current criminal legal aid solicitor schemes to encourage earlier engagement, and is looking to implement:

206 Legal aid: Overview.

207 Millions invested in legal aid to boost access to justice and keep streets safe (MoJ, December 2024).

a. the harmonisation of the fees paid for work done at a police station;

b. current magistrates' court fee schemes, including Youth Court enhancement, uplifted by 10%;

c. setting a fixed ratio across all outcomes and offences within the Litigators Graduated Fees Scheme (LGFS); and

d. an uplift of 24% for prison law provided.

33. I have explored and endorsed the harmonisation of fees aid for work done in the police station as it is critical to ensure that appropriate advice is available to ascertain whether diversion is considered on an informed basis at the police station. I shall, however, discuss the LGFS in more detail in Chapter 7 (Maximising Early Engagement in the Crown Court) and I have discussed the availability of the duty solicitors through better remuneration in Chapter 3 (Diversions).

34. As I shall explain later in this chapter, I consider that if legal professionals are both better remunerated and from an earlier point in the process then a potentially perverse incentive (for the case unnecessarily to go to trial in order for legal professionals to receive a full trial fee) would be removed. This view was corroborated by delegates attending the Westminster Legal Policy Forum Seminar on 'Efficiency and Tackling Backlogs in the Courts System', which took place in April 2025, where a common theme from attendees was the view that current fee structures are inadequate.

The Right to Elect to be Tried in the Crown Court

35. In the context of my recommendations to distribute a greater volume of appropriate work to the magistrates' court, it is worth noting that according to MoJ Crown Court Statistics, the proportion of either way offences where a defendant elected Crown Court trial in 2021 was 14.6%.[208] Owing to data-quality issues, the MoJ does not have reliable data on electing for trial beyond 2021. The CPS Annual Report 2021/22 showed the proportion of either way cases in which a defendant elected Crown Court trial was 7.3%, increasing to 8.5% in 2023/24.[209] As shown in Fig. 5.3, either way offences as a proportion of Crown Court

208 Source: Criminal court statistics quarterly: July to September 2021 (MoJ, January 2022).

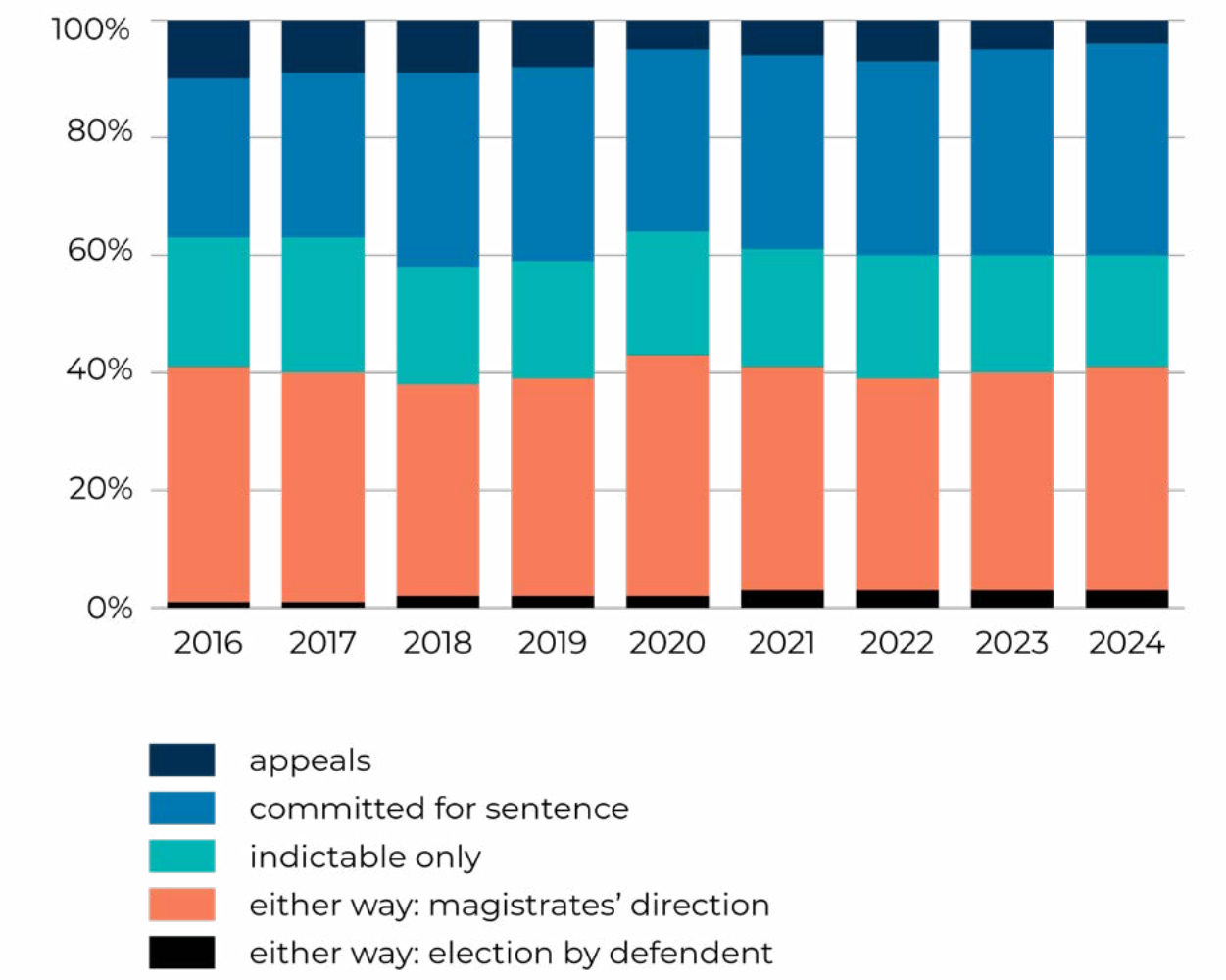
209 Source: Crown Prosecution Service annual report and accounts 2023 to 2024 (CPS, July 2024). Note: CPS election rate data is not directly comparable to MoJ statistics due to different case management systems and different points of data collection.

receipts have remained relatively stable since 2022.[210] The proportion of either way offences in the Crown Court that were sent by the magistrates' court is much larger than that in which defendants elected Crown Court trial, but this has decreased more recently as an overall proportion of either way offences in the Crown Court as defendants' election rates have increased.

Figure 5.3

Percentages of adjusted receipts into Crown Court type

England and Wales, 2016-2024



Source: Criminal justice system statistics quarterly, December 2024; CPS annual report and accounts 2023-2024

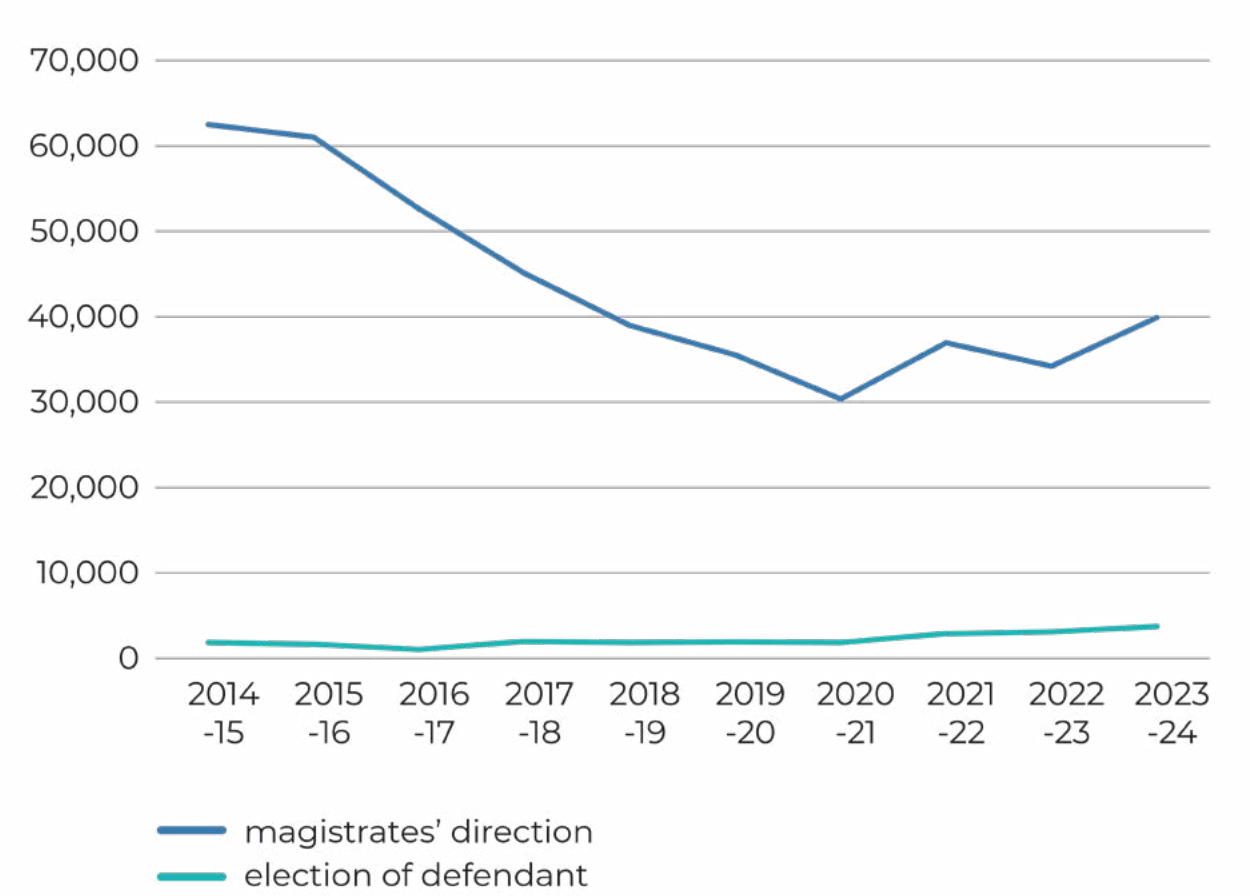
210 The figure uses two sources of data: MoJ and CPS. Percentages of elected defendants have been combined with MoJ receipts data, hence the figure is adjusted and should be interpreted with caution.

36. Defendants' election rates are increasing, which is contributing to the growing open caseload in the Crown Court, and therefore I consider urgent reform essential. Figure 5.4 shows either-way receipts to the Crown Court as a result of magistrates' and defendants' decisions. This shows that the volume of defendants electing has increased, while the volume directed has decreased.

Figure 5.4

Either way receipts into the Crown Court by route (CPS data, shown by financial year)

England and Wales, 2015-2024



Source: CPS annual report and accounts 2023-2024

37. A defendant's decision to elect Crown Court trial can be influenced by many factors. It is overly simplistic to suggest the decision is limited to a preference for jury trial. The 1993 Runciman Commission went so far as to say that defendants who elect a Crown Court trial, first, are seeking to put off the date of trial; second, consider juries offer a better chance of acquittal; and, third, hope that it could lead to a lower sentence if convicted.[211] I consider the current increase in election rates to be an unintended impact of the open caseload as it stands, but such increasing election rates are also likely to be a contributory factor to the crisis in the criminal courts.

38. I am also aware, however, that there are many other reasons that might lead a defendant to elect Crown Court trial. Data shows, for example, that ethnic minority defendants are more likely to elect trial by jury.[212] The Lammy Review into the 'treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System' was clear that the jury trial is one area where those from an ethnic minority do not face disproportionate outcomes.[213] I strongly advise the government to carry out equality impact assessments as part of the implementation of any recommendations to ensure that measures are applied fairly and transparently. Regular monitoring should also be introduced to identify any disproportionate outcomes that do happen to arise, with processes in place to understand their causes and how they can be addressed.

39. During my roundtables with legal practitioners, I was told there are a range of other factors that influence such a decision, and many of those are, in my view, capable of being addressed by changes in practice that will be a particular focus of the Efficiency Review later in 2025:

    a. The case management system in the Crown Court (Crown Court Digital Case System) is better, and more iterative than that of the magistrates' court.

211 Viscount Runciman of Doxford, The Royal Commission on Criminal Justice (HMSO, 1993).

212 According to MoJ statistics, in 2022, the black ethnic group had the highest proportion of defendants electing themselves to be heard at a Crown Court (27%). This was followed by defendants from the mixed ethnic group (21%), Asian and other defendants (18%) and white defendants (15%). Source: Statistics on Ethnicity and the Criminal Justice System, 2022 (MoJ, March 2024). Note: the MoJ no longer publish election rate data due to data-quality issues. Therefore, this data should be used with caution.

213 The Rt Hon. David Lammy, Lammy review: final report (September 2017).

b. The short timeframe between first appearance and a summary trial in the magistrates' court means processes and reviews can be rushed or do not happen as they should.

c. The public discourse on criminal convictions means many perceive a Crown Court as being in the defendant's best interests.

40. Whatever the justifications or their merits, there can be no doubt that defendants choosing to elect Crown Court trial constitute a contributory factor to the growth of the open caseload and to why it has become so unmanageable. Before turning to my recommendations, I examine briefly the objections that have previously prevented reform to the right to elect to be tried in the Crown Court (the 'right to elect').

41. Reconsidering a defendant's right to elect is not a new question. There have been many independent reviews and Royal Commissions over the years that have pondered the same question as I do today. Over 30 years ago, Runciman concluded that the decision as to the mode of trial (i.e. trial in the Crown Court or magistrates' court) should be based on agreement between both the prosecution and defence.[214] He went on to argue that where there was disagreement, the decision should be made by the magistrates' court as this is the most objective route to determine the mode of trial. Martin Narey in his 1997 'Review of Delay in the Criminal Justice System' went further by concluding that the magistrates' court should not be bound by an agreement between the parties.[215] The conclusion that the court, not a defendant, should decide on the mode of trial is also a position that was echoed over 20 years ago by Lord Justice Auld, and in several submissions to this Review.

42. Most often, the resistance to reforming the right to elect has centred on whether a defendant has a constitutional 'right' to a jury. I make clear my position that there exists no such constitutional or common law right to a trial by jury, with the result that there is no basis for this to limit any approach to necessary reform. It is on this premise that I proceed with my subsequent recommendations in this chapter on the Restriction of the Right to Elect (RRTE) model and recommendations in subsequent Chapters 8 (Crown Court Structure) and 9 (Trial by Judge Alone).

214 The Royal Commission on Criminal Justice (1993).

215 Martin Narey, Review of Delay in the Criminal Justice System: The Narey Report (Home Office, 1997), p. 33.

43. Some have claimed that there is a constitutional right derived from Magna Carta. I reject this interpretation, as did Lord Justice Auld after his careful scrutiny of a substantial body of academic research, and the terms of Magna Carta, Clause 39. He observed that a free man's right to the lawful judgement of his 'peers' did not refer to trial by jury.[216] Lord Justice Auld concluded that 'there is no legal basis for regarding the claimed "right" to jury trial as a constitutional entitlement, that is an entrenched right overriding all other legal instruments … or as a right at all'.

44. Well over a century ago, William Holdsworth identified that Clause 39 had been misinterpreted and that trial by jury developed as a common law tradition not as a constitutional right.[217] Lord Devlin in his oft-quoted 1956 Hamlyn Lectures titled 'Trial By Jury', also closely scrutinised Clause 39 and addressed the argument based on a constitutional right to jury trial. Lord Devlin observed that the jury system began as 12 local individuals who acted as witnesses, swearing to the truth of their knowledge.[218] It was only much later that juries evolved into a group of impartial strangers tasked with rationally deciding a verdict based on the evidence presented to them. Jury trial in its modern form began in the 19th century, alongside the establishment of professionalised policing and the formalised representation of defence and prosecution presenting competing evidence. Although it was only in 1898 that a defendant acquired the right to give evidence. As the law has become more sophisticated, jury trial has been progressively reserved for the most serious cases. Since then, the system has changed substantially, where juries evolved from a typical formation of neighbours of the accused to the current composition of members of the local community selected at random specifically excluding those who know the defendant or the witnesses. In short, no right to jury can be derived from Magna Carta.

216 The Rt Hon. Lord Justice Auld, Review of the Criminal Courts of England and Wales (HMSO, October 2001), ch. 5.

217 William Forsyth, History of Trial by Jury (John W. Parker and Son, 1852), p. 108; William Holdsworth, A History of English Law, Vol. 1 (Methuen & Co. Ltd, 1903); W. R. Cornish, The Jury (Allen Lane, 1968), p. 12, as cited in Review of the Criminal Courts of England and Wales (2001).

218 Lord Patrick Devlin, The Hamlyn Lectures: Trial by Jury (Methuen & Co. Ltd, 1996).

45. An alternative argument advanced by some is that there is a right to jury enshrined in Article 6 of the ECHR as incorporated by the Human Rights Act 1998.[219] Again, I reject that argument: there is no legal basis for this claimed right as a constitutional entitlement. Lord Justice Auld also considered this claim when he contrasted the position in England and Wales with the position in the USA and Canada where trial by jury is a constitutionally protected right. His conclusion was clear – a right to jury trial had not been created following the incorporation of the ECHR.[220] I agree.

46. ECHR case law is also clear that there is no Convention right to a jury.[221] That is hardly surprising given the number of Member States in which no jury trial exists in any form. The Grand Chamber of the European Court of Human Rights has recognised that Member States of the Council of Europe have adopted many different and equally legitimate models of lay adjudication in criminal matters, all of which can satisfy Article 6. Some jurisdictions lack any form of jury trial or lay adjudication in criminal matters; others use a collaborative court model of lay adjudicators sitting and deliberating alongside professional judges; and yet others have opted for the 'traditional' jury model.[222] In *X and Y v Ireland*, the European Commission of Human Rights held that 'Article 6 does not specify trial by jury as one of the elements of a fair hearing in the determination of a criminal charge.'[223] The domestic courts in the UK have also been explicit that Article 6 of the Convention does not include a right to jury trial. Moreover, they have confirmed that alternative modes of trial provided for are fair within Article 6.[224]

47. Notwithstanding the rejection of a constitutional or ECHR right to jury trial, Lord Justice Auld acknowledged the symbolic power of the tradition and the value of public participation in the criminal justice system. I find myself in the same position.

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219 European Convention on Human Rights; Human Rights Act 1998.

220 Review of the Criminal Courts of England and Wales (2001).

221 *X and Y v Ireland* [1980] ECHR (8299/78); *Callaghan v United Kingdom* [1989] ECHR (14739/89).

222 Taxquet v Belgium [2010] ECHR (926/05).

223 *X and Y v Ireland* [1980]. See also *Wanyosi v United Kingdom* [1998] ECHR (3212/96). Similar arguments were rejected in a series of Russian cases: Klimentyev v Russia [2002] ECHR (46503/99); Moiseyev v Russia [2004] ECHR (62935/00); Andrey Isayev v Russia [2010] ECHR (24490/03).

224 Shuker & Ors, Re Applications for Judicial Review [2004] NIQB 20.

48. Having dismissed claims of a formal legal or constitutional right to a jury, I nevertheless acknowledge the strength of feeling apparent from many criminal justice professionals during my engagement and in submissions to the Review, that for many the jury trial is seen as the 'gold standard' of adjudication in criminal trials. Nevertheless, that perception cannot generate a 'right' to a jury trial. I note that the courts have rejected such claims as lacking any formal legal substance, as for example, in *R (BH) v Norwich Youth Court* where the Divisional Court rejected an argument founded on a submission that the defendant would be denied 'access to what he described as the "Rolls Royce" benefits of a jury trial as compared to summary process before the Youth Court'.[225]

49. A further influential factor in my reasoning is that English law recognises a proliferation of situations in which no jury trial is available. Adults have no possibility of a jury trial in summary offences – they make up around 70% of the total number of criminal cases each year.[226] A person aged under 18 has no right to elect trial by judge and jury for an either way offence and whether a person has a right to elect or be tried by a Youth Court is dependent on their age at the time mode of trial is determined.[227]

50. In addition, I note that the government in 2022 also accepted that there is no 'right' to a jury trial. The proposal to include a right to a jury trial in a British Bill of Rights was introduced to Parliament on 22 June 2022.[228] The Bill suggested that the right would 'apply insofar as trial by jury is prescribed by law in each jurisdiction' in the UK.[229] This formulation makes clear that any such right is not grounded in the common law or in constitutional principle, but exists solely as a matter of statute; it is contingent upon legislative provision and can therefore be limited, modified or withdrawn by Parliament.

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225 *BH v Norwich Youth Court* [2023] EWHC 25 (Admin).

226 Source: Criminal court statistics quarterly (2025). Note this uses disposed cases as a measure for cases dealt with. Note also that this contains a double counting of cases in the magistrates' court that were sent straight to the Crown Court.

227 A person aged under 18 has no right to elect trial by judge and jury for an either way offence and whether a person has a right to so elect, or will be tried by a Youth Court, is dependent on their age at the time mode of trial is determined: *R v Islington North Juvenile Court, ex parte Daley* [1983] 1 AC 347. When s. 12 of the Judicial Review and Courts Act 2022 comes into force, the Youth Court will have the power to send a person who has attained the age of 18 before 'the start of the trial' (within the meaning of s. 22(11B)(a) and (b) of the Prosecution of Offences Act 1985) to the Crown Court for trial.

228 Bill of Rights: Bill documents (MoJ, June 2022).

229 Section 9 of the Bill of Rights Bill.

51. I acknowledge that there have been frequent judicial references to the 'right' to a jury trial and to its constitutional significance, but these are, in my view, all statements of the court that are not authoritative binding statements.[230]

52. When the courts have had to deal directly with the matter, the conclusion they have reached are supportive of the stance that there is no right to jury trial. For example, direct consideration of the matter is provided by the Court of Appeal (Criminal Division) in *R v Twomey* in which the court was considering the first juryless trial in the Crown Court under the provisions relating to jury tampering in section 44 of the Criminal Justice Act 2003.[231] Lord Judge CJ described trial by jury as 'a hallowed principle of the administration of criminal justice' and as a 'right … deeply entrenched in our constitution', but added an important qualification, namely, that it was a 'right available to be exercised by a defendant unless and until the right is amended or circumscribed by express legislation' and that it could be 'removed' by 'express statutory language'.[232] This recognition that any 'right' to trial by judge and jury may be restricted by legislation is no more than a reflection of the constitutional supremacy of Parliament.

53. My conclusion that there is no constitutional or, indeed, any form of general right to trial by judge and jury echoes that of the Auld Review. What I acknowledge is that there is only a general obligation to submit to a jury trial in indictable cases.

54. I am also keenly aware that there have been several failed attempts to remove a defendant's opportunity to choose jury trial by reform of the right to elect. The Rt Hon. Jack Straw made two attempts in Criminal Justice Mode of Trial Bills (No. 1 and No. 2).[233] Both Bills sought to remove the defendant's ability to elect for trial in the Crown Court: the first was defeated and the second failed for lack of time. In part, this was due to the perception that removing the right to elect equated to removing the right to a jury trial, and that it should not be a decision

230 Such as the Statements of the House of Lords in *R v Connor and R v Mirza*. Lord Steyn acknowledged its constitutional significance (para. 7) and Lord Hope spoke of the 'right to trial by jury' (para. 59).

231 *R v Twomey* [2009] EWCA Crim 1035.

232 Ibid, paras 10, 12, 16 and 32.

233 Criminal Justice (Mode of Trial) Bill, House of Lords - Explanatory Note (1999), para. 4; Criminal Justice (Mode of Trial) (No 2) Bill, House of Commons - Explanatory Note (2000), para. 4.

borne out of seeking cost-savings in the justice system. I take a great interest in the former reason and consider this a crucial factor as to the apprehension for reforming the right to elect to date.

Recommendations

55. Control must be taken of the influx of cases entering the Crown Court by keeping more cases within the remit of the magistrates' court. In 2015, I reiterated the observations made by Lord Justice Auld in 2001, which advocated the complete removal of the defendant's right to elect for either way offences. However, after carefully considering the submissions made to this Review and reflecting on the context in this country surrounding the right to elect along with the other proposals I am making, I have reassessed this position. Having examined the evolution of the mode of trial and its impact on judicial processes and individual rights, I have concluded that it may not yet be essential to take that course in England and Wales. Rather, I recommend restrictions which offer the greatest potential to improve efficiency while reflecting public attitudes to jury trial for the more serious offences.

56. I therefore start by recommending that the government considers removing the right to elect only for certain categories of offence. My initial recommendation is that a proportionate reform would be to remove the right to elect for those offences with a maximum sentence length of two years (and a selection of other either way offences where appropriate). I set out this recommendation in more detail below.

57. I also consider the more radical step of reducing the number of either way cases that can be tried in the Crown Court by reclassifying some as summary only.[234] This has the benefit of ensuring that such cases must always be dealt with in the magistrates' court, but is a recommendation that must be approached with care since it involves reducing the maximum sentence for such offences to 12 months – no matter how serious the circumstances of the offending.

234 It is important to note here that low-level offences have previously been reclassified as summary only as a result of lengthy delays in the criminal courts. The James' Committee, which was led by the Late Lord Justice James, published a report on the Distribution of Criminal Business in 1975 that recommended that low-value offences such as criminal damage, drink driving and taking a vehicle without the owner's consent should be made summary only to reduce demand in the Crown Court. The James' Committee's recommendations are implemented in part by legislation in the form of the Criminal Law Act 1977.

I set out in more detail below my recommendations for reclassification and how restricting the right to elect and reclassification can be adopted in combination.

58. This combined approach respects the principles that have guided this Review. These options ensure that the independent court trying a case is the one most proportionate to the alleged offence, so that proceedings remain fair for all parties whilst also streamlining processes and enhancing timeliness in the criminal courts. It will deliver benefits in terms of efficiency as a greater number of cases would be retained in the magistrates' court. Implementing these measures could address major concerns such as managing caseloads, preserving proportionality and ensuring transparency.

59. In the following sections, I will provide a detailed explanation of these recommendations, breaking down the reasoning behind each and highlighting how it aligns with the broader goals of reforming and modernising the criminal justice system. I will start with the model that restricts the right to elect as a softer approach, then go on to discuss options for reclassification, before considering whether these could be considered as a hybrid approach.

Restriction of the Right to Elect (RRTE)

60. As I have already observed, I deem it necessary that I revisit the same question I posed in my 2015 Review: does the current allocation process provide the most effective approach in securing the most appropriate mode of trial?[235] In other words, is the right balance being struck between cases that are tried in the magistrates' court and the Crown Court? Following my engagement and consideration of the submissions to this Review, and in the context of the present parlous state of the criminal justice system, I have come to the conclusion that the right to elect in certain categories of case should be removed. I will henceforth refer to this as the RRTE model. As I have suggested already, it is hardly surprising that many contributors to the Review strongly support maintaining the right to elect for all allocation decisions. The jury trial is, for many contributors, considered the 'gold standard' of the trial processes in the criminal justice system. They fear that any attempt to modify it would represent a substantial shift in what the Criminal Law Solicitors' Association

235 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015).

(CLSA) describes as a 'hard-won protection for our society against potential state outreach'. As will be clear from the analysis above, this is a characterisation which I simply do not accept given they are only used in 1% of criminal cases.[236] I have examined direct changes to the use of juries in subsequent Chapters 8 (Crown Court Structure) and 9 (Trial by Judge Alone).

61. Contributors offered creative suggestions as to how the right to elect could be reformed. One contributor suggested that only the magistrates' court should have a say in directing a case to the Crown Court with their decision based on the application of definitive Sentencing Guidelines and that the magistrates should retain for trial all cases in which the starting point for sentence is within their sentencing powers of 12 months. I am surprised that this is not a consideration magistrates are already applying to their allocation decision – though this may be because the increase to magistrates' sentencing powers from six to 12 months is relatively new.[237] There should be further training on allocation guidelines and decision-making for magistrates and, indeed, for prosecutors. That could be initiated immediately, irrespective of my other recommendations being implemented. At the other end of the spectrum another contributor suggested that the right to elect should be limited only to cases where sentences of life imprisonment can be imposed. That would, indeed, be radical; it is not something I am prepared to consider let alone recommend.

62. Given the data set out in paragraph 35 above and recognising that the goal of this Review must be to have the greatest impact on the open caseload, a radical yet effective approach would be to remove the right to elect entirely. While this suggestion may attract criticism for those reasons I have rehearsed above, I am prepared to accept and acknowledge that it is one the government might wish to consider. Radical reform must be on the table if there is to be serious, meaningful change within the system in order to rescue it from collapse. Removing the right to elect in all either way cases would have the most significant impact on reducing the caseload. However,

236 Source: Criminal court statistics quarterly (2025). This proxy assumes not guilty plea trials have a jury, and 1 defendant = 1 case. In 2024, there were 127,468 defendants dealt with, whereas disposed cases were 121,579. This gives a ratio of 1.12 defendants per case. Additionally, this contains a double counting of cases in the magistrates' court that were sent straight to the Crown Court.

237 Increased sentencing powers for magistrates to address prisons crisis (MoJ, October 2024).

this must be balanced to take account of nuances and addressing the complexities of the system while still striving for impactful reform.

63. I have therefore reached the more limited conclusion that the defendant's right to elect in either way offences with a maximum sentence of two years should be removed. For all such offences, the decision on whether to retain the case in the magistrates' court or send the case to the Crown Court would be exclusively in the hands of the magistrates – whether as a lay bench or DJMC. In exercising that decision, the magistrates' court should apply Sentencing Council allocation guidelines which should be revised to maximise consistency and transparency in the decision-making within the new framework. To be clear, the magistrates' court could still send cases with a maximum sentence of two years to the Crown Court where the case merits a Crown Court trial. Similarly, the magistrates' court would retain the power to commit such cases to the Crown Court for sentencing after trial where, in the light of the evidence adduced in the magistrates' court trial, the 12-month sentencing capacity of the court is then considered inadequate, having regard to the published Sentencing Council guidelines.

64. My recommendation is to make this limited inroad into the right to elect, with the target being offences with a maximum sentence of two years. Those offences form an obvious grouping since they have been categorised by Parliament as the least serious of the either way cases. They would typically (if not almost inevitably) receive sentences within the maximum set for the magistrates' court. I have identified a pool of additional offences which in my view would also be strong candidates for the RRTE based on the average custodial sentence length (ACSL) they typically receive along with other factors pointing to the magistrates' court being a proportionate forum to deal with many allegations of those offences. This list, which I subsequently refer to as the 'RRTE list', is set out in Annex G.

65. I acknowledge that there is apprehension in some quarters about the quality of justice delivered by the magistrates' court. However, when compared with the alternative (which is the removal of the right to elect entirely or more wholesale reclassification of offences), the RRTE model is a smaller step change applying as it does only to certain offences without going to the extreme of removing the option for a Crown Court trial entirely. I note also the reforms I am recommending that will further enhance justice in the magistrates' court, in particular,

mandatory audio recording of all criminal proceedings – see Chapter 6 (Appeals from the Magistrates' Court).

Benefits and impacts

66. I am confident that the RRTE model represents a measured approach to streamlining justice. On the other hand, I anticipate that some might say the RRTE list is too limited, which may restrict its impact on the open caseload. However, in combination with reclassification (of some other either way offences as discussed below), the impact would be more substantial whilst maintaining appropriate protections for those cases that might, in some instances, require a trial in the Crown Court. The list of offences in Annex G include the RRTE list *and* those which could be reclassified as summary only.

67. Additionally, I note that unlike reclassification, one advantage of the RRTE is that there is no need to make ancillary amendments to process such as section 40 of the Criminal Justice Act 1988 (which deals with the ways in which summary only offences can be added to an indictment comprising other offences being tried in the Crown Court). RRTE does not require any consequential amendments to legislation in that regard. Similarly, whereas reclassification to make either way offences summary only would impose six-month time limits on the prosecution commencing, RRTE does not have that effect.[238]

68. This recommendation should ensure that more cases are retained in the magistrates' court where it is appropriate. This would maintain proportionality to available sentencing powers; avoid the limitations associated with reclassification to summary only offences; and ensure the magistracy remains the most appropriate decision-maker for allocation decisions in relevant cases. This measured recommendation strikes a balance between efficiency, fairness and practicality, supporting the justice system in managing caseloads without compromising its integrity.

238 Section 127 of the Magistrates' Courts Act 1980.

69. The model would improve the timeliness of these less serious cases, which in turn could lower victim and witness attrition rates. At the same time, it would maintain the fairness of processes for the defendant who would retain an independent and impartial court in all cases and a right to appeal conviction and sentence. Furthermore, the recommendation avoids the argument that some defendants are treated differently because it applies uniformly to those with offences carrying a maximum sentence of two years.

70. While removing the right to elect for certain offences may streamline the judicial process and alleviate the burden on the higher courts, it raises concerns about balancing the right of the defendant with the broader interests of justice. I reiterate that any party dissatisfied with a magistrates' court decision following a trial would retain the right to appeal, with the benefit of any necessary transcript, albeit limited to a point of law or failure of process (see Chapter 6 – Appeals from the Magistrates' Court), ensuring access to scrutiny by the Crown Court or the High Court. For those faced with charges for either way offences which would attract a custodial sentence of more than two years, the right to elect maintains an element of choice in the trial process, noting that election will not guarantee a jury trial as I set out in Chapter 8 (Crown Court Structure).

71. This recommendation is contingent upon magistrates' sentencing powers remaining at the current maximum of 12 months. In 2022, Parliament provided the power for the Lord Chancellor to increase the maximum sentencing powers of the magistrates' court to 12 months. The legislation (Judicial Review and Courts Act 2022) also provided for the Lord Chancellor to reduce the power back to six months should that be necessary. In May 2022, and again in October 2024, the government exercised the power to increase sentencing powers to 12 months. My strong recommendation is that the maximum should remain at 12 months. Furthermore, I recommend that the legislation be amended so that the Lord Chancellor no longer has the power to reduce the maximum to six months via a Statutory Instrument. The 12-month maximum should be made permanent.

72. I am confident that many would agree with me that an excessive number of cases are being referred to the Crown Court which could and should properly be tried by magistrates.

Recommendation 14: I recommend that the Ministry of Justice 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 less than or equal to two years and could be expanded to other either way offences by the inclusion of offences on a statutory list (which would facilitate ready amendment).

Recommendation 15: I recommend that the ability to amend magistrates' sentencing powers by Statutory Instrument should be repealed and that the 12-month maximum should be made permanent.

Future expansion

73. I have been conservative in selecting the list of offences in scope of the RRTE model, however there are other offences the government may wish to consider where it can be argued that, based on the nature of the offence and the likely evidence, a magistrates' court should be the sole arbiter of mode of trial – some of these are set out in the RRTE list at Annex G (List of Offences in Scope for Recommendations).

74. I consider that the RRTE model, although less impactful on the open caseload than outright reclassification, is an appropriate one to adopt. It ensures consistency and proportionality across all cases. I note also that this retains discretion for the magistracy, subject to the application of the allocation guidelines.

75. Should the government want to expand the RRTE model, the better course may be to encourage monitoring and further consideration of the impacts of these recommendations before making more radical inroads into the right to elect. The RRTE as recommended safeguards fairness within the trial process while reducing the risk of decisions that may disadvantage defendants.

Obstacles to implementation

76. As mentioned, political sensitivity surrounding the removal of the right to elect must also be considered, as seen in relation to the Mode of Trial Bills and as I understand from comments made to me throughout my engagement on this Review. Together, these factors highlight the complexities and considerations involved in implementing such changes.

77. To assuage these concerns, I do no more than reiterate that I am not advocating the removal of defendants' rights because there is no right in common law to a jury trial. Instead, this option is designed to ensure that cases are tried in the most appropriate level of court. What I am recommending is not new. In many other jurisdictions there is no right to elect. In the Scottish criminal justice system, for example, the Crown Office and Procurator Fiscal Service (COPFS) holds a wide discretion when deciding in which forum a case is to be heard (see Case Study E); there is no right to elect trial at all. This system works successfully. What is being recommended is far less radical. It involves the right to elect being retained for most either way offences, it removes a defendant's right to elect only for offences at the lowest level of the either way category. It requires the allocation process to be applied judicially, after regard to published national guidelines. The decision will not, for example, be for the prosecutor as it is in Scotland. As a result, the RRTE may contribute to improving the timelines of case resolutions, ultimately enhancing the efficiency and fairness of the justice system.

Case Study E: Scottish criminal justice system

When a crime is reported, the police or other reporting agency carry out an initial investigation. If there is enough evidence, then a report may be submitted to COPFS for consideration. A procurator fiscal (prosecution lawyer working for COPFS) will assess the evidence. If there is enough evidence, the procurator fiscal will decide what action to take, if any, in the public interest.

Decisions on how to proceed in a case are for the prosecutor. In reaching that decision, prosecutors will consider all the individual facts and circumstances of a case. The criteria for decision-making and the range of options available to prosecutors are set out in the published Prosecution Code.

Actions available to the prosecutor include:

1. Prosecution in court
2. A warning
3. Fiscal fines
4. A conditional offer of a fixed penalty (for certain road traffic offences)
5. An offer of compensation
6. Fiscal Work Orders
7. Diversion from prosecution
8. Referral to the Scottish Children's Reporter Administration
9. No proceedings
10. No proceedings meantime

When the decision is made to prosecute, the Procurator Fiscal must then choose the appropriate forum for the trial. In Scotland, there are three main types of courts where criminal cases can be heard:

- High Court: deals with the most serious crimes, such as murder and rape.
- Sheriff Court: handles both solemn procedures (serious offences heard with a jury with a maximum of five years) and summary procedures (less serious offences heard by a Sheriff alone with a maximum of 12 months).
- Justice of the Peace Court: typically deals with minor offences (with a maximum of 90 days).

78. Some might say that there is a risk to the likely success of this model because magistrates could be too risk averse in allocation – something that does not arise if reclassification is adopted. I acknowledge that such a risk exists. However, in this context and with this limited pool of offences, I am confident that magistrates would exercise their discretion appropriately. I do nevertheless urge the magistracy to bear in mind the state of the collective criminal justice systems when making allocation decisions. I have no doubt that most offences with a maximum sentence of two years are suitable for summary trial, but I do not exclude the possibility that there may, only very occasionally, be cases in which it is appropriate for magistrates to decline jurisdiction: I am confident they can exercise such a power and direct these cases to the Crown Court appropriately.[239]

79. Some might say this approach carries the risk of complicating the allocation process within the magistrates' court. Under the recommended model, some either way offences would retain the defendant's right to elect, and others would not. I acknowledge that concern, but the model is simple in practical operation: all offences with a maximum sentence length less than or equal to two years require a decision only of the magistrates' court as to mode of trial. The criteria by which the RRTE model would apply should be in legislation and those offences that would be eligible (or ineligible) can be clearly set out in allocation guidelines produced by the Sentencing Council for the magistrates' court.

80. To expedite the allocation decision-making process, where the offence is not in the RRTE model, I recommend that the order of the decision-making on allocation be reversed. Instead of the present system, the defendant, after indicating a not guilty plea, should next be invited to state whether they elect Crown Court trial. If the defendant indicates that they are not electing, only then would the magistrates' court decide whether they have sufficient powers to hear the case or whether the case should be directed to the Crown Court. That should save some time in cases where the defendant was always going to elect trial in the Crown Court, regardless of the decision of the magistrates' court. It would also expose the fact of an election (rather

239 In relation to offences that are either way, which is far more extensive than those with a maximum of two years, in 2024 around 60% of either way cases sentenced in the Crown Court received a custodial sentence of more than 12 months. Note: this excluded 'NAs' or 'Not Knowns' from 'Custodial Sentence Length'. It has not been possible to extract those cases which have a maximum of two years from the statistics.

than the fact that the magistrates have been persuaded for whatever reason not to accept jurisdiction). That will be important for monitoring purposes so that any future reforms can identify with precision the types of case in which defendants are electing Crown Court trial from the outset.

81. Section 19 of the Magistrates' Courts Act (MCA) 1980 provides that the court shall give the prosecutor and the accused the opportunity to make representations as to which court is more suitable for the conduct of the trial for either way offences.[240] My recommendation on the order of allocation decisions does not diminish the defendant's right to participate in that decision.

Recommendation 16: I recommend that 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 their decision on allocation: to retain jurisdiction and try summarily or direct to the Crown Court.

82. Primary legislation would be required to remove the right to elect for specified either way offences. There is no power in the MCA 1980 for the relevant provisions to be amended by way of subordinate legislation. Although primary legislation is required, the either way offences for which the right to elect is to be removed could be specified in a schedule to that legislation. If, after the present crisis has passed (assuming it will), it is thought that the continued use of the power is too draconian, it would be possible for provision to be made in the legislation for the schedule to be amended so as to remove cases by way of Statutory Instrument. It may be considered that primary legislation should always be required to add other offences (if that becomes necessary), and the primary legislation implementing the RRTE model can mandate that if it is felt necessary.

240 Section 19 of the Magistrates' Courts Act 1980.

Reclassification

83. I turn now to discuss my suggested approach as to the reclassification of some either way offences. Reclassification involves changing the status of an offence from either way (triable in the magistrates' court or Crown Court) to summary only (only triable in the magistrates' court).

84. Ordinarily, should an offence be reclassified outright then it would change the maximum sentence to six months to align with most other summary offences. For the offences that it is proposed to reclassify, I recommend that the maximum sentence should be changed to 12 months to align with the new maximum for the magistrates' court. In addition, at present, most summary only offences are limited to the six-month time threshold from the time when the offence was committed or the complaint arose, to the commencement of the process by way of information or charge. There are exceptions to this, and they could be followed for appropriate reclassified offences if desired.[241] A third, more significant consequence of reclassification is that it would, of course, remove the defendant's right to elect for such an offence.[242] I explore all of these impacts in this section. I also note there may be operational impacts across multiple government departments. I have not detailed all of these here and the government should consider these ahead of any implementation.

85. Selecting offences for reclassification is a challenging and important step. One way in which potential offences could be selected for reclassification, which I do not favour, is by the introduction or change of financial and/or weight thresholds for a greater number of suitable either way offences. This would mean that an either way offence that falls below a particular threshold could only be tried summarily in the magistrates' court. Such examples of thresholds do already exist – criminal damage below £5,000 is to be tried summary only. Reform could include amending such thresholds – for instance, it might increase the financial threshold currently in place for criminal damage offences – or it could involve introducing a new type of threshold such as possession of a specific quantity or weight of different classes of drug, based on those set out in the Sentencing Guidelines, for simple possession offences.

241 There are exceptions to s. 127 of the MCA 1980 which impose the six-month time limit on commencement of a prosecution, for example the Animal Welfare Act 2006, s. 31.

242 Section 127 of the Magistrates' Courts Act 1980.

86. Such a model would, in effect, remove the defendant's right to elect, reduce the sentence length and be limited to the time threshold of six months (or 12 months if that is determined to be appropriate) set out above, but only where the offence committed is below the prescribed threshold. It would ensure that such cases are dealt with more efficiently at an earlier stage of the process, given the time limit to initiate proceedings. It would maintain a trial by an independent court proportionate to the severity of the case. The model would also retain some flexibility in dealing with cases as it would not reclassify the entire offence, so the most serious instances of the offence could still proceed to the Crown Court, and the defendant would retain the right to elect in such cases.

87. In my view, introducing thresholds for additional offences (such as possession of drugs) to determine whether they can be heard in the magistrates' court risks creating arbitrary thresholds. Many offences for which thresholds might be considered applicable are already complex enough. Overlaying this with additional thresholds for allocating cases to the criminal courts may lead to inconsistencies without materially improving the outcome. I am not convinced that the introduction of additional thresholds to other offences is the right model to help the system out of this crisis. On the other hand, given that there is an existing threshold for criminal damage, the opportunity should be taken to update the financial threshold which was fixed at £5,000 by s. 46 of the Criminal Justice and Public Order Act 1994 with effect from 3 February 1995. According to the Bank of England's 'Inflation Calculator', the equivalent value in today's money is £10,248 and, in the circumstances, I would increase the sum of £5,000 to £10,000.[243] This would mean any criminal damage up to the value of £10,000 would be tried summarily in the magistrates' court.

Recommendation 17: I recommend that, to reflect inflation, the existing threshold for criminal damage being tried as a summary only offence be increased from the sum of £5,000 to £10,000, as set by section 46 of the Criminal Justice and Public Order Act 1994.

243 Inflation calculator | Bank of England.

88. I also considered another method by which to identify offences suitable for reclassification – namely, by looking into the Sentencing Guidelines and the range of likely sentence lengths. For example, according to statute, possession of a controlled drug classified as Class B carries a maximum penalty of five years' custody when tried on indictment. If tried summarily, the maximum penalty is three months' custody or a Level 4 fine.[244] However, setting these thresholds on sentencing must not be done in an arbitrary manner so as to create cliff-edge boundaries. This could also complicate matters further. This aligns with my conclusion on thresholds.

89. Having rejected both these mechanisms by which offences might be selected for reclassification to summary only, I have concluded that the most straightforward and logical approach is to select offences based on whether the offences have attracted an ACSL well within the limit of 12 months; needless to say, it excludes indeterminate life sentences not least because the sentence length is not recorded.

Context

90. In May 2022, and again in October 2024, the government decided to change magistrates' sentencing powers to 12 months.[245] If this decision remains in place, which I believe it should, the ability to switch the power on and off should be removed. In my view, the magistrates' court would be well suited to try a much greater pool of cases involving offences that are currently classified as either way. If those offences remain either way, there is a risk that magistrates would either not exercise their power to retain cases that are within their new 12-month maximum, or the defendant would elect trial in the Crown Court. By reclassifying some of these offences, that risk is removed altogether as magistrates must retain jurisdiction. As the government has recently

244 Sentencing Guidelines: Possession of a controlled drug (Sentencing Council).

245 The power is derived from the Judicial Review and Courts Act 2002. It was applied to offences committed on or after 2 May 2022 by the Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (SI 2022 No. 500). However, the power was switched off and the maximum reverted to six months where conviction occurred on or after 30 March 2023 by the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023 (SI 2023 No. 298). At that time, the Lord Chief Justice issued a letter to courts making clear that the reversion to six months was intended to be temporary, and was a government response designed to ease pressure on the prisons. The limit was once again increased to 12 months where conviction occurred on or after 18 November 2024 by the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2024 (SI 2024 No. 1067).

confirmed its confidence in the magistrates' court dealing with cases of that relative complexity and gravity, I take that 12-month sentence threshold as my starting point in identifying offences suitable for reclassification.

91. By reclassifying offences with an ACSL well within the limit of 12 months, I can be confident that most cases would already fall within magistrates' existing decision-making powers. I accept that this does not mean to say that these offences have never received a sentence greater than 12 months but that is likely to be truly exceptional and would be so infrequent that it does not provide a basis not to make the recommendation. Reclassifying such offences would ensure that the criminal court responsible for determining both verdicts and sentences is proportionate to the seriousness of the alleged crimes. This would align the criminal court and judicial process more closely with the severity of the offences.

92. I note that most existing summary only offences have a maximum custodial sentence length of six months.[246] In my recommendation to reclassify some either way offences to summary only, the maximum sentence length should be set at 12 months, rather than six months. Existing summary only offences should not have their maxima increased to 12 months. It should be a matter for the government to decide whether any new summary offence it chooses to create should have a maximum of six or 12 months.

93. Whilst the ACSL is my starting point for reclassification decisions, I recognise that the average can be distorted by significant 'outliers', which is why I speak of it being 'well within' a sentence of 12 months. Where the ACSL is therefore closer to the 12-month mark, it is likely that a higher proportion of these offences committed in the time period have received a sentence greater than 12 months. As such, ACSL should not be the exhaustive mechanism for reclassification and there are other factors of equal importance to be considered. I have listed the offences considered appropriate for reclassification at Annex G (List of Offences in Scope for Recommendations). The starting point for this list was identifying all either way offences in the period 2020 to 2024 with an ACSL of 12 months or less. I then considered the following factors to finalise the list of offences suitable for reclassification:

246 Section 224 of the Sentencing Code 2020 (Sentencing Council).

a. Sentence length – where the ACSL was close to 12 months then it is likely that a number of cases of that offence type warrant a sentence greater than 12 months. They would therefore be less likely to be within the sentencing power of the magistrates' court and hence be less appropriate for reclassification.

b. The distinctiveness of allegations to the defendant's character, reputation and employability.

c. Following reclassification of an offence to summary only, the offence would then be subject to the six-month time limit on prosecution being initiated in accordance with section 127 of the MCA 1980 (unless this limit is changed for individual or all such offences).

d. That reclassification would remove the right to elect and reduce the maximum sentence to 12 months' imprisonment.

e. The need for timely resolution, especially those cases related to violence against women and girls.

f. The complexity of the likely evidence in a case.

g. Whether the maximum sentence for the offence was recently increased or is a new either way offence.

h. Whether, if the offence in question became summary only, it would be capable of being added to Crown Court indictment under section 40 of the Criminal Justice Act 1988 (so that if a defendant is charged with multiple offences, including summary only offences, these can all be tried in the Crown Court together).

94. Applying this catalogue of factors reflects the importance of ensuring that cases are tried at the appropriate level. The aim is to avoid unnecessary referrals to the Crown Court when they fall within the available sentencing powers of the magistrates' court but retaining the Crown Court trial option where a higher number of cases would require it. Diverting such cases away from the Crown Court would not only reduce pressure on the system but also ensure that more serious offences could then be dealt with in the Crown Court in a more timely manner.

95. I am aware that concerns have been raised around whether the magistracy, including DJMCs, have sufficient training to deal with the complexity of some offences that would be reclassified. I do not accept that concern. I am confident that with this pool of offences, the potential complexity will be within the competence of the magistrates'

court. I have no doubt that all magistrates are more than capable of dealing with these cases. Nevertheless, I note that if these offences are reclassified as summary only, it would be possible for further guidance to be created which deals with the internal distribution of work within the magistrates' court – the more complex cases could be assigned for trial to a DJMC. DJMCs already deal with extremely serious cases in the Youth Court (with the power to sentence up to two years' custody).

96. While I fully acknowledge that reclassifying certain offences would remove the defendant's right to elect (as explained earlier in the chapter), significant steps must be taken to reduce the unsustainable Crown Court caseload. I am confident that justice can and will continue to be served in the magistrates' court, provided the process is fair and proportionate.

97. Having said that, I am concerned to avoid the trap of implementing changes that appear reformative but in practice complicate the system and deliver minimal impact. A striking example is the offence of theft from shops of goods valued at £200 or less. Such theft is to be tried summarily in a magistrates' court rather than in the Crown Court (unless the defendant elects), and this shift has led to fewer investigations (let alone prosecutions) for such offences.[247] However, the government's recent decision in the Crime and Policing Bill 2025 is specifically to target low-value shop theft. The Bill now stipulates that theft of goods of any value is to be considered an either way offence ('general theft') and thereby eligible for trial in the Crown Court.[248] This change aims to remove the perceived immunity granted to shop theft of goods to the value of £200 or less, and apply maximum sentencing powers of seven years to all theft.[249] The impact is mitigated as Sentencing Guidelines already provide a structured framework for determining the appropriate penalties, considering factors such as harm and culpability, which might include financial value.

98. In selecting suitable offences for reclassification, I considered several bases on which to identify appropriate offences, all designed to ensure a balanced and effective approach. For the reasons I have outlined in paragraph 93, the metric I have preferred is looking at either way offences with an ACSL of 12 months or less as a starting

247 Section 22A of the Magistrates' Courts Act 1980, which undermines the statutory claim that the offence is to be tried summarily.

248 Crime and Policing Bill (UK Parliament, May 2025).

249 Crime and Policing Bill: Retail crime factsheet (Home Office and MoJ, February 2025).

point and considering other factors thereafter before reaching a final list. I considered other options such as identifying the offences for reclassification based on the details of individual sentencing guidelines that provide a structured framework for determining the appropriate allocation based on the specifics of each case. This would have included reviewing culpability and level of harm tables. While relying on the Sentencing Guidelines would offer a clear and detailed method for reclassification, in my view it could make the criteria overly specific for certain offences and overlook broader trends in the data. The simplest option I recommend using is ACSL as a starting metric for identifying cases that are eligible to be reclassified.

99. As I have acknowledged, regardless of the method by which I recommend reclassification of offences, once an offence is reclassified as summary only, there are other impacts on the process that will need to be resolved. First, summary offences require that the CPS and police must bring charges within the statutory time limit set out in section 127 of the MCA 1980. This six-month limitation for the commencement of summary only offences imposes clear procedural constraints and, if not carefully accounted for, could result in cases being time-barred before being charged. This would limit the delivery of justice for cases that might otherwise warrant an acquittal in the interests of the defendant or a conviction and penalty in the interests of victims and witnesses, as well as society more generally. That is why I have left open the question whether that limit should be increased as it has been for other summary only offences.[250] This depends on the practical ability of the CPS or police to meet this deadline. Without that assurance, unless the time limit is increased, there is a real risk that justice could be undermined not by the merits of a case but by administrative delay. The primary legislation which reclassifies the offences can address this matter.

100. A second consequence of reclassification is that there may be impacts on police powers (in relation to search and seizure etc.). It is not my intention to limit the police powers for these reclassified offences. Once again, the primary legislation bringing about the reclassification should ensure that police powers are not jeopardised.

250 For example, s. 39A of the Criminal Justice Act 1988, inserted by s. 49 of the Police, Crime, Sentencing and Courts Act 2022, extending the time limit for any offences of common assault or battery which amount to domestic abuse, as defined in s. 1 of the Domestic Abuse Act 2021.

101. In short, statutory provisions surrounding reclassification, therefore, must be guided not just by ACSL but also by operational feasibility, to ensure timely and effective prosecution remains achievable.

102. Reclassification of offences based on ACSL and feasibility criteria means this option for reform could provide a substantial list of suitable offences. The impact this could have on the open caseload would be significant, subject to the selection of offences, and is a logical next step following the government's recent increase to magistrates' sentencing powers. The existing framework is sufficient to manage the Crown Court trial process without requiring additional provisions or modifications. This approach preserves the integrity and flexibility of the justice system while avoiding unnecessary changes that could complicate its operation. I would suggest that the government considers this as a necessary option to help bring the Crown Court caseload down.

103. A higher number of magistrates' court trials (over Crown Court trials) is likely to have a greater impact on the open caseload because, when a defendant consents to a summary trial, they are typically informed of the hearing date before leaving court. This ensures there can be no subsequent claim that the defendant was unaware of the trial date, thereby promoting procedural clarity and reducing the risk of delays or adjournments due to misunderstandings.

104. Reclassification would have significant implications for proportionality, fairness and participation within the system. By adjusting the mode of trial for certain offences, reclassification would ensure that cases are heard in the most appropriate venue, matching the seriousness of the offence with the court's capabilities. By handling these offences exclusively in the magistrates' court, the justice system would foster greater transparency, as proceedings in these courts tend to be quicker, more accessible and less complex than in the Crown Court. They will become even more transparent with my recommendation for mandatory recording of proceedings – see Chapter 6 (Appeals from the Magistrates' Court). The shift to reclassify offences would enhance public confidence by demonstrating a commitment to timely and effective justice. Although reclassification would affect all defendants by limiting their choice of trial venue, fairness would be preserved as the magistrates' court would still provide a free and fair independent court for the alleged offence, ensuring justice would remain accessible and equitable for everyone involved.

105. To implement reclassification as recommended, primary legislation would be required. This legislative action would be essential to ensure that the reclassification was legally binding and enforceable. The modelling on this option has used those offences listed at Annex G (List of Offences Scope for Recommendations). I estimate that the introduction of both my RRTE model and reclassification recommendations combined will save c. 4,000 Crown Court sitting days per year, and would be seen at a lower cost vs these cases being seen in the Crown Court (see Modelling Box A).

Recommendation 18: I recommend that the 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 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.

Impact of RRTE and reclassification on sitting days

106. In the following box, I present an initial modelled assessment of the combined impacts of both the RRTE and reclassification model on Crown Court and magistrates' court sitting days, and the expected financial impact of these recommendations. Additional savings may be anticipated should my further recommendations be adopted; see paragraph 54 of Chapter 8 (Crown Court Structure). A more detailed explanation of the approach to modelling is set out in Annex F (Technical Annex).

Modelling Box A – Illustrative impact of RRTE and reclassification on workload and costs

Using available data and evidence and the assumptions, caveats and qualifications expressed below and throughout this chapter, it is estimated that the introduction of both the RRTE model and reclassification combined would save approximately 4,000 Crown Court sitting days per year. Given the magistrates' court can hear cases more quickly than the Crown Court, it is estimated that these cases would be able to be seen in the magistrates' court using less than 1,000 sitting days. The 4,000 Crown Court sitting days saved from these reforms could therefore be used in the Crown Court with a jury to hear the most serious cases. It is estimated that the cost of hearing these cases in the Crown Court with a jury would have been £190 million (between 2027/28 and 2029/30, assuming recommendations are implemented in 2027/28).

However, the equivalent costs of hearing these cases in the magistrates' court (including set-up costs provided by HMCTS) would be £5.4 million in total over the same period, freeing up 4,000 Crown Court sitting days annually. There will be no cost savings from the freed up 4,000 sitting days as it is anticipated this will be used to hear additional cases in the Crown Court with a jury.

A full explanation of the modelling methodology, assumptions and uncertainties is provided in Annex F (Technical Annex). However, it is worth noting a few key assumptions:

- All sitting-day saving estimates have been rounded to the nearest thousand.
- It has been assumed that disposals per day in the magistrates' court are in line with the current average excluding SJP cases.
- Modelling assumes that recommendations are implemented in 2027-28, however, as is made clear in this Review, recommendations should be implemented as quickly as is feasible.
- A 20% election rate is assumed across all either way offences. In reality, election rates will vary, particularly for offences in scope of the RRTE model. For example, I have heard anecdotally that the offence Assault of an Emergency Worker has a much higher election rate than average.
- The modelling excludes impact from behavioural changes, for example changes in pleas or election rates.

- The cost modelling assumes the baseline is the 2025/26 allocation of sitting days in the magistrates' court (114,000 sitting days). It is assumed that the magistrates' court can hear all the cases that are moved across from the Crown Court.
- A 20% optimism bias has been applied to the costs to account for any uncertainty related to upward pressure on costs.

Ancillary orders

107. I will briefly separate out my consideration on offences related to breaches of 'ancillary orders'. An ancillary order is a legal order imposed by judges or magistrates that serves to address issues related to criminal behaviour without necessarily resulting in a custodial sentence. It is therefore often considered a diversionary practice. Some ancillary orders are aimed at redressing the harm caused by an offender. Others aim to prevent future reoffending or repeat victimisation. Ancillary orders can include a range of actions such as compensation orders, restraining orders and disqualification from driving.

108. I have considered whether certain ancillary orders should be moved to the civil jurisdiction. However, I am concerned about the unintended consequences associated with this. It may be that transferring the issue could result in a more onerous process for victims, and this could have a disproportionate impact on them. Aside from this, it could simply lead to an increased caseload from the criminal to the civil jurisdiction. Therefore, instead, I recommend reclassifying breaches of many of these orders from either way to summary only, and have applied all the criteria I have listed above to make this recommendation.

109. I acknowledge that these orders are distributed across many discrete Acts. It may not be sensible to replace them with a single Act dealing with all orders in criminal cases, but I do see merit in a discrete Act that governs the administration, policing, consequences of breach etc. for all these orders so that these matters can be aligned. That will allow for more efficient policing. In addition, I recommend that the right to elect should be removed from any offences of breach of these orders.

The Hybrid Model

110. My recommendations in this chapter involve a dual approach: the removal of the right to elect from some either way offences and the outright reclassification of others. By integrating these options, I aim to enhance the efficiency and fairness of the justice system, mitigating concerns relating to each option raised earlier. The RRTE streamlines the trial process for other offences, reducing delays and alleviating pressure on the Crown Court. Meanwhile, reclassification allows for a more appropriate mode of trial for certain offences, ensuring that cases are heard in the court most suited to their nature and seriousness. The combination of these approaches creates a balanced framework that addresses current challenges in the justice system while maintaining fairness and proportionality in its application.

111. There is a range of either way offences, differing in seriousness, complexity and impact on victims. It is not a straightforward decision to determine whether a case should be tried in the magistrates' court or Crown Court. Various factors must be considered, as reflected in my decision to reclassify certain offences to summary only. Some cases are more complex than others and would need a court with the appropriate sentencing powers to handle the case. The model reflects the overarching principle of proportionality, recognising the need to move away from a complete application of the right to elect. The use of both reclassification and RRTE provides more flexibility in distributing work appropriately and dealing with it in an efficient and timely manner.

112. By targeting a pool of offences with either a maximum sentence of two years or an average custodial sentence length of less than 12 months, a proportionate response can be achieved. The recommended hybrid reform approach has the potential to reduce the outstanding caseload significantly as it can impact on a wider pool of offences. Targeting these offences ensures that cases falling within this category could be managed more efficiently, without compromising fairness or proportionality in sentencing. It encompasses a wide range of offences that can be reviewed in the magistrates' court to streamline processes and increase capacity in the Crown Court to deliver timely justice.

113. I recognise that the political sensitivity surrounding the removal of the right to elect must be carefully considered, as it could impact adversely on the perception and acceptance of the reform. Finally, there is a limit to what can be modelled during this timeframe, and therefore I urge the government to consider other offences and model this as needed.

An Alternative

114. I am very conscious that some may think that my recommendations to remove the right to elect in relation to certain offences and to reclassify others is complex and liable to give rise to error; others may go so far as to say that it is unworkable. I do not accept any of these concerns but let me make the alternative very clear. The present way in which trials are organised, allocated and tried is no longer sustainable and, if continued, will lead to the collapse of the criminal justice system. Unless some way of moving forward, along the lines that I have recommended, is to be put in place, the only alternative would be complete abandonment of the right to elect trial by jury (as, indeed, was recommended in the Auld Review and, in my mind, required serious consideration at the time of my 2015 Review). Even that would not be sufficient, as I discuss when considering the Crown Court in Chapter 8 (Crown Court Structure).

Confidence in the Magistracy

115. Confidence in the ability of the magistrates' court to make decisions is paramount to supporting the implementation of these options and the general objectives of this Review, as outlined in the Terms of Reference. If the magistrates' court is responsible for more criminal trials, and dealing with cases of greater gravity and complexity, then confidence in its ability to deliver justice for all is critical. Public perception of magistrates in England and Wales is influenced by various factors, including their role in the criminal justice system, the transparency of their decisions and the public's understanding of sentencing guidelines and their decision-making.

116. Public attitudes towards appropriate sentencing also play a vital role in maintaining trust and confidence in the criminal justice system. Ensuring that sentencing aligns with public perceptions of fairness and proportionality is essential for fostering credibility and transparency within the system. Public opinion surveys have long documented criticism of perceived lenient sentencing in the

magistrates' court.[251] An article in the *British Journal of Criminology* discusses public opinion towards the magistracy and the Sentencing Council guidelines.[252] However, the study found that providing information about sentencing structures can change public attitudes, making them less punitive and more understanding of the role of the magistracy. The Sentencing Council launched an interactive platform, 'You be the Judge', with the aim to increase understanding of how sentencing and sentencing guidelines work and raise awareness of the role that judges and magistrates play in sentencing based on real-life examples.[253] This underscores the importance of transparency and education about sentencing in general in shaping public perception. The public must be educated on the processes and procedures of the criminal courts and more needs to be done in this context by the relevant bodies to support users of the system.

117. The estimated appeal rate in the magistrates' court was approximately 0.4% in Q4 2024.[254] The proportion of appeals is particularly low given the high volume of cases the magistrates' court handles annually. This relatively low proportion of appeals may indicate that the magistrates' court is consistently applying the law and making well-balanced decisions. It also suggests that there is considerable satisfaction from defendants and legal representatives in the consistency of decision-making in the magistrates' court. I deal more fully with appeals from the magistrates' court in Chapter 6 (Appeals from the Magistrates' Court).

118. Overall, these factors collectively underscore the significance of transparency, education and communication in shaping public perception of the magistracy. By enhancing public understanding of sentencing guidelines and the role of the magistracy, it can bolster confidence in its processes and decisions. The Senior Presiding Judge and the judiciary have expanded the Crown Court Improvement Group (CCIG) to become the Criminal Courts Improvement Group. That will enable the group to include the magistrates' court in its reform work.

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251 Julian Roberts, Michael Hough, Jonathan Jackson and Monica M. Gerber, 'Public opinion towards the lay magistracy and the sentencing council guidelines: The effects of information on attitudes' (2012) 52(6) Brit J Crim 1072–1091.

252 Roberts et al., 'Public opinion towards the magistracy and the sentencing council guidelines'.

253 You be the Judge launched (Sentencing Council, July 2024).

254 Source: Criminal court statistics quarterly (2025).

I am hopeful that this cross-system collaboration can improve access to justice and as a consequence, improve public confidence and perception. The successful implementation of the recommendations for this Review is fundamentally dependent on having confidence in the magistrates' ability to deliver justice effectively and equitably.

Recording facilities in the magistrates' court

119. The Law Commission's 2025 Consultation Paper on appeals has recently highlighted concerns raised during pre-consultation with legal professionals on removing the automatic right to appeal from the magistrates' court. The Commission feared that the criminal courts 'system would collapse if magistrates were required to provide detailed reasons for their decisions, including their verdicts, and legal advisers were required to offer robust written advice that would withstand judicial scrutiny on appeal'.[255] Additionally, there was an argument advanced that the right to a full re-hearing is necessary because summary proceedings lack the same protections for defendants (such as the same likelihood of publicly-funded representation) as indictable cases.[256] Having regard to the scheme I am recommending, including its safeguards, I am not persuaded that these arguments have force. Magistrates already provide reasons for their decisions. Moreover, recording magistrates' court proceedings would remove the need for a detailed note of evidence and would record the advice of the legal adviser. This should reduce the pressure on the legal adviser and/or court staff.

120. Introducing the recording of trial and sentence proceedings in the magistrates' court is a significant step. The Senior District Judge (Magistrates' courts) has long since argued for its implementation. It will serve as a crucial tool in eliminating the need for re-hearings in the Crown Court, allowing instead references to transcripts of the original trial when necessary to resolve the grounds of appeal. Without this measure, as outlined in paragraph 31 of the Law Commission paper, there is a risk of increasing the workload on judges. Transcripts would not need to be automatically prepared in every magistrates' court case but would be generated only where and to such extent as is necessary to do so for the purposes of an appeal. AI transcription services will, subject to quality safeguards, remove the need for hand-prepared transcription. AI transcription services will be subject to safeguards.

255 Criminal Appeals Consultation Paper (Law Commission, 2025), p. 93.

256 Criminal Appeals: Issues Paper (Law Commission, 2023), p. 44.

121. There must always be appropriate safeguards in place to ensure that trial proceedings are fair and can be subject to proper scrutiny if the verdict or sentence is challenged and disputed. In this respect, the purpose of the recording system will reflect that in the Crown Court which records and stores all its proceedings via a digital recording system. Similar consideration should therefore be given for the magistrates' court. Whether Digital Audio Recording Transcription and Storage (DARTS) or a simpler recording system should be put in place would have to be decided after further review by HMCTS and others. But to be clear, I recommend the introduction of a secure recording software system that can capture the whole duration of the proceedings from start to finish. Although this may be capable of being implemented without primary legislation, I would encourage the government to use primary legislation given the significance of the change and to avoid any challenge to its operation.[257]

122. This recommendation would be a key foundation to support my amendments to the appeals process. In addition, it would serve as a valuable safeguard now that the magistrates' court is hearing more complex and serious cases with magistrates' enhanced sentencing powers. The Terms of Reference for the Efficiency Review state that technology and AI are integral components, and I will be pursuing those matters in more detail there. However, I reference this now as it serves as a principal means by which to prevent cases from being re-heard in the Crown Court, instead allowing for reference to available transcripts.

123. The argument might be made that recording all proceedings generates an opportunity for defence advocates to create grounds of appeal (particularly since the automatic right to appeal will be removed). I am not persuaded by this argument. At present, appeal rates are low even when defence advocates have the opportunity to appeal irrespective of any alleged error at trial. I am not convinced that mandatory recording and a requirement for leave will generate more appeals than when there is an automatic right to appeal. Nor should the recording of proceedings cause defence advocates to seek to delay or frustrate the flow of proceedings in the magistrates' court.

257 This could also be achieved by means of change to the Criminal Procedure Rules and Criminal Practice Directions under s. 69 of the Courts Act 2003.

124. There are several key benefits to this approach. By keeping a record and transcribing proceedings (where necessary), the magistrates' court would enhance transparency and accountability within the court system. This level of documentation would allow the public and parties to scrutinise the workings of the court and foster further trust in the magistrates' court's decision-making. This practice also enhances the prospect that similar cases are treated similarly, mitigating the risk of any disproportionate outcomes. A mute button would allow confidential discussions by the bench to be kept confidential without the need for the court to adjourn.

125. Detailed records of court proceedings would also simplify the appeal process, as courts hearing appeals could review challenged rulings (and, if necessary, the relevant evidence) from the magistrates' court without the need for a full re-hearing. Quite apart from the benefit to victims and witnesses (who would not have to return to go through the trial a second time), this would both save Crown Court time and also ensure that appeals are based on a thorough understanding of the original case and judgment. Given that there would be no appeal simply on the facts, the evidence and any other relevant material should already be available to the judge of the Crown Court sitting on the appeal. I am confident that this approach would ensure fair and timely hearings for defendants.

126. As with any technological development in court, be it simple or complex, it would require change to the standard practices and procedures in place within the courtroom. Whilst I am not suggesting a complete overhaul of the technical landscape of the magistrates' court estate, I do suggest finding a simple mechanism which enables proceedings to be recorded and stored securely, though my preference is to avoid complicating and further delaying the matter and therefore use the simplest mechanism, at least initially.

127. Further consideration is also required as to how these records would be stored securely. Crown Court records are stored in a limited number of authorised places: they are primarily stored at the court itself for a period, then may be transferred to HMCTS and, eventually, some may end up at the National Archives.[258] In the case of the magistrates' court, either a consistent approach should be taken with the retention of Crown Court records, or a policy could be adopted that magistrates' court recordings be kept for a specified time only and then destroyed.

258 Criminal court cases: Crown courts since 1972 (The National Archives).

Recommendation 19: I recommend that trial and sentencing proceedings in the magistrates' court be audio recorded and, if necessary for the purposes of appeals, appropriate parts transcribed.

Diversity

128. The magistrates' court plays a critical role in upholding justice at a community level, and one of its strengths lies in the diversity of its bench. Between 2014 and 2020 there was a marked increase in diversity within the magistracy, however this has plateaued over the last five years. In 2023/24, over 2,000 appointments to the magistracy were made. Of these, 57% were female and 13% were from an ethnic minority background.[259] I applaud efforts to date to diversify the magistracy to ensure it better represents the population it serves, however more must be done to continue this work. The Lammy Review concluded that a more diverse magistracy would build public trust in the justice process, particularly among people from ethnic minority backgrounds, thus increasing public perceptions of fairness – I agree with that view.[260]

129. To illustrate the progress that has been made, I refer to Penny Darbyshire's 1977 *Criminal Law Review* article. She encouraged readers to visit any magistrates' courtroom, where they are almost certain to find that the oldest individuals are on the bench, often a generation older than the court clerk and those appearing before them. Considering that the peak age of known offenders during that period was 18 for males and 15 for females, the age gap was most pronounced in the Youth Court, with a double generation difference between the bench and the defendant.[261] Progress, as I say, has been made since this point, but there is a need to do more.

259 Source: Diversity of the judiciary: Legal professions, new appointments and current post-holders - 2024 Statistics (MoJ, December 2024).

260 Lammy review: final report (2017).

261 Penny Darbyshire, 'For the New Lord Chancellor—Some Causes of Concern About Magistrates' [1997] Crim LR 861–874.

130. Despite the efforts to improve representation, the magistracy is not yet fully representative of the general population in England and Wales. Magistrates continue to be significantly older than the population at large, with 81% over the age of 50 in 2023–24 compared to 43% of the population aged 20 to 75 being over 50 (based on the 2021 census).[262] The proportion of magistrates from an ethnic minority background is 13% compared to 18% of the general population.[263] Despite making up 30% of applicants, individuals from ethnic minority backgrounds accounted for only 16% of those appointed to the magistracy. This stark disparity highlights a significantly lower success rate compared to white candidates. I share the concern expressed by Penelope Gibbs (2024), who remarked that it is a pity so many were turned away, especially given that the magistracy still falls far short of reflecting the ethnic diversity of the population.[264]

131. The magistracy also contains a smaller proportion of people with a disability.[265] Further, there are significant differences in magistrates' occupations and socio-economic profile compared to the broader population. 76% of magistrates attended university compared to around half of the population, and approximately 80% of magistrates appointed in 2023/24 had 'modern/managerial' roles compared to less than half of the population.[266] I agree with Lord Justice Auld when he stated, as with juries, magistrates are not wholly reflective of the communities from which they are drawn, but nevertheless have an important symbolic effect of lay participation in the system which should not be under-valued.[267] More must be done to ensure a representative magistracy to help mitigate public perceptions of biases and assure individuals of the justice system's ability to deliver equitable justice. I will return to this point in Chapter 8 (Crown Court Structure).

262 Source: Diversity of the Judiciary.

263 Source: ONS Census 2021.

264 Penelope Gibbs, Should magistrates be more representative of the people? (Transform Justice, 2024).

265 Source: Diversity of the Judiciary.

266 Ibid.

267 Review of the Criminal Courts of England and Wales (2001), p. 98

Magistrates' court fees

132. Turning to legal representation in the magistrates' court, I will set out some of the ways in which I recommend that fees should be reformed. This is in response to the fact that, following my recommendations, the magistrates' court would be hearing more serious cases (and therefore defence practitioners would need to represent defendants charged with these graver offences). In addition, consideration is warranted because I consider there to be some perverse incentives in the magistrates' court arising because of fee structures. Removal of them would allow for better decisions to be made by defence representatives on their clients' behalf.

133. Sir Christopher Bellamy KC, in his 2021 'Independent Review of Criminal Legal Aid' (CLAIR), made a number of recommendations on the magistrates' court which he hoped would put the court on a more sustainable footing.[268] Bellamy recommended that:

    a. the existing magistrates' court scheme should be retained, but remuneration increased;

    b. there should be a system of higher and lower standard fees for appeals and committals for sentence from the magistrates' court to the Crown Court; and

    c. committals for sentence should not be remunerated at less than the equivalent remuneration for a guilty plea in the Crown Court.

134. In response to CLAIR, the MoJ uplifted the fees paid for appeals in the magistrates' court by 15% in 2022 and I am therefore, at this time, not recommending a further increase for these, although I recognise that a consequence of the recommendations that I make in relation to appeals might mean that a review of this funding may become necessary.[269]

135. It is important to note that the recommendations made by Bellamy, although recent in time, were made when the criminal courts were in a very different position to the current crisis. They were made in the shadow of a pandemic which had a debilitating effect on the system and dramatically changed the outlook and increased the open caseload. It is my view, however, that his recommendations, and in

268 Sir Christopher Bellamy, Independent Review of Criminal Legal Aid (November 2021).

269 Government's full response to the Criminal Legal Aid Independent Review and consultation on policy proposals (MoJ, December 2022).

particular that committals for sentence should not be remunerated at less than the equivalent remuneration for a guilty plea in the Crown Court in particular, still stand and would help to remove perverse incentives around guilty pleas.

136. In CLAIR, Bellamy highlighted the Criminal Law Solicitor's Association's argument that 'the fixed rate paid to litigators for committals for sentence from the magistrates' court to the Crown Court is lower than the basic fees applicable in the Crown Court in many cases, even for a guilty plea in the Crown Court'. This, he suggested, may lead to a conflict between the solicitor's interest in possibly obtaining the higher Crown Court fee and the client's interest, which may be best served by pleading guilty as early as possible.

137. I agree with Bellamy's assessment. This disparity in fees is creating a perverse incentive whereby solicitors are likely to be paid more by the defendant not pleading guilty at the first hearing but instead proceeding to the Crown Court before pleading. The solicitor would thereby obtain the Crown Court fee for a sentencing hearing, rather than the fee for a guilty plea and sentence in the magistrates' court (and potentially for a committal for sentence to the Crown Court in some cases). Removing this perverse incentive would, in my opinion, reduce the number of cases cracking at trial and save wasted court resources, which are already stretched.

Recommendation 20: I 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.

Conclusion

138. The magistrates' court plays a vital role in the criminal justice system. This chapter highlights the significance of that role in managing the open caseload and supporting the delivery of swifter, more effective justice. I present a range of recommendations to be implemented in full, along with alternatives for the government to also consider, including the RRTE model, reclassification of either way offences to be summary only and a hybrid approach that combines both reclassification and the RRTE. These recommendations are designed to reflect the recent extension of magistrates' sentencing powers and to alleviate pressure on the Crown Court. To support these recommendations, I proposed mandatory audio recording of all criminal proceedings in the magistrates' court. This would enhance transparency, streamline case management and focus appeals on legal errors rather than full retrials.

139. The chapter considered how the magistrates' court could be better equipped to handle more complex cases, including through greater diversity in the magistracy and by efforts to improve public confidence. Consideration should also be given to enhanced training for magistrates to reflect the seriousness of the cases with which they will be dealing and the different procedures of the Crown Court. It also acknowledged the need for other parts of the criminal justice system to be prepared for a shift in caseload.

140. Fairer and more proportionate remuneration for legal work in the magistrates' court is essential to maintain public confidence and eliminate perverse incentives, thereby supporting more appropriate and balanced decision-making. These measures should apply equally across the system, promoting fairness in proceedings and ensuring that decisions are made in the best interests of justice.

141. Taken together, the recommendations in this chapter aim to enhance the capability, efficiency and fairness of the magistrates' court. By strengthening its role within the wider system, the magistrates' court would be positioned to deliver justice that is timely, proportionate and trusted by the public by saving 4,000 sitting days in the Crown Court. Building on this foundation, the next chapter turns to the appeals process from the magistrates' court to the Crown Court, and how it can be reformed to further reduce the open caseload.

Chapter 6

Appeals from the Magistrates' Court

Chapter 6 – Appeals from the Magistrates' Court

Introduction

1. Appeals play a crucial role in the justice system as they provide an important safeguard in rectifying wrongful convictions and addressing legal errors, thereby promoting individual justice and strengthening public confidence in the system.

2. In continental Europe, the criminal appeals process has its origins in the inquisitorial procedure in which the judge takes a leading role in investigating and determining the facts of a case, rather than relying solely on the evidence presented by the prosecution and defence. It emerged much earlier than in England and Wales, and remains a persistent feature of criminal procedure in those jurisdictions. Indeed, appeals are now commonly regarded as a fundamental right and are closely aligned with Article 13 of the ECHR: the right to an effective remedy and Article 2 of Protocol 7, which specifically recognises the importance of appeals in criminal cases.[270]

3. It is clear that effective appeals processes serve important functions. They provide a method for public accountability of trial courts, thereby adding legitimacy to the criminal justice system. Appeals serve this important public function and boost public confidence in the system – even when they expose failings and miscarriages of justice. There is a serious debate about the adequacy of the appeal process from the Crown Court, and there are many examples of miscarriages of justice

270 Guide on Article 2 of Protocol No. 7 to the European Convention on Human Rights: Right of appeal in criminal matters (European Court of Human Rights, February 2025).

that take a long time to correct.[271] Whilst this issue is outside the scope of this Review, it exemplifies the need for a clear and effective appeals process from all courts. The public, and professionals in the system, must be reassured that errors should be detected and rectified. Appeals are the primary way in which judges, as public officials, are subject to oversight and held accountable for how they reach their decisions.[272]

4. Defendants who are convicted by the magistrates' court have an automatic right to appeal to the Crown Court – either on conviction, on sentence or both. Additionally, in certain circumstances, they can apply back to the magistrates' court. The current process for appeals from the magistrates' court to the Crown Court is not proportionate in the burden it places on the courts, relative to the gravity of the offences involved, and is pervaded by procedural complexities. In my 2015 Review, I shared my views on the magistrates' court appeals process, and again it is necessary to revisit the proposed structural changes I outlined.[273] These changes align with the recommendations made by Lord Justice Auld in his comprehensive review of the criminal courts, published in October 2001. Both reviews emphasised the need to streamline and improve the efficiency of the appeals process.

5. The Auld Review in 2001 highlighted several key areas for reform, aimed at creating a more predictable and fair appeals process, which would benefit both individuals seeking to challenge alleged injustice and the public at large.[274] In my 2015 Review, I echoed these sentiments and recommended additional measures to enhance the appeals process. These included the integration of modern technology to facilitate better case management, the removal of the automatic

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271 In recent times, there have been several high-profile cases of miscarriages of justice, where innocent individuals were wrongfully convicted and sentenced to significant prison terms, only to have their convictions subsequently overturned. The Post Office scandal, which occurred between 1999 and 2015, saw more than 900 sub-postmasters and others wrongfully prosecuted on charges of false accounting and theft due to faults in the Horizon IT system. This scandal has been described as one of the greatest miscarriages of justice in British history. Notable examples on an individual level are the cases of Andrew Malkinson (convicted of rape in 2004) and Peter Sullivan (convicted of murder in 1987) in both cases for crimes they did not commit. In each case, new DNA evidence proved their innocence.

272 Peter D. Marshall, A Comparative Analysis of the Right to Appeal (2011) 22(1) Duke J Comp and Int'l L 1–46.

273 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015), ch. 10.

274 The Rt Hon. Lord Justice Auld, Review of the Criminal Courts of England and Wales (HMSO, October 2001), ch. 12.

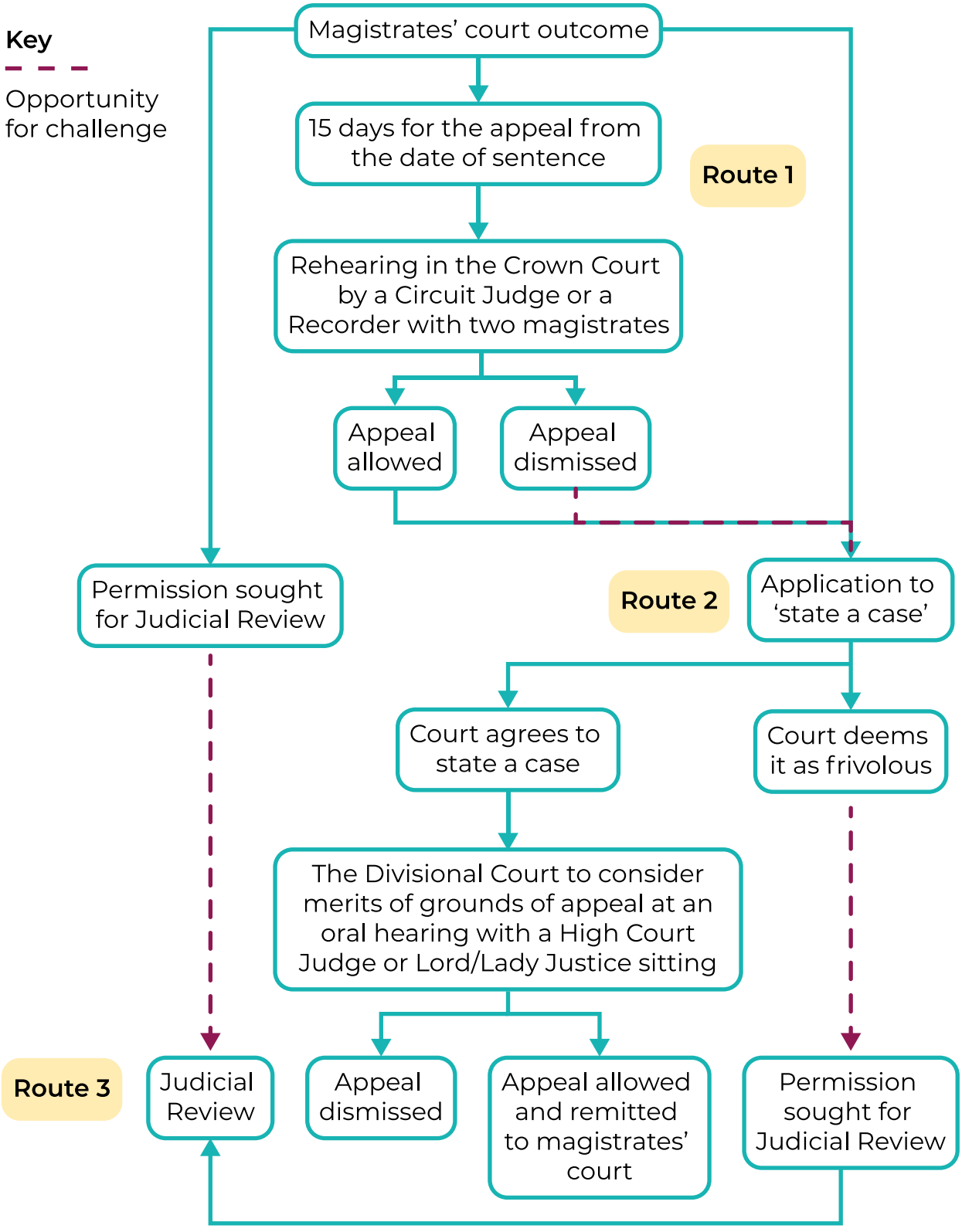
right to appeal from the magistrates' court to prevent frivolous cases taking up precious time in the Crown Court in its capacity as an appeal court, as well as the revision of the right to a re-hearing to focus solely on points of law. Revisiting these recommendations is crucial in the continuing pursuit of an appeals process that upholds the principles of justice while adapting to the evolving needs of the system as a whole.

6. This chapter will concentrate on the challenges inherent in the appeals process from the magistrates' court only. I will start by summarising the current appeals processes, before highlighting some of the issues arising from its existing structure and setting the stage for my recommendations. I recommend three fundamental changes to the appeals process. The first would replace the automatic right to appeal from the magistrates' court to the Crown Court, with a need for permission to appeal on similar grounds to those available from the Crown Court to the Court of Appeal (Criminal Division). The second would remove the obligation to conduct a re-hearing in the Crown Court. To enable this and ensure fairness in the process, I have also recommended in Chapter 5 (The Magistrates' Court Process) that all hearings and proceedings in the magistrates' court should be audio recorded. Together, these options aim to: reduce the number of appeals in the Crown Court (which in 2024 stood at around 4% of the open caseload[275]); streamline the appeals' process; and, with the introduction of a record of proceedings, enhance the magistrates' court process in all cases.

275 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025).

The Current System

Flowchart 6.1: The Current System (ignoring sections 14 and 142 of the MCA 1980)



7. I offer a brief explanation of how each of these routes of challenge to the decision of the magistrates' court works in practice, in part to highlight the complexity of the system: in doing so, I will cross refer to Flowchart 6.1. I will devote little discussion to the process for routes 2 and 3 as I do not recommend any changes to the routes of challenge in the High Court by way of case stated or judicial review.

8. A defendant who is convicted in the magistrates' court can challenge that decision:

   a. pursuant to section 14 of the MCA 1980 and within 14 days of learning of the conviction, making a statutory declaration that they did not know about the proceedings until after the date of conviction thereby rendering the conviction void;

   b. pursuant to section 142 of the MCA 1980 (power to re-open cases to rectify mistakes etc.), following conviction, if it subsequently appears to the court that it would be in the interests of justice that the case should be heard again by different justices, the court may so direct thereby rendering any conviction of no effect;

   c. pursuant to section 108 of the MCA 1980, lodging an appeal to the Crown Court which can be an appeal against conviction or sentence or both;[276]

   d. pursuant to section 111 of the MCA 1980, appealing to the High Court (usually a Divisional Court of the King's Bench) by case stated. Such challenges are limited to a claim that the magistrates' court has made an error of law or acted in excess of its powers and;

   e. by seeking to apply for judicial review before the High Court (the Administrative or Divisional Court of the King's Bench).

9. Where a defendant has been acquitted, a prosecutor is also able to challenge decisions of the magistrates' court, by way of case stated or by judicial review (this is explained more fully in routes 2 and 3 below).

10. I do not intend to refer further to the rights of defendants under section 14 or section 142 of the MCA: these are important mechanisms for the speedy correction of errors of process (either in relation to service of proceedings or in any other circumstances when it is in the interests of justice to order that a trial or proceedings be reheard). These should remain unaffected by the changes which I do recommend but must be seen as additional avenues which can be

276 There is also the right to appeal a bind over which is a re-hearing before the Crown Court. Section 1 of the Magistrates' Court (Appeals from Binding Over Order) Act 1956.

used in order to challenge a conviction. The remainder of this chapter focuses on the remaining routes of appeal not involving returning to the magistrates' court.

Route 1 – Automatic Right to Appeal from Magistrates' Court to the Crown Court

11. The most frequently used mechanism of challenge from a decision of the magistrates' court is by appealing to the Crown Court either against conviction or sentence or both. This right of appeal is automatic and does not require the articulation of grounds of appeal: it permits a challenge to the Crown Court without needing permission from the magistrates' court or the Crown Court to do so.

12. It is possible to challenge other aspects of the decision of the magistrates' court. If the offender pleaded guilty, the offender may still appeal against conviction but only in limited circumstances (e.g. where the guilty plea was demonstrably made in error or was equivocal). An appeal must be lodged within 15 working days to exercise the automatic right to appeal for a re-hearing in the Crown Court.[277] If an appeal is made outside this time limit, then the defendant may still appeal but would need to ask the court for permission to do so out of time.

The re-hearing in the Crown Court

13. An appeal to the Crown Court comes before a panel comprised of any judge of the Crown Court (High Court Judge, Circuit Judge or Recorder) sitting with at least two magistrates (see Chapter 5 – The Magistrates' Court Process) not previously involved in the case.[278]

14. The hearing is not a review of the magistrates' court decision, but instead a complete re-hearing of the case. As a result, on hearing the appeal, the Crown Court has the power to reverse, affirm, amend or even remit the magistrates' decision back to the magistrates' court, giving its opinion on how the magistrates' court should then dispose of the case.[279] If an appeal is dismissed, the court can consider the appropriate sentence for the crime committed. The court can increase

277 Part 34 of the Criminal Procedure Rules 2020.

278 Section 74(1) of the Senior Courts Act 1981 requires two to four magistrates although rules of court can allow a judge to continue without that number. See s. 74(3) of the Senior Courts Act 1981; Sentencing Explained (Sentencing Academy, 2023).

279 Section 48 of the Senior Court Act 1981.

the original sentence.[280] Any increase to the sentence would need to be within the maximum sentencing powers available in the magistrates' court for the offence.[281] An appeal against sentence is also a re-hearing thereby giving rise to the risk that the Crown Court increases the sentence; it may not do so, however, beyond the maximum available to the magistrates' court for that offence.

15. It is estimated that in 2024 the proportion of magistrates' court decisions that were appealed stood at approximately 0.4%.[282] 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%).[283] Some of these appeals are not contested when they get to the Crown Court, due to significant victim and witness attrition rates; such an outcome represents a failure of the system.

Route 2 – Appeals to High Court on a Matter of Law (Appeal by Way of Case Stated)

16. Route 2 of Flowchart 6.1, represents the process for an appeal by way of case stated. This is a process whereby an individual who is dissatisfied with a decision from the magistrates' court (or an appeal decision of the Crown Court) can challenge the decision in the High Court on a point of law or jurisdiction. As this route is beyond the scope of this Review (although, in any event, I would not at this stage recommend any change to it), I will only outline its procedures save to underline that I do not consider that it would be appropriate to recommend removing the right of appeal to the Crown Court altogether thereby relying instead only on appeals by case stated to the High Court.

280 Typically, where the court envisages that as a possibility, the court would indicate that risk in open court to allow the appellant to abandon the appeal if they wish.

281 But in an appeal by way of reference from the Criminal Cases Review Commission (CCRC), the Crown Court cannot increase the sentence.

282 Source: Criminal Courts Statistics Quarterly (2025).

283 Ibid.

17. This route of appeal is available to the prosecution as well as the defendant and must relate to a point of law on conviction or sentence. The appeal by way of case involves a request being made within 21 days for the magistrates' court (or the Crown Court in an appeal case) to 'state a case' for the opinion of the High Court. What that means is that the court is required to state a question which it would like the High Court to answer – e.g. 'were we correct in interpreting this provision in the following way ...?' That would be accompanied by a statement of the facts and context of the case and findings made by the court which must be drafted and agreed by the parties and the court. If the magistrates' court refuses (on the grounds that it is thought that the request is frivolous), the applicant (whether prosecutor or defendant) can seek to challenge the view that it is frivolous by way of judicial review. If a case is stated, then it must be determined by the High Court (the Divisional Court or Administrative Court of the King's Bench Division in the High Court). It should also be noted that the appeal by way of case stated is mutually exclusive from the appeal to the Crown Court; once a case stated application has been made, there can be no appeal to the Crown Court.

18. The Divisional Court which would hear appeals by way of case stated is part of the High Court. The case stated would usually be heard by at least two judges of the High Court or, commonly, one Lord or Lady Justice of Appeal and a High Court Judge. Under section 28A(3) of the Senior Courts Act 1981, the Divisional Court may 'reverse, affirm or amend' the decision of the magistrates' court, or remit the case with its opinion, or make any other order (including an order as to costs) as it sees fit.[284] For the sake of completeness, I add that if, after the determination of a case stated, a point of law of general public importance is certified by the High Court, 'leave to appeal' (permission to appeal the decision of the High Court) can be sought from the High Court or the Supreme Court for a further appeal by the losing party to the Supreme Court.

284 If the High Court quashes an acquittal, the defendant then has a right to appeal the conviction to the Crown Court. The appeal to the Crown Court is lost if the defendant asks for a case to be stated, however if case is remitted to be re-tried by the magistrates' court, it can be re-appealed. See s. 28A(3) of the Senior Courts Act 1981.

Route 3 – Judicial Review

19. Route 3 of Flowchart 6.1 illustrates the process for a judicial review from the magistrates' court. In this context, either the defence or prosecution can seek permission from the High Court to apply for judicial review – based on an error of law made by the magistrates' court or a claim that they acted in excess of their powers or there was otherwise a breach of natural justice. As with case stated, I do not recommend any changes to this part of the appeals process and therefore will only briefly explain what this process entails. A judicial review challenges the process by which the decision was made, rather than the merits of the decision itself. It is a mechanism by which the courts can hold the executive and public bodies to account, ensuring they have exercised their powers properly in accordance with the law.[285] An application for judicial review from the magistrates' court must be made as soon as possible and in any event within three months of the decision or action being challenged. Though available as a means of challenge, it is discouraged if there is a route to appeal.

20. Most cases for judicial review are for civil matters and, over the past decade, criminal case applications have declined. In 2013, there were 273 criminal cases in which applications for judicial review were made. By 2023, this had reduced to 117 criminal cases (from a total of 2,535 judicial review case applications).[286]

A Complex Appeals Process

21. As I outlined in my 2015 Review, the appeals process plays a vital role in upholding public confidence in the criminal justice system and provides essential scrutiny of judicial decisions. However, I also expressed concerns that the magistrates' court appeals process can be, at times, not proportionate and, given the absence of any requirement of leave to appeal to the Crown Court, is entirely unfiltered. Appeals made around 5% of Crown Court receipts in 2024.[287] Whilst I understand that the contribution of the number of appeals to the overall Crown Court caseload is low (as shown in Chapter 2 (Problem Diagnosis)), there are inefficiencies in the appeals process that justify revisiting this area.

285 Judicial Review and Courts Bill Fact Sheet (MoJ, 2021).
286 Source: Civil justice statistics quarterly: January to March 2024 (MoJ, June 2024).
287 Source: Criminal Courts Statistics Quarterly (2025).

22. There are several features of the present appeals process which may be considered inefficient. First, there are multiple routes to challenge decisions of the magistrates' court with different procedures in place. As a matter of principle, this merits examination. In addition, I am concerned that the complexity inhibits participation and understanding by the defendant. The scheme is far too complicated for someone who has little or no knowledge of the criminal justice system and its procedures. This was echoed by Professor J. R. Spencer who argued that the appeals routes created an 'over-complicated and muddled' system.[288] Quite apart from the right in certain circumstances to return to the magistrates' court, the appellant has the automatic right to appeal to the Crown Court (via a re-hearing) and can also pursue an appeal by way of case stated or seek judicial review: see Flowchart 6.1. This is to be contrasted with an appeal from the Crown Court after a full trial which requires permission to appeal to the Court of Appeal (Criminal Division).[289]

23. Equally, depending on the route of appeal chosen, there are different time limits in submitting the application, and vastly different processes to apply. These procedural complexities in the magistrates' court are unnecessary and can be streamlined. The scope for reform of the process by which magistrates' court decisions are challenged in the High Court involves broader issues than the scope of my Review although I note the outstanding Law Commission review of this area of the law.[290] I focus here on the process of appeals to the Crown Court.

24. Second, the current appeals process from the magistrates' court is unduly time-consuming, as it necessitates a re-hearing in the Crown Court with a consequent impact on victims and witnesses. It has been a central theme of this Review that more must be done to protect the precious resource of the Crown Court, particularly in the current crisis. In this context, there are reasonable opportunities to make the right to appeal to the Crown Court more proportionate. Repeating the same hearing as has been held in the magistrates' court is not an effective use of Crown Court resources. The impact that this has on the victim and others involved may be considerable and can cause substantial distress; it is not unheard of for them simply to decline to engage in a

288 J. R. Spencer, 'Does our present criminal appeal system make sense?' [2006] Crim LR 677.

289 Section 31 of the Criminal Appeal Act 1968.

290 The High Court's Jurisdiction in Relation to Criminal Proceedings (Law Commission, 2010).

further hearing. Whilst appeals are important to safeguard the rights of defendants and victims, ensuring they have every opportunity to hold the court accountable for its decisions, alternative solutions that promote efficiency and streamline the process without compromising fairness and accountability should be considered.

25. Finally, one of the reasons that the route to appeal to the Crown Court has been granted automatically and involves a full re-hearing is a concern that there is a greater risk of error in the magistrates' court, and that such error cannot be readily detected since no recording is made of proceedings. I have further explained this in Chapter 5 (The Magistrates' Court Process). It is essential to ensure that defendants, victims and society at large has confidence in the fairness and proportionality of the decisions made by the magistrates' court in criminal cases. Additionally, they should be reassured that there is a clear avenue for appeal, providing an opportunity for the case to be revisited based on a recording in the event of any concerns or issues.

26. I now turn to my recommendations for the appeals process. My main reflections, as outlined in 2015 and again in this section, is that the appeals process requires reform, so that any procedural complexities are reduced for all users of the criminal justice system.

Recommendations

The Appeals Process – Permission to Appeal

27. In this section, I turn to potential solutions that the government can consider implementing to tackle the problems addressed above. Before doing so, I will provide some background to the origins of the appeals system and how these practices have arisen.

28. In the context of the magistrates' court, appeals might be thought to be especially important in safeguarding the correctness of decisions and the legitimacy of the decision-making processes. The magistrates' court is dealing with high volumes of less serious offences, and there is a risk, as with any system dependent on human actors, that there could be errors. With such huge pressures of volume and time in the magistrates' court, the risk of error may seem more obvious. Further, with the exception of District Judges (Magistrates' courts) and their deputies, magistrates do not generally have legal qualifications and depend on advice from a legal adviser. The risk of error is compounded when, in the absence of recording, there is no mechanism for simple

and swift review of what occurred. It is therefore no surprise that the right to automatic re-hearing in the Crown Court has evolved.

29. I begin by recommending that the automatic right to appeal from the magistrates' court to the Crown Court (route 1 of Flowchart 6.1) should be replaced with a requirement for a defendant to apply for permission to appeal. This would be similar to the process adopted in appeals from the Crown Court to the Court of Appeal (Criminal Division) in which a more senior judge reviews applications for permission to appeal and decides either to refuse or to grant permission for a hearing on points of law, including the availability of fresh evidence, alleged failures of process and jurisdiction.

30. My second recommendation is to remove the requirement for a re-hearing in the Crown Court, replacing it with a hearing on grounds that are identical to the grounds on which an appeal can be brought from the Crown Court to the Court of Appeal (Criminal Division). A judge of the Crown Court would have to identify whether there was an arguable point of law in deciding whether to grant leave to appeal. The appeal itself would therefore be limited to challenging the incorrect application of and/or interpretation of the law or procedural irregularity, as well as cases involving fresh evidence, rather than a re-argument of the facts of the case. In relation to sentence, the judge would determine whether it was arguable that the sentence was wrong in principle or manifestly excessive.

31. I envisage a similar system applied to magistrates' court appeals. The defendant who wishes to appeal a decision of the magistrates' court as to conviction or sentence would be required to seek permission to appeal from a single Circuit Judge. That judge would decide by examining the appeal papers (and only exceptionally at the discretion of the judge, with the need for an oral hearing).

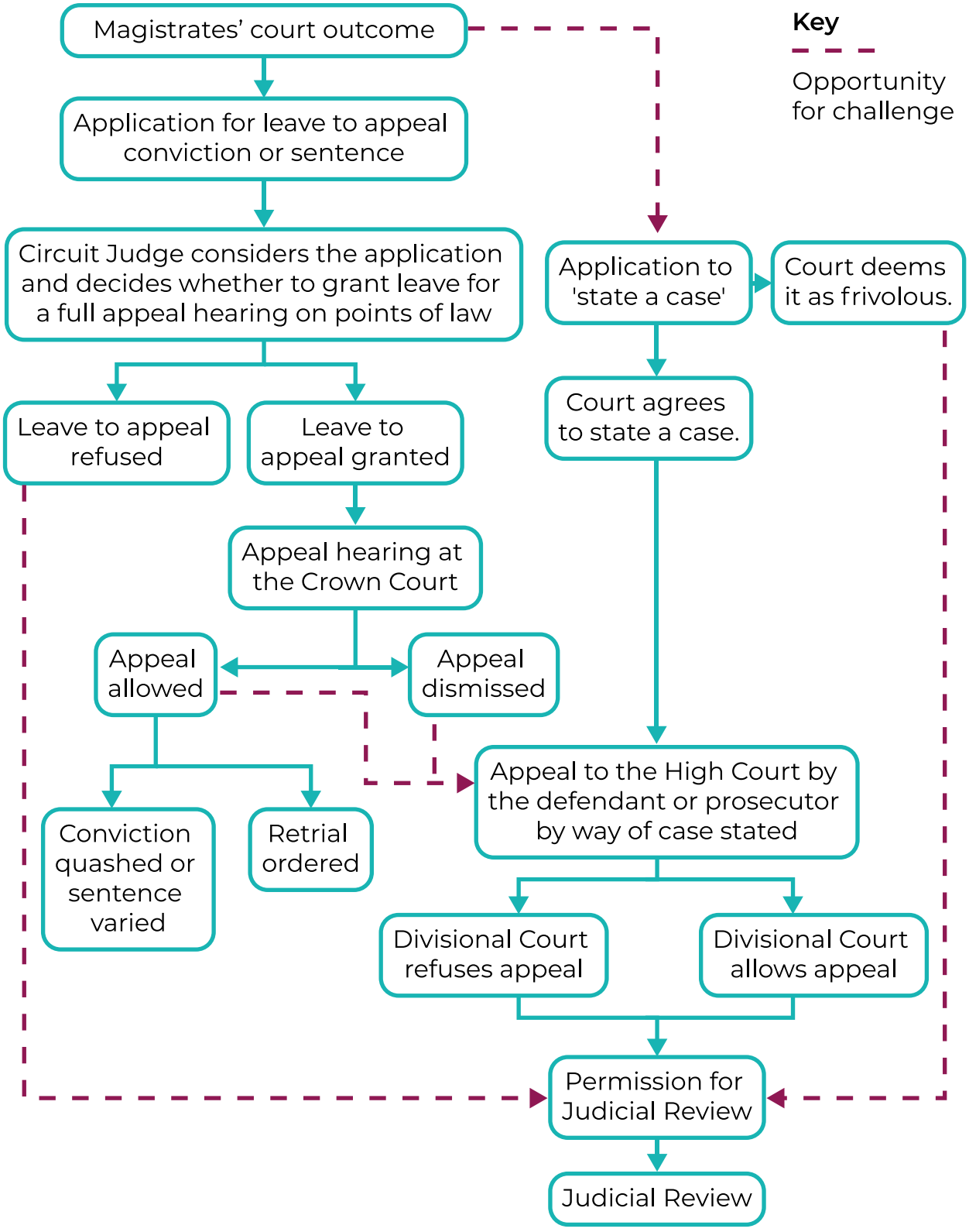
32. There is at least one example of the statutory removal of the automatic right to appeal from the magistrates' court. The Anti-social Behaviour, Crime and Policing Act 2014 amended the Extradition Act 2003 to remove the automatic right to appeal in extradition cases. This change was intended to streamline the process and reduce the number of unmeritorious appeals that were burdening the court system.

33. Where leave to appeal is granted, the appeal itself could be heard by a judge sitting with two magistrates (either a Recorder, Circuit Judge or a High Court Judge if the case merited it), as is the current composition for appeals to the Crown Court.[291] This is a proportionate solution for the court staff, legal advisers and the prosecution, as well as defendants and witnesses in ensuring only those cases that merit further investigation are reviewed by the court, and that justice is served and not burdened with a further hearing without good reason.

34. These changes would bring numerous benefits. They should not only reduce the number of appeals sent to the Crown Court, regardless of their merit, but also spare victims and witnesses the distress of going through the same trial twice. It would, in addition, enhance the efficiency of the system. To implement this change, I also make recommendations for the use of technology, which I discuss below and again ignoring sections 14 to 142 of the MCA 1980.

291 Given that an appeal can only be pursued on a point of law, there is an argument for saying that the appeal should be heard by a judge alone (on the basis that the magistrates will defer to the judge on matters of law in any event). Irrespective of whether there is force in that argument, I consider that there are good reasons for magistrates to be involved, particularly where the appeal is against an exercise of discretion or in relation to appeals against sentence. I do not recommend appeals by judge alone.

Flowchart 6.2 New Appeals Process (ignoring sections 14 and 142 of the MCA 1980)



35. Flowchart 6.2 outlines the new process that I envisage for appealing a case from the magistrates' court. Before outlining the detail, it is worth highlighting that under the recommended scheme, applications for leave to appeal from the magistrates' court to the Crown Court would not go to the newly recommended Crown Court (Bench Division) (Chapter 8 – Crown Court Structure), but to a judge of the Crown Court.

36. The scheme I envisage is as follows. If a defendant is convicted by the magistrates' court, and the defendant seeks to challenge that decision or the sentence imposed, the defendant's legal representative (or the defendant if representing themselves) would evaluate the grounds for appeal and complete the necessary forms to seek permission to appeal. An application should then be served on the Crown Court for permission to appeal based on alleged errors of law or procedure. A Circuit Judge would then consider the application for leave to appeal, either on paper or, in exceptional circumstances if the judge orders it, at an oral hearing. The focus should be on points of law. If the judge refuses leave to appeal, that decision is subject to judicial review in the Administrative Court (because it is not a decision relating to a trial on indictment): this is akin to the current right to apply for judicial review if the magistrates' court refuses to state a case on the grounds that it is frivolous, which I do not seek to reform. The process for the judicial review is set out above at paragraph 19. Appropriate time limits for such further challenges would apply, which I am confident could be set out in detail in the legislation after appropriate consultation with the Administrative Court Office and other bodies.

37. If the Circuit Judge grants leave to appeal, the case would proceed to an appeal hearing at the Crown Court. The Crown Court would have the power to uphold the conviction or quash it. If the appeal were successful, the Crown Court would be able to order a retrial if it were appropriate to do so. Following the decision of the Crown Court on appeal, the prosecutor and the defendant would both be entitled to pursue an appeal to the High Court by way of case stated. That would be subject to the power of the judge to declare it frivolous and refuse to state a case. In such a scenario, the refusal decision would be subject to a challenge by judicial review (which is a similar remedy to that currently available in those circumstances in the magistrates' court).

38. At present, an appeal against sentence from the magistrates' court to the Crown Court does not require leave and the court can dismiss the appeal or vary the sentence (including by increasing it). In the new model that I am recommending, given that leave to appeal would be a prerequisite (even against sentence), it is no longer necessary (or in my view appropriate) for the Crown Court to be able to increase sentence. The Crown Court would be empowered to either dismiss the appeal on the grounds that the sentence was neither wrong in principle nor manifestly excessive (which is the test for the Court of Appeal), or allow the appeal and pass the appropriate lesser sentence. If a point of law arose in connection with the sentence, a further appeal could be lodged by way of case stated in the usual way, with permission required, as described above.

39. The requirement to seek permission should deter individuals from pursuing appeals without reasonable grounds, thus saving time and money for all parties involved. By filtering out unmeritorious appeals, courts will be able to allocate their resources more efficiently, concentrating on cases that genuinely require their review.

40. The appeal process that I am recommending will include numerous safeguards for the defendant who has become an appellant. There is scrutiny by a judge of the Crown Court of all applications. The decision should be one with reasons that can be challenged. In the appeal itself in the Crown Court, the court would be able to rely on relevant parts of the transcript of magistrates' court proceedings (following my recommendation above). In addition, appellants should no longer face the risk of sentence being increased. Reflecting on the principles considered earlier in the chapter, this would improve the overall quality of cases that reach the higher courts, as frivolous or baseless appeals would be filtered out early in the process. Encouraging appellants to consider carefully the legal bases for their appeal could lead to better prepared and more cogent arguments on appeal.

41. There are several considerations that need to be made in adopting this new model of appeals. Under the current legislation, the defendant has the right to appeal at the end of the trial against both the verdict and sentence. To change this to permission to appeal on points of law only would require primary legislation. This would also impact on the current legal aid fee structure which should be covered under the recent uplift in fees made by the MoJ.[292] These recommendations are also dependent on an important enabling process in the form of recording services in the magistrates' courts, which is outlined in Chapter 5 (The Magistrates' Court Process).

Recommendation 21: I recommend that 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).

Recommendation 22: I recommend that the requirement for a full re-hearing in the Crown Court should be replaced with a hearing on issues for which leave to appeal has been granted.

292 The Criminal Legal Aid (Remuneration) (Amendment) Regulations 2022 - Explanatory Memorandum.

Conclusion

42. A clear route of appeal is vital to exposing miscarriages of justice when they have occurred, and it is crucial that it is accessible for those who need it. The current appeals process from the magistrates' court to the Crown Court is both procedurally complex and excessively burdensome relative to the seriousness of many offences concerned. While the approximate rate of appeals for 2024 of 0.4% of cases may appear low, each case represents individuals whose access to timely and fair justice has been delayed, and therefore such opportunity for appeal must be safeguarded. As I have set out, the current model, which includes an automatic right to appeal and a full re-hearing, contributes to inefficiencies and delays across the justice system.

43. My recommendations aim to modernise and streamline the appeals process while preserving fairness and proportionality. By replacing the automatic right to appeal with a requirement to seek permission to appeal on arguable points of law, it should reduce the number of appeals entering the Crown Court and ensure that only cases with genuine legal merit proceed. Importantly, where permission is refused, a further opportunity to appeal to a higher court would remain, maintaining procedural fairness and public confidence. Similarly, removing the requirement for a full re-hearing in the Crown Court should not only save valuable court time, but should also spare victims the distress of reliving the same hearing in two separate courts.

44. Just as the appeals process should focus on appeals with real legal merit, the way cases enter the Crown Court should also be carefully managed to ensure only suitable cases move forward, and that they do so quickly and efficiently. The next chapter considers how cases enter the Crown Court, examining opportunities to improve early decision-making, reduce delays and ensure that resources are focused where they are most needed.

Chapter 7

Maximising Early Engagement in the Crown Court

Chapter 7 – Maximising Early Engagement in the Crown Court

Introduction

1. There are several reasons why a case may progress from the magistrates' court to the Crown Court: an either way case which attracts a sentence beyond the magistrates' court's sentencing powers, an either way case where a defendant elects for trial in the Crown Court or an indictable only offence.[293] A guilty plea can, of course, be entered at any stage of the process from the first hearing but, to maximise the efficiency of the system, the earlier any guilty plea that is going to be made is entered, the better. This avoids 'cracked trials' (i.e. a plea entered on the first day of the trial). Whilst the proportion of guilty pleas in the Crown Court has remained relatively stable, guilty pleas are being entered much later than they were. Since 2019, the proportion of defendants who pleaded guilty to all counts at the fourth, fifth or sixth (or more) hearing has nearly doubled from 12% to 22%.[294]

2. I begin this chapter by assessing the current landscape and discussing the impact that late guilty pleas are having on the criminal justice system. I then move on to consider reform recommendations which, in line with the Terms of Reference of this Review, will examine ways of reducing the open caseload. I look specifically at the ways in which defendants who decide to plead guilty could be incentivised to do so at the earliest point in the process, in either the magistrates' court or the Crown Court, to avoid wasted court time and cracked trials. I will identify the ways in which the process can incentivise those intent on pleading guilty to do so earlier without infringing a person's right to a fair trial through: appropriate judge-led use of '*Goodyear* indications'; sentence reductions; making changes to the PTPH; revisions to legal

293 This also includes the Youth Court which is a 'special' type of a magistrates' court for 10 to 17-year-olds. Cases here are dealt with by either three magistrates or a District Judge. It will deal with matters such as theft and burglary, anti-social behaviour and drugs offences. The most serious cases, such as murder or rape, begin in the Youth Court but progress to the Crown Court (Criminal courts: Youth courts).

294 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025). Note this is out of all defendants pleading guilty prior to trial (removing unknown numbers of hearings).

aid and more appropriate remuneration of legal professionals in the pre-trial phase, all of which could facilitate early engagement and help resolve cases in a more timely and efficient manner.

The Current System

3. The first substantive hearing in the Crown Court is the PTPH. This is a case management hearing in which a Circuit Judge (or, where appropriate, any other judge of the Crown Court) sets directions for trial. It is the first opportunity in the Crown Court for the defendant to enter their plea: guilty or not guilty.[295] It allows the parties to decide their next steps and discuss legal matters that may arise later at trial.

4. The defendant has three options at this stage: to plead guilty to all charges; to plead guilty, but to only some of the charges against them; or to plead not guilty. If the defendant pleads guilty to all the charges, the judge can either sentence the defendant straight away or postpone the sentencing hearing to ask for more information to help decide what the sentence should be. The judge will then rely on Sentencing Council guidelines and decide the most appropriate punishment when considering the charges and circumstances of the case.

5. If the defendant pleads guilty to some, but not all, of the charges, however, it is for the prosecutor to decide whether or not to accept the plea. They have three options. They could 'offer no evidence' on the charges to which the defendant has pleaded not guilty. This means the court must accept the plea of not guilty and therefore cannot take any further action on those charges. Alternatively, the prosecutor could ask that the charges 'lie on file not to be proceeded with without the leave of the Crown Court or the Court of Appeal': technically, such charges could be restarted at a later date but the circumstances in which that might happen would have to be truly exceptional. If the prosecutor has taken either of these routes, the judge would then sentence the defendant only for the charges to which the defendant has pleaded guilty. Finally, the prosecutor could ask for the charges to which the defendant has pleaded not guilty be listed for trial.

295 With reference to Chapter 5 (The Magistrates' Court Process) of this Review. The defendant may make an indication that they will enter a plea of guilty at allocation stage in the magistrates' court.

6. It is also at the PTPH where the defendant can plead not guilty. In this instance, the judge would set a date for trial or, at least, provide a trial window.[296]

Current Trends in Guilty Plea Timing

7. Ultimately, at some stage in the journey through the Crown Court process, many defendants enter guilty pleas, and some do so before the trial itself. It is clear however, that guilty pleas are being entered later and later in the criminal court process, as I set out below. This is leading to wasted court time and is contributing to the rising open caseload and delaying justice. As the open caseload rises, the wait for trial also grows, and is creating what I will refer to throughout this chapter as a 'perverse incentive' for defendants, or a 'positive feedback loop'. As I explained in Chapter 2 (Problem Diagnosis), with greater delays, the prospects increase of victims indicating that they no longer support a prosecution; witnesses dropping out; or it no longer being in the public interest to pursue the case. This incentivises some defendants to avoid entering a guilty plea they would otherwise have made. Of course, not all defendants are thinking in this way and, in many cases, delays cause problems for defendants and victims alike. But this perverse incentive not to enter a guilty plea until later in the process does, nevertheless, exist, with some defendants taking the chance that the case will never go to trial. It carries a risk for such defendants because, by not pleading guilty early, they lose the substantial sentencing reduction that would otherwise have applied.

8. Whilst it is my view that encouraging guilty pleas to be made as early in the process as possible would have several benefits, it has long been recognised that there is a risk of pressure being brought to bear on defendants to plead guilty, who might not otherwise have done so. As the Criminal Law Act 1967 sets out, a defendant 'shall in all cases be entitled to make a plea of not guilty'.[297] One of the overarching principles guiding this Review is the right to a fair trial: this is one of the pillars of the justice system in England and Wales and must be upheld. I am keenly aware of the risk of coercive pressure on defendants to plead guilty and have borne it in mind in formulating these recommendations.

296 Victims' Guide - The first hearing in the Crown Court: The Plea and Trial Preparation Hearing (CPS).

297 Section 6 of the Criminal Law Act 1967.

9. To that end, let me be clear that my aim is not to increase the number of people who plead guilty, but to focus on that pool of defendants who will plead guilty at some stage, and to ask what measures might be introduced to ensure that they plead guilty as early in the process as possible. This would not only benefit them, by securing for them the maximum reduction for a guilty plea in accordance with the Sentencing Council published guidelines, but reduce the outstanding caseload and associated costs of a case progressing further in the process unnecessarily.[298]

10. In cases in which defendants do plead guilty, the number of hearings before they enter that guilty plea is steadily increasing. Figure 7.1 shows that, in 2016, approximately 25% of defendants who pleaded guilty to all counts prior to trial did so at or after their third pre-trial hearing. This increased to approximately 35% in 2024.[299] As above, this change in defendants' behaviour is inflating the pressure on the criminal courts by lengthening the time it is taking for defendants to make the plea decision which could be made much earlier.

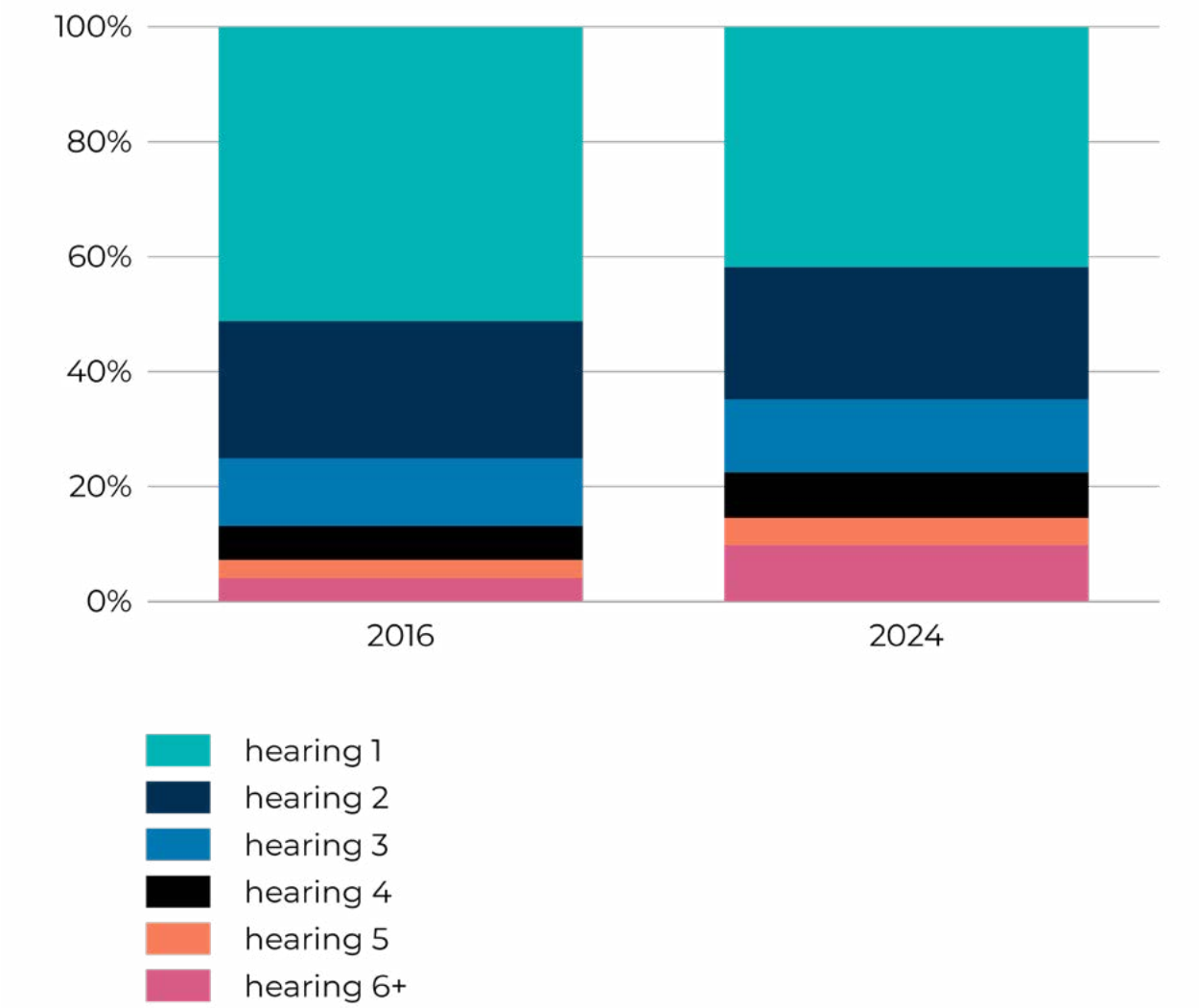
298 Sentencing Guidelines: Reduction in sentence for a guilty plea – first hearing on or after 1 June 2017 (Sentencing Council).

299 Source: Criminal court statistics quarterly (2025). Note: this underestimates the number of hearings defendants have had as the calculation presumes every defendant with six or more hearings had six hearings. Additionally, it excludes unknowns.

Figure 7.1

Percentages of different number of hearings before a guilty plea was entered and accepted prior to trial in the Crown Court

England and Wales, 2016 & 2024



Source: Criminal court statistics quarterly, October to December 2024

11. In 2024, a high proportion (61%) of all defendants entered a guilty plea.[300] 19% entered a guilty plea at the PTPH (33% of all guilty pleas).[301] However, fewer defendants are pleading guilty at the first hearing now than did so in 2016. Figure 7.2 demonstrates this: in Q1 of 2016, on

300 Calculated as guilty pleas entered out of the summation of guilty and not guilty pleas, excluding dropped cases. Source: Criminal court statistics quarterly (2025).

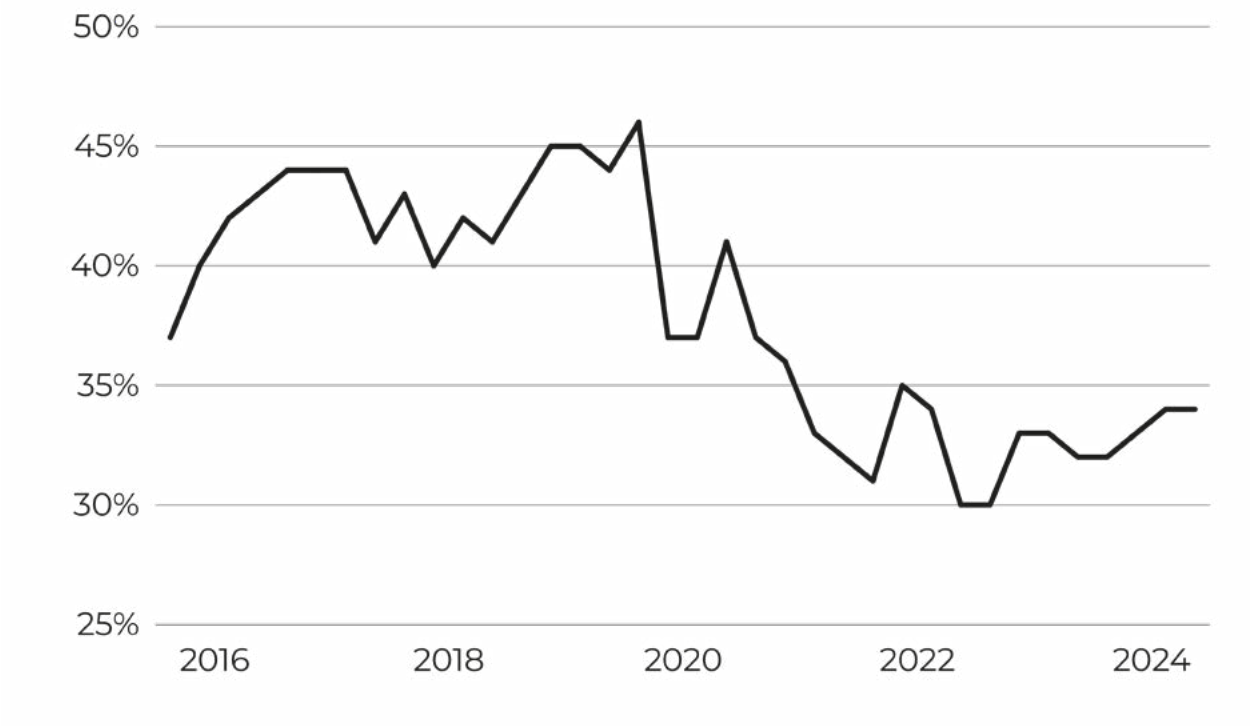
301 Source: ibid. Note: the first hearing is presumed to be the PTPH. This underestimates the number of hearings defendants have had as the calculation presumes every defendant with six or more hearings had six hearings.

average 37% of defendants pleaded guilty at the first hearing in the Crown Court, increasing to a series peak of 46% in Q1 of 2020, but by Q4 of 2024 that number had fallen to 34%.[302] Without radical reform, the number of defendants pleading guilty at the first hearing in the Crown Court may continue to fall.

Figure 7.2

Quarterly proportions of all guilty-pleading defendants who plead guilty at first hearing in Crown Court

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

302 Source: ibid. Note: calculated as defendants pleading guilty at first hearing, out of the total number of defendants pleading guilty (e.g. in Q1 of 2016: 5,841/15,776 = 37%). The first hearing is presumed to be the PTPH. This underestimates the number of hearings defendants have had as the calculation presumes every defendant with six or more hearings had six hearings.

12. Understanding the impact of delayed guilty pleas on the wider system also requires consideration of the volume of 'cracked trials'. When a trial cracks (either because an acceptable guilty plea is offered on the day of the trial or the prosecution is abandoned) it wastes court time which could have been used to hear an effective case, ultimately adding to the open caseload. Such cases also waste prosecution resources in the preparation of a full trial.

13. There are a considerable number of cracked trials in the Crown Court. In 2024, of the 31,158 criminal court trials listed, 9,578 (31%) cracked.[303] As shown in Fig. 7.3, 64% of the trials that crack do so because the defendant enters a guilty plea late (i.e. on the first day of trial) and for the first time.[304] This is not a new problem. Over 30 years ago, the Runciman 'Royal Commission on Criminal Justice' suggested that 'cracked trials create serious problems, principally for the all the thousands of witnesses each year' and that it causes 'unnecessary anxiety for victims'.[305] It was clear then, and is clear now, that they are rife and are adding to the open caseload.[306]

303 Source: ibid.

304 Methodology used for grouping cracked reasons: 'Guilty plea entered late' includes acceptable guilty plea(s) entered late: offered for the first time by the defence and previously rejected by the prosecution. 'Prosecution end case' including insufficient evidence, witness absent/withdrawn, public interest ground, adjournment refused. 'Guilty plea to alternate charge, first time offered by defence' and when previously rejected by prosecution. Other reasons include defendants bound over.

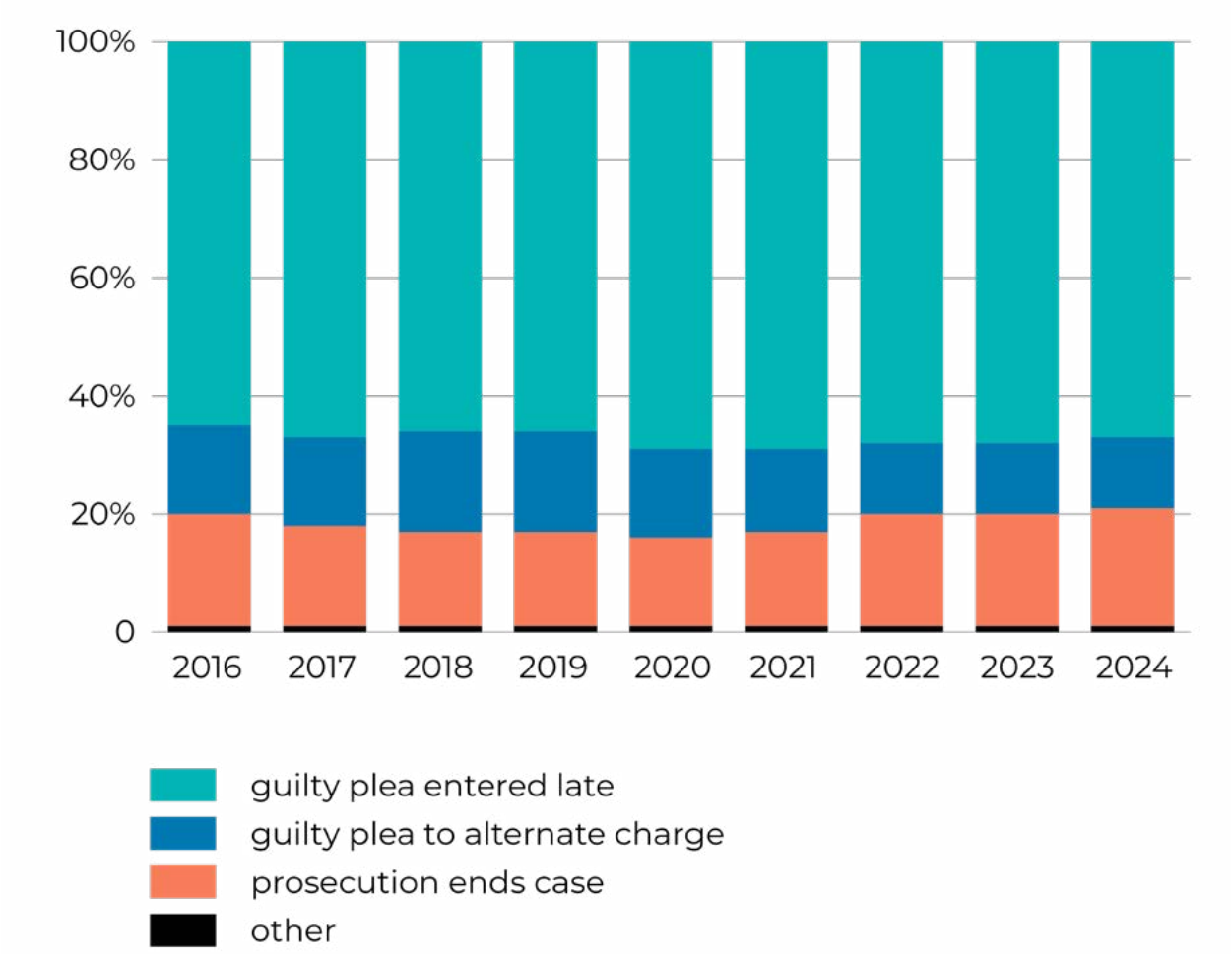
305 Viscount Runciman of Doxford, The Royal Commission on Criminal Justice (HMSO, 1993).

306 A significant number of cases also 'crack' when the prosecution offer no evidence. This may be because the victim or witnesses have become unwilling to engage or it may be a consequence of a fresh analysis of the prospect of obtaining a conviction and an analysis of the public interest test. For whatever reason, however, it means that the substantial investment in the case has been lost. I shall return to the concept of 'getting it right first time' in the Efficiency Review.

Figure 7.3

Percentages of reasons for cracked trials by year

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

14. I have discussed bail and remand decisions in Chapter 4 (Investigation and Charging Decisions) and it is important to also note here that individuals who are on remand may be making the conscious decision to spend the maximum amount of time on remand. This is creating another disincentive as the individual is benefiting from an advantageous regime for remand prisoners who can:

    a. access facilities to seek release on bail;

    b. retain the right to preserve their home, job and personal finances; and

    c. maintain contact with their family and friends.

15. Further, it is important to note that a defendant's time spent on remand counts towards their final sentence if they are found guilty after trial. As a result, in some cases, the consequence of someone on remand delaying their guilty plea would result in their immediate release once the judge has calculated the reduction for a guilty plea (however late) and the time served on remand has been taken into account.

16. The remand population has risen faster than the total prison population, compounding the impact on the criminal justice system. This is of particular concern due to the impact on the prison capacity crisis: between 2018 and 2024, the remand population increased from 10.7% of the overall prison population to 19.9%.[307] Reception prisons, where defendants on remand are housed, are facing the most acute pressures across the prison estate. The 'untried' population – defendants who pleaded not guilty and are awaiting their trial – makes up the biggest cohort of remanded prisoners. The 'convicted unsentenced' population – defendants who have pleaded or been found guilty and are awaiting their sentence – is growing even faster. As of December 2024, 66% of the remand population were awaiting trial with 34% awaiting sentence.[308]

17. It is also important to acknowledge the effect that extended remand lengths have on defendants and their families. It is of particular concern that, while on remand, appropriate support cannot be provided to reduce the risk of their reoffending, which can have knock-on impacts on the criminal justice system further into the future. As prison offender managers (POMs) only work with convicted prisoners, those who have served their sentence on remand have received less or no support with issues such as accommodation, benefits or drug and alcohol abuse. Also of great concern is that an individual could spend a significant length of time on remand before subsequently being acquitted at trial. Their time in prison awaiting trial has significant negative impacts on their personal lives and these people may not have had the support they needed to help them avoid risks of offending. I have outlined case studies from defendants who are affected in Chapter 2 (Problem Diagnosis).

307 Source: Offender management statistics October to December 2024 (MoJ and HMPPS, April 2025).

308 Source: ibid.

Goodyear Indication Uptake

18. As set out above, the PTPH is the first hearing in the Crown Court and provides an opportunity for the judge to offer a *Goodyear* indication. This allows a judge to make an advance sentence indication. This is a means of introducing a degree of certainty in the defendant's mind, in relation to what would happen if they pleaded guilty at this point in proceedings, by the judge providing the defendant with an advance early sentence indication. This is something that the defendant may well have discussed with their legal representatives, but hearing the indication from the judge in open court gives certainty and transparency.

19. The judgment in *R v Goodyear* was a significant moment in the history of the criminal justice system of England and Wales.[309] In that case, the Court of Appeal sought to regulate inappropriate practices whereby some judges were offering defendants secret indications of likely sentence if they were to plead guilty there and then. In *Goodyear*, the court concluded that a judge can, when invited to do so by the defendant or a representative on their behalf, give an indication of sentence if the defendant were to plead guilty at that stage of the proceedings. This gives the defendant the opportunity to weigh up the benefits of a guilty plea against the risks involved in proceeding to trial and, in doing so, the process may encourage earlier guilty pleas. The process is somewhat hypothetical, and that fact has to be understood by the defendant – this is not the defendant indicating to the trial judge that they are going to plead, but merely asking for an indication if, hypothetically, they were to plead. The judge, too, must regard this as hypothetical and not an indication of any acceptance of liability by the defendant. The scheme requires the judge to have considered all evidence available to them at that time to make an informed decision on the likely sentence at that point in the proceedings.

20. The application of a *Goodyear* indication is now found in the Criminal Procedure Rules (Crim PR) but is of common law origin and governed by the judgment in the decision in that case where the court was clear that an indication can only be given at the request of the defence. However, in giving the judgment of the court (written by Judge LJ, as he then was), Lord Woolf CJ expressly noted that it may be that a future reconsideration of the rules would be required to allow for an indication to be given of the judge's own motion. He said:

309 R v Goodyear [2005] EWCA Crim 888.

> 'We have further reflected whether there should continue to be an absolute prohibition against the judge making any observations at all which may trigger this process. The judge is expected to check whether the defendant has been advised about the advantages which would follow an early guilty plea. Equally he is required to ascertain whether appropriate steps have been taken by both sides to enable the case to be disposed of without a trial. Following this present judgment, he will know that counsel is entitled to advise the defendant that an advance indication of sentence may be sought from him. In these circumstances, we do not believe that it would be logical, and it would run contrary to the modern views of the judge's obligation to manage the case from the outset, to maintain as a matter of absolute prohibition that the judge is always and invariably precluded from reminding counsel in open court, in the presence of the defendant, of the defendant's entitlement to seek an advance indication of sentence. The judge would no doubt approach any observations to this effect with caution, first, to avoid creating pressure or the perception of pressure on the defendant to plead guilty and, second, bearing in mind the risk of conveying to the defendant that he has already made up his own mind on the issue of guilt, or indeed that for some reason he does not wish to try the case. If notwithstanding any observations by the judge, the defendant does not seek an indication of sentence, then, at any rate for the time being, it would not be appropriate for the judge to give or insist on giving an indication of sentence, unless in any event he would be prepared to give the indication permitted by *Turner* (see paragraph 35) that the sentence will or will not take a particular form' (emphasis added).'[310]

21. In *R v Nightingale* 2013, Lord Judge CJ dealt with a case in which the Judge Advocate General had sought to explain to a defendant the potential difference between the sentence which might then be imposed and that which might follow a trial. That practice is and always has been considered the exercise of undue influence. He observed that 'it remains wholly inappropriate for the judge to give, or to insist on giving, any indication of sentence. *Goodyear* underlines that the judge should not give an advance indication of sentence unless one has been sought by the defendant'.[311] This would appear to suggest that a *Goodyear* indication should only be given following an explicit request from the defendant. I consider Lord Judge CJ was

310 Ibid, para. 51.

311 R v Nightingale [2013] EWCA Crim 405.

primarily focused on prohibiting judges from doing what the Judge Advocate General had done in that case, which was putting the defendant under pressure by indicating both sentence on a plea and (at least implicitly) the larger sentence that would be imposed after a trial. I wholeheartedly agree that such a practice places undue pressure on the defendant and I am not recommending such a step. I am not of the view that Lord Judge was setting his mind against a reform of the process to allow an indication to be given of the judge's own motion; this is what he visualised in the decision in *Goodyear* itself.

22. I am aware through submissions to this Review, however, that *Goodyear* indications are 'rarely requested', and the application of the scheme has been limited. The CLSA, in its submission to this Review, said that there is a 'poor uptake, and ineffective use of *Goodyear* indications', and further engagement has suggested that defendants may be unwilling to request a *Goodyear* indication.[312]

23. My view is that the *Goodyear* approach is therefore not being used to its full potential. I acknowledge the reasoning of the *Nightingale* judgment and that it has since been applied; I would, however, argue that it appears to inhibit the optimal use of the application of *R v Goodyear* by suggesting that an indication can only be given at the request of the defendant. When examined closely, the judgment in *Goodyear* explains that the judge is expected to check whether the defendant has been advised about the advantages which would follow an early guilty plea (principally, a sentence reduction). The judge is also required to understand whether both defence and prosecution have taken the appropriate steps to allow the case to be disposed of without trial. Whilst *Goodyear* makes clear that the judge should not put undue pressure on the defendant to seek an indication, it also recognises that under the decision of the Court of Appeal in *R v Turner*, the judge is permitted to state in open court, 'if it be the case, that, whatever happens, whether the accused pleads guilty or not guilty, the sentence will or will not take a particular form, e.g. a probation order or a fine or a custodial sentence'.[313] This is not reflected in either the Criminal Practice Directions or the Crim PR.

312 With thanks to the CLSA for its submission to this Review.

313 R v Turner [2001] EWCA Crim 2003.

24. This wording, and the reference to the original *Turner* decision, allows a different interpretation of *Goodyear* to be adopted. In my view, the judge should be permitted to take a proactive approach in giving an advance indication of sentence. I do not believe this infringes on the right of the defendant to seek a *Goodyear* indication or puts undue pressure on the defendant to plead guilty. I emphasise again, and in keeping with the principle of upholding the fairness of proceedings, that my aim is not to increase the number of guilty pleas made, but to encourage those that will be made to be made earlier in the process to prevent cracked trials and wasted Crown Court time.

25. I therefore recommend that there should be an expectation set on every judge, at the PTPH, to take a more proactive approach and routinely to express in open court the willingness to give *Goodyear* indications, irrespective of whether a request has been made by the defence for an indication. Unless they deem there are good reasons not to.[314] It may be sufficient for the judge to ask the defence advocate whether this was a case for a judicial indication on sentence and whether they had explained to the defendant the potential advantages of the greater certainty that this would provide. This would help mitigate the problems with low take-up of guilty pleas and allow for cases to reach a conclusion earlier. I am here only referring to an expectation to offer an indication as to the *type* of sentence: it may well be that its particular form would have to await a pre-sentence report. Thus, the indication could be, for example, of a non-custodial sentence or a sentence which would not result in an immediate custodial sentence without being more specific. Furthermore, I am not suggesting that there should ever be an indication of a higher sentence should the defendant not be prepared to plead guilty: that would place inappropriate pressure for all the reasons expressed in *Nightingale*.

26. As I have explained above, I do not believe this would place undue pressure on defendants to plead guilty or negatively impact the fairness of proceedings. On the contrary, I can see this assisting defendants who may otherwise be unaware of the benefits of a *Goodyear* indication. Unrepresented defendants (UDs), for example, are a group who are unlikely to be aware of a what a *Goodyear* indication is or the benefits of requesting one. Their lack of awareness

314 There are well recognised circumstances in which a *Goodyear* indication would be inappropriate – for example, where a defendant may fall in the dangerousness sentencing regime in the Sentencing Code 2020.

of court procedure or the legal system more generally can mean that cases take longer to progress as every step along the way must be spelt out to UDs for their understanding and to ensure a fair trial. As set out in the Crown Court Compendium, the court is required to take every reasonable step to facilitate the participation of the defendant should they be unrepresented, including, for example, the judge asking the defendant whether they wish to call any witnesses in their defence.[315] I shall explore UDs in more detail in the Efficiency Review. In the meantime, however, judges routinely ensuring that defendants are aware of *Goodyear* indications, even without the benefit of legal representation, would help maximise their participation and ensure fairness across the system. Furthermore, even those with legal representation may not be aware of *Goodyear*, or may have dismissed it as unnecessary based on the advice of their representatives. Creating an expectation that a *Goodyear* indication can be given in every case would ensure that these defendants did not miss the opportunity to secure sentence reduction by entering a guilty plea.

27. To have the maximum impact, I would suggest that the expectation for a discussion about a *Goodyear* indication should be at the first hearing, which is invariably the PTPH. This expectation should be on all judges in the Crown Court.

28. I turn to implementation of this recommendation. As with any other principle, it could be the subject of legislation but since *Goodyear* is a common law doctrine with Crim PR restatement, its use can be readily amended by a decision of the Court of Appeal (Criminal Division), by amendment to the Crim PR or by a new Criminal Practice Direction. I therefore invite the Lady Chief Justice to consider introducing a new Criminal Practice Direction, which sets this expectation. Ultimately, a discretion should remain with the judiciary, and I recognise that judges should retain a degree of autonomy not to ask about the desirability of a *Goodyear* indication but should provide a 'good reason not to'.

29. Finally, I emphasise that my recommendation for routine *Goodyear* indications underlines the critical importance of prompt service of the relevant papers so that legal representatives have been able properly to advise their clients and the judge able to assess the gravity of the case.

315 Crown Court Compendium, Part I: Jury and Trial Management and Summing Up (Judicial College, updated April 2025).

Recommendation 23: I recommend that 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, unless good reasons are given not to provide an indication.

Plea and Trial Preparation Hearing Form

30. For all cases sent to the Crown Court, or where the defendant has elected trial in the Crown Court, and where a trial is anticipated (unless expressly exempted by the Crim PR or Criminal Practice Directions), both parties are required to complete a PTPH form prior to the PTPH itself.[316] The form requires details on various case management matters such as time estimates for trials, number of witnesses required and the defendant's plea. The judge then reviews the completed form prior to the PTPH. This ensures that the judge has an indication of what plea to expect and how to set case management directions should the matter proceed to trial.

31. The conduct of the PTPH should always comply with both the Crim PR[317] and Criminal Practice Directions.[318] In relation to case management, the court should:

    a. Ensure that it is explained to the defendant and the defendant understands (with help if necessary) that they will receive credit for a guilty plea.

    b. Take the defendant's plea in accordance with rule 3.32 (arraigning the defendant on the indictment) or if no plea can be taken then find out whether the defendant is likely to plead guilty or not guilty.

    c. Unless the defendant pleads guilty, the court should satisfy itself that it has been explained to the defendant. This should be in terms the defendant can understand (with help, if necessary), that at the trial:

        i. the defendant will have the right to give evidence after the court has heard the prosecution case;

316 Source: Plea and Trial Preparation Hearing Parties Pre-Hearing Information Form.
317 The Criminal Procedure Rules 2020.
318 Criminal Practice Directions 2023.

ii. if the defendant does not attend, the trial may take place in the defendant's absence;

iii. if the trial takes place in the defendant's absence, the judge may inform the jury of the reason for that absence; and

iv. where the defendant is released on bail, failure to attend court when required is an offence for which the defendant may be arrested and punished, and bail may be withdrawn;

v. and give directions for an effective trial.[319]

32. I would suggest that to encourage the uptake of *Goodyear* indications, the form should be amended to include a prompt for the defence representative to indicate that they have informed the defendant a) of the opportunity to seek a *Goodyear* indication, and b) emphasised, for the avoidance of all doubt, that there is no pressure to plead guilty, and that the indication is only intended to provide information.

33. To do this, I would suggest that the Lord Chancellor ask the Criminal Procedure Rule Committee to review and amend the form in line with this recommendation. I would urge this reform to be expedited. If there is a delay owing to the Criminal Procedure Rule Committee process, the same result could be achieved by a Practice Direction. Having said that, however, I recognise that this is essentially a matter for the Lady Chief Justice and the judiciary generally.

Recommendation 24: I recommend that 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.

319 Part 3.21 of the Criminal Procedure Rules 2020.

Plea and Trial Preparation Hearing Timing

34. The 'Better Case Management Handbook' explains that the PTPH 'may be listed on a day exceeding 28 days, so long as the day is not more than 35 days from sending'.[320]

35. The PTPH is a hearing that is multi-faceted, and whether the PTPH in its current form is being used efficiently warrants consideration, which I will discuss in more detail in the Efficiency Review. Under my proposed reforms, the PTPH will take on even greater significance as decisions will be taken on allocation between Divisions of the Crown Court (see Chapter 8 – Crown Court Structure) and on pleas that will need to be dealt with as early as possible after the case is received from the magistrates' court. In addition, there will be the usual catalogue of other decisions that relate to trial management which are less time-sensitive. All will require practitioners and judges to be well prepared. As I explained in my 2015 Review, I believe that 'effective and consistent judicial case management' is incredibly important, and the PTPH therefore serves a valuable purpose.[321] Its value, however, is dependent on parties to the case having time for effective communication. My belief that there is a 'need for parties to engage more effectively' is as true today as it was in 2015, and the system should be encouraging as much early communication as possible. Legal aid fee schemes should incentivise the early resolution of a case. To that end, fee schemes should recognise and remunerate advocates for the work they do when preparing for the PTPH.

Recommendation 25: I recommend that any future reform of the legal aid fee scheme should be adjusted to recognise the work advocates do in order to prepare for the Plea and Trial Preparation Hearing.

36. There is a common theme in the submissions to this Review, however, that legal professionals are finding the time pressures set upon them by the Crim PR and Practice Directions difficult to manage, and that there is insufficient time for preparation that would, in my view, lead to valuable discussions with their clients, including discussions about the benefits of entering an early guilty plea.

320 The Better Case Management (BCM) Handbook (Judiciary of England and Wales, January 2018).

321 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015).

There may therefore be merit in allowing more time before the PTPH is conducted.

37. I understand that this recommendation will be open to criticism from victims' groups which may be concerned that the postponement of the PTPH could delay justice even further. The Victims' Commissioner, in her submission to this Review, noted that the open caseload and delays to trials are leaving victims often subject to 'last-minute communication of adjournments and a lack of explanation for why the trial had been adjourned adding further to victims' emotional anguish' and that 'the elongated court process also disrupts victims' home, work, and school lives, disadvantaging them in the present and the future'.[322]

38. By contrast, the CLSA, in its submission to this Review, suggested the implementation of a pilot scheme to help ensure that 'PTPHs are more effective by delaying them to at least 12 weeks after the 1st appearance [in the magistrates' court] where there has been no Preliminary Hearing'.

39. I am of the view that a delay at the start of proceedings in the Crown Court would allow practitioners and parties the opportunity to focus on, and either resolve or at least reduce, the issues which may arise later in court proceedings. Further, the consequence could, potentially, be to encourage a guilty plea entered earlier in the process, thereby in fact bringing justice forward in these cases. In any event, it should lead to more effective trial management with the aim of reducing rather than increasing delay.

Recommendation 26: I recommend that 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.

40. I note that, in some courts, there is, in fact, a practice of delaying the PTPH. I referred in Chapter 2 (Problem Diagnosis) that during my team's visit to Bristol Crown Court, Bristol had experimented with delaying the PTPH to ensure sufficient preparation time and to improve the effectiveness of the hearing.

322 With thanks to the Victims' Commissioner for her submission to this Review.

41. I therefore recommend that the timing of the PTPH should be reformed by Crim PR or Criminal Practice Direction after consultation with the Lady Chief Justice and others, and that there should be a national pilot scheme to test whether delaying the PTPH and prioritising earlier engagement would have any material impact on the timing of guilty pleas, or any unintended consequences. This would allow better, and potentially faster, decisions to be made in the interests of all parties, including victims.

Reduction for a Plea of Guilty

42. In the period since 2011, sentence lengths have dramatically increased and, subject to decisions which may be implemented following the Independent Sentencing Review chaired by the Rt Hon. David Gauke, offenders have been serving far longer of those longer sentences. By way of background, as a result of the Criminal Justice Act 1967, offenders were eligible for parole after one third of their sentence and (subject to good behaviour) were entitled to remission and release after two thirds. Those on parole were on licence but only up to the remission date. It suffices to note that over the years these provisions have been substantially altered. Release for most cases now comes only after a half (and for more serious offences two thirds of the sentence) with licence provisions (along with liability to recall) lasting until the end of the sentence. These provisions are far more penal. As I shall explain and seek to justify in more detail later, I believe that there should be further sentencing reductions for a guilty plea as an incentive for them to be entered as early as possible.

43. There has always been a reduction on sentence available to defendants who plead guilty; the extent of that reduction has been related to the time at which the plea is entered. The first statutory requirement was contained in section 144(1) of the Criminal Justice Act 2003[323] which, in relation to a defendant who pleaded guilty, required a court to take into account the stage in the proceedings for the offence at which the indication of a guilty plea was made and the circumstances of that indication.[324] Thereafter, in 2004 and again in July 2007, a definitive guideline was issued by the Sentencing Guidelines Council (the forerunner to the Sentencing Council) which, applying to all offenders

323 Following the Runciman Commission recommendations. Viscount Runciman of Doxford, The Royal Commission on Criminal Justice (HMSO, 1993), ch. 7.

324 Section 144(1) of the Criminal Justice Act 2003.

aged 18 or over, identified the maximum reduction for a guilty plea as one third for those defendants who pleaded guilty at the earliest reasonable opportunity, which was generally the first hearing in the magistrates' court or Crown Court. That discount reduced to one quarter for a plea entered after the trial date had been set, and one tenth if only on the day of trial or once proceedings had begun. The rationale for the reduction in sentence was clear: it spared victims and witnesses the stress of giving evidence at the trial, and it saved court time and resources. Judges were expected to follow the guidance but had discretion where there was a justification not to do so. It did not apply to cases involving a mandatory minimum sentence, such as the minimum term for an offender guilty of a third burglary.

44. By the Coroners and Justice Act 2009, the responsibility for creating sentencing guidelines passed to the Sentencing Council. In particular, the Council was mandated by section 120(3)(a) to prepare sentencing guidelines about the discharge of the court's duty under section 144 of the 2003 Act. By section 125 of the Act, a sentencing judge was mandated to follow the guidelines unless it would be contrary to the interests of justice to do so.

45. In 2011, however, before the Council had issued guidelines, in a Green Paper entitled 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders', the then Justice Secretary, Kenneth Clarke QC, MP, proposed increasing the maximum discount from one third to one half on the basis that this would encourage early guilty pleas, saving time and court resources, reducing the pressure on the prison system and cutting costs.[325] The proposal was then part of the Legal Aid, Sentencing and Punishment of Offenders Bill, but it faced considerable opposition on the basis that it was too lenient and would lead to sentences that were too short. There were also concerns that a reduction of that magnitude might lead to guilty pleas from defendants who were in fact innocent.[326]

46. As a result, the proposal was abandoned, and the provision was dropped from what was later to become the 2012 Act.

325 Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders (MoJ, December 2010).

326 The Royal Commission on Criminal Justice (1993), ch. 7. On which see Andrew Ashworth and Rory Kelly, Sentencing and Criminal Justice (Bloomsbury, 2021), pp. 177–179.

47. The Sentencing Council issued guidelines on this matter with effect from 1 June 2017, identifying that an admission of guilt normally reduced the impact of the crime upon victims, saved victims and witnesses from having to testify and was in the public interest in that it saved public time and money on investigations and trials.[327] It underlined that the earlier the plea was indicated, the greater the benefits, but that admissions at interview, cooperation with the investigation and demonstrations of remorse should not be taken into account in determining the level of reduction, but should be considered separately as potential mitigating factors in the sentencing exercise. Further, the benefits applied regardless of the strength of the evidence.

48. The discounts broadly remained as they were: one third at the first stage of the proceedings (at which an indication of plea is sought and recorded); one quarter after the first stage; and a sliding scale of reduction thereafter, with a maximum of one tenth on the first day of the trial. An exception was possible where the court was satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged, or otherwise made it unreasonable to expect an indication of plea sooner than it was made.

49. Following the legislative involvement of the Coroners and Justice Act 2009, the creation and content of any reduction of the guilty plea guideline remains for the Sentencing Council. The guideline provides detail to flesh out the basic one third, one quarter and one tenth framework. That includes, first, that an offender caught red handed (for example, in the course of a burglary) is still entitled to a full discount if pleading guilty at the first opportunity. Second, if a plea is entered on the day of the trial (when substantial additional cost and court commitment have been incurred) as opposed to the PTPH (prior to this cost and commitment of court time), the reduction moved only from 25% to 10%, that is to say, an additional 15%. Finally, a defendant who, by pleading guilty on the first day of what was expected to be, for example, a nine-month trial thereby saving very substantial public expense, can expect no more than a 10% reduction. These last two examples identify the comparatively little benefit to be obtained by a defendant, notwithstanding the financial and organisational costs incurred by the state in the provision of judicial and court time, witness engagement (to say nothing of their stress) and both prosecution and

327 Although there is some dispute about the receptiveness of victims to a discount being given, there is evidence of support. Reduction in sentence for a guilty plea: Research report (Sentencing Council, March 2017).

defence costs in preparation for trial, as well as the knock-on impacts and disruption for timetabling for other trials in the list for that court that are affected by a late plea.[328]

50. The guideline and reduction apply in both the magistrates' court and Crown Court. Although most often discussed in terms of custodial sentence, the guideline applies in relation to other forms of penalty as well.

51. Although this is ultimately a matter for the government or the Sentencing Council, I would recommend an increase to the maximum reduction for entering a guilty plea to 40% (if made at the first available opportunity), which would decrease to one third at the PTPH and, thereafter, at the discretion of the judge as the case proceeds to trial. This would allow the judge to take greater account of the circumstances of the case and, in particular:

    a. the facts of the case as then understood;
    b. the gravity of the offence to which the defendant has pleaded guilty;
    c. the stage of the proceedings at which the plea has been entered;
    d. the beneficial impact of the admission on and to victims; and
    e. the likely saving of public funds consequent upon the guilty plea.

52. As I have been at pains to point out, I do not want to make recommendations that place pressure on defendants to plead guilty inappropriately. I am aware that by increasing the maximum reduction, the risk of that might increase. There is already concern that the present reduction might have that effect.[329] To combat that risk, should my recommendation be implemented, I would encourage the Sentencing Council to conduct research, in conjunction with the Judicial College, into the manner in which judges, in communicating with the defendant at the time the plea is entered, can validate that this is a plea voluntarily entered. I also encourage the Sentencing Council and the MoJ to conduct recording and statistical data analysis on the use of the reduction across the full range of offences to monitor

328 Different considerations apply in relation to murder, and I do not make any recommendation in relation to those.

329 Jill Peay and Elaine Player, 'Not a Stain on Your Character' [2021] Crim LR 921–944; Andrew Ashworth and Rory Kelly, Sentencing and Criminal Justice (Bloomsbury, 2021), p. 174.

its application, and to publish these results for public scrutiny. I am particularly keen that this research and scrutiny is conducted so that risks of disproportionality in application of early pleas can be examined and, hopefully, the public reassured.

53. I accept that an increase in the reduction is also likely to generate the same concerns as were articulated when it was proposed that there should be a 50% reduction to encourage early pleas of guilty. For example, I note that there is some feeling in academic circles that the Sentencing Council's guidelines on sentence reductions have been failing to achieve their potential and as a result there remains a proportion of defendants entering a guilty plea later than they would otherwise do so.[330]

54. It will no doubt be suggested by some that these criteria are effectively the same as those identified in the current guideline, but the wider discretion I am suggesting for judges to apply to pleas made between the PTPH and the trial is intended to encourage those who are guilty to admit their responsibility earlier. Importantly, at the same time, it allows judges to afford considerable reduction, should they consider it appropriate, where very substantial saving of public funds is a consequence even of a late plea. But even then, the reduction will not be as great as that which would be available for the earliest plea. I am deliberately leaving this proposed new discretion undefined so that the effect of a guilty plea at the earliest stage is clear, and the consequences thereafter less certain. That should maximise the incentive for those intending to plead to do so earlier where the reduction will be known.

Recommendation 27: I recommend that the 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.

330 With thanks to Julian V. Roberts KC (Hon.), Emeritus Professor at the University of Oxford, for his submission to this Review.

55. Further it is my view that this proposed increase to 40% is not, of course, as great but more significant is the fact that, as set out above, sentences have very dramatically increased in the 14 years that have since passed. Whatever the impact of recommendations made in the Independent Sentencing Review, it will be difficult to argue that anyone receiving a sentence for a serious offence of the lengths now being passed (compared to those then being imposed) is being treated lightly.

Litigators' Graduated Fee Scheme

56. There are two different payment schemes in the Crown Court – one for advocates (i.e. barristers and solicitor advocates), known as the Advocates' Graduated Fee Scheme (AGFS), and the other for litigators (i.e. the solicitors doing the preparatory work), known as the Litigators' Graduated Fee Scheme (LGFS).

57. The MoJ, in its consultation in relation to the fees for criminal law solicitors, is proposing two amendments to the LGFS (see Chapter 5 – The Magistrates' Court Process). One looks to implement a fixed ratio between outcomes across all offence types for basic fees, and the other looks to increase the basic fees for trials for the lowest-paying offence type. I support this work and hope that implementation of these changes will assist in making the PTPH as effective a hearing as possible.

58. As stated earlier, I have received evidence which suggests that a lack of appropriate remuneration may be perversely incentivising some defence solicitors to focus on the merits of any case only later in the process and, as a consequence, they fail to address the issue of an earlier guilty plea. In my view, there are two problems in particular which need to be addressed.[331]

331 In addition, Sir Christopher Bellamy, in CLAIR, assessed that the LGFS creates underlying incentives for litigators to refrain from advising in favour of early guilty pleas and required reform. He suggested that the fees paid for work in the police station were too low and should be distinguished by offence type. This is part of what I suggested in my 2015 Report by 'getting it right the first time' and resolving these issues at the earliest point. I will note here, however, that as a response to CLAIR, the police station fee scheme had £18.5 million invested into it by the MoJ in November 2024. See Sir Christopher Bellamy, Independent Review of Criminal Legal Aid (November 2021).

59. The first is the potential conflict between the solicitor's and client's best interests, arising from the fact that the fee paid for a guilty plea at the PTPH is lower than the fee paid when a guilty plea is entered on the first day of trial (resulting in a cracked trial). Currently, for example, if a defendant pleads not guilty at the PTPH but pleads guilty during the trial (resulting in a cracked trial), their legal representative will be paid the higher cracked trial fee. Anecdotal evidence I have received suggests that this may be influencing some defence solicitors to delay their preparation of the case and thus the provision of advice to plead guilty until later in the process. Whilst one should take such anecdotal evidence with caution, it is my experience that busy legal professionals will delay preparation until it is absolutely necessary to complete it. I agree that this could put some solicitors in a difficult position in which they must decide when to put work into the preparation of the case. On the one hand, they might delay the preparation until just before the trial (thus receiving a full trial fee). Alternatively, they could do so earlier and provide advice which could deliver their client with the discount consequent on an early guilty plea. This may, therefore, be in the client's best interests, but could reduce the fee received for what might be no less work. I repeat that this may be no more than a consequence of the decision as to when to put the necessary work into preparation of the case and advise the client accordingly. For reasons which are a consequence of the system within which solicitors find themselves, this is creating an environment in which more trials are cracking later in the process, and valuable court time and resources are being wasted. In line with the Terms of Reference of this Review, I must recommend a way to remove these perverse incentives with the aim of reducing the open caseload.

60. The second problem to address is the reliance on Pages of Prosecution Evidence (PPE). LGFS is the scheme by which defence representatives who represent legally aided defendants in the Crown Court are remunerated for their work. The scale of their fee is determined by various proxy elements, including the type of offence, the outcome (guilty plea, cracked trial and trial), the number of trial days and the most significant driver of these, PPE.

61. The number of documents in the trial preparation (i.e. the volume of PPE) determines whether the representative receives either a standard or enhanced fee. It is a proxy for deciding the complexity of a matter, and therefore how much the representative should be remunerated for their work. A witness statement or streamlined forensic reports are both examples of what constitutes PPE, as long as they are served in evidence and copied to all parties.[332]

62. The reliance on PPE for remuneration also appears to be creating a perverse incentive against defence solicitors advising clients to plead guilty early (where that is in the client's best interests) so as to claim a higher fee for their work done. This concern is backed up by the findings of Christopher Bellamy's CLAIR, which suggests that PPE incentivises law firms to obtain 'cases with a large amount of served material, as the resulting fee will outstrip the required work on the case'.[333] Similarly, the Criminal Legal Aid Advisory Board (CLAAB)'s 2024 Annual Report stated that the reliance of PPE creates a disparity between basic fees for cases in which there is a guilty plea and those that go to trial. CLAAB was very clear that there is much to be done and endorsed unactioned CLAIR recommendations. More broadly, the Law Society suggested to this Review that it feels that LGFS, in its current form, is 'no longer appropriate'.

63. The MoJ is currently developing two main LGFS reform proposals. The first is establishing a fixed ratio between guilty plea, cracked trial and trial basic fees, at a rate of 65:75:100, with the 100 relating to the basic trial fee. It believes that making this change in fee structure will support earlier engagement, and I agree that this could help to solve the first problem identified above.

332 PPE offence types are set out in the Crown Court Fee Guidance (Legal Aid Agency, December 2024). PPE is defined in legislation by the Criminal Legal Aid (Remuneration) Regulations 2013.

333 Independent Review of Criminal Legal Aid (2021).

64. The MoJ's second proposal is to uplift the lowest paid basic fees covered by the LGFS. The MoJ believes that uplifting the basic fees for offence types E to I – the lowest paying offences in the LGFS, ranging from offences such as burglary (type E) to offences against public justice (type I) – will increase the likelihood of an earlier guilty plea and reduce cracked trials due to the fees of both being uplifted. Uplifting the fee for these offence types would support the viability of this work for legal aid providers by increasing, and more closely aligning, the fees paid for early guilty pleas and cracked trials.[334]

65. In the longer term, I understand that the MoJ is considering removing the reliance of PPE as a proxy for complexity. I agree with that approach. My view is that this system requires further reconsideration and there should be work explored by the MoJ to model an LGFS which reduces its PPE reliance and brings the scheme more in line with the system applied by AGFS. The AGFS, for example, has 48 bands which, compared to the 11 of the LGFS, can reflect more effectively the range of differences between certain case types and also reduce the reliance on PPE as a complexity marker. This is not least because of the dramatic increase in digital evidence which can more readily be reviewed using digital tools.

66. The MoJ has recognised that making structural changes to LGFS, which has a reliance on outdated digital systems, may have a long implementation timeline. I therefore suggest that digital systems should be appropriately funded and transformed to cope with any structural changes to the LGFS.

67. I endorse the work on which the MoJ is currently consulting and is planning to develop in this area. I do, however, have some concerns about maintaining the trust and confidence in the AGFS whilst harmonising both schemes. I stress that care and consideration is needed when looking to more closely align the schemes and reduce the reliance on PPE. Further, both in relation to the AGFS and LGFS, HMCTS, the Legal Aid authority and the professions as a whole should work more closely together to ensure that better outcomes are reached. I would be happy to return to this issue in my Efficiency Review if ideas as to the formulation of a revised scheme are then available.

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334 LGFS table of offences as defined by the CPS. See Graduated Fee Scheme C - Manual of Guidance (CPS, January 2018).

Recommendation 28: I recommend that the Litigators' Graduated Fee Scheme should be reformed into a banded scheme with most cases in standard 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.

Means Test

68. The criminal justice system (or series of systems) in England and Wales is complex and built on the foundations of hundreds of years of history. It is a complicated system for anyone to interpret, even with legal advice. As I mentioned above, I would not anticipate that unrepresented defendants would be able to navigate themselves through it with ease. As a consequence, the legal aid system is incredibly important in supporting those who come into contact with the criminal justice system.

69. One aspect of qualifying for legally aided representation in criminal proceedings is that the defendant must be able to satisfy a means test, which determines their financial eligibility. This establishes whether they are entitled to legal aid and therefore will have state funding for legal representation and advice throughout the proceedings against them. When applying for legal aid, the applicant has to demonstrate their financial circumstances, what type of allegation they face, how serious the allegation is and in which court it will be heard. The application also has to pass an interests of justice test.[335]

70. The interests of justice test includes various factors which help determine whether defending the case and applying legal aid for defence representation is in the best interests of justice. This includes, but is not limited to, assessing whether the defendant would be likely to 'suffer serious damage to his or her reputation' and 'whether it is in the interests of another person that the individual be represented'.[336]

71. The Legal Aid Agency (LAA) uses this information to consider whether the defendant meets the threshold of eligibility for legal aid.[337] If

335 Criminal legal aid: means testing (Legal Aid Agency, June 2014–February 2025).

336 Legal Aid, Sentencing and Punishment of Offenders Act 2012.

337 Criminal Legal Aid Manual: Applying for legal aid in criminal cases in the magistrates' and Crown Court (Legal Aid Agency, May 2025).

unsuccessful, an applicant has a right to appeal on the grounds of hardship. This appeal will consider any expenditure that the LAA has not yet taken into account, and the likely costs of the case.[338]

72. There is a contrast between the magistrates' court means test and the one applied in the Crown Court. The Crown Court means test has a higher income threshold for qualifying for legal aid and offers an option for the party to make contributions to their legal aid. This is decidedly more favourable compared to the 'in and out' system the magistrates' court applies, which does not require applicants to pay contributions towards their legal aid cost and operates at a lower income threshold of eligibility.[339]

73. There is an anomaly, however, in the provision of legal aid in complex 'either way cases' from the magistrates' court to the Crown Court.

74. As set out in Chapter 5 (The Magistrates' Court Process), an either way offence can be heard in either the magistrates' court or the Crown Court. The category of offences that are either way include such offences as theft, burglary and drug offences which can vary greatly in seriousness. The magistrate will then decide whether a case is sufficiently serious to be heard in the Crown Court or whether it should be retained for trial the magistrates' court (as magistrates currently only have powers to sentence up to 12 months in custody).[340] This does not, at present, infringe the defendant's right to choose for their trial to take place in the Crown Court should they prefer.[341] If the magistrates retains the case, try it and convict the defendant, but decide that the 12-month sentencing power will be inadequate, they can 'commit' the case to the Crown Court for sentence.

75. Currently, however, there appears to be an anomaly which is affecting defendants differently in the application of legal aid in either way cases that are committed for sentence from the magistrates' court to the Crown Court. If a defendant pleads guilty in an either way case at the magistrates' court and applies for funding for legal representation through its means test but fails, the defendant will not qualify for legal aid. If the case is committed to the Crown Court for sentencing,

338 Criminal legal aid: means testing (2014–25).

339 Legal Aid Means Test Review (MoJ, May 2023).

340 Increased sentencing powers for magistrates to address prisons crisis (MoJ, October 2024).

341 Which court will a case be heard in? (Sentencing Council).

the legal aid refusal carries over to the Crown Court when dealing with their sentencing. In such cases, whilst the defendant will usually benefit from a reduction in their sentence for pleading guilty earlier, they will not benefit from having legal representation at any stage, from the first appearance in the magistrates' court through to sentencing in the Crown Court.

76. On the other hand, if the same defendant had pleaded not guilty to the same offence(s) and the case was sent straight to the Crown Court for trial, the Crown Court means test would apply. In this scenario, the defendant would not receive the benefit of a sentence reduction for pleading early in the magistrates' court, but they may have the benefit of legal advice in the Crown Court through the application of the higher income threshold Crown Court means test.

77. This anomaly is creating a perverse incentive for all defendants, including those who are intending to plead guilty, not to enter an earlier guilty plea in order to benefit from funded legal advice. I have seen evidence of this in the CLAAB Annual Report and the Law Society's submission to this Review, which both recommend that committals for sentence be treated as Crown Court proceedings for the purposes of legal aid, whereby the Crown Court means test applies.[342]

78. I note the MoJ has considered the different applications in the means tests as an issue but concluded, in its Means Test Review, that the current approach:

> 'remains fit for the magistrates' court as many cases involve a single hearing and are generally less complex and shorter than those heard in the Crown Court, meaning they cost less. Further, unlike the Crown Court, magistrates' hearings work to tighter deadlines and there is a very small window of opportunity to apply for and be granted legal aid.'[343]

79. The higher income thresholds to qualify for legal aid in both the magistrates' court and the Crown Court differ substantially. In the magistrates' court, this currently sits at £22,325 whilst in the Crown Court it is at £37,500. There is merit to this as the Crown Court will deal with the most serious and complex matters. However, I do believe there is a disparity that will have the greatest adverse effect

342 With thanks to the Law Society for its submission to this Review.

343 Legal Aid Means Test Review (2023).

on those from the lowest socio-economic backgrounds and those defendants from ethnic minorities when a defendant is committed for sentence from the magistrates' court to the Crown Court. As I note throughout this recommendation there should be reconsideration in how the means test is applied when dealing with this question. I note more broadly that there is an interdependency here with the implementation of my recommendation of a Bench Division of the Crown Court, which would sit as a new branch within the Crown Court (see Chapter 8 – Crown Court Structure), and I recognise that work would need to be done by the MoJ to explore how the means test should apply to this new Division in the Crown Court.

80. Whilst I accept that dealing with potentially complex issues in the Crown Court more readily requires defendants to have the benefit of legal representation, I believe that a person committed for sentence in the Crown Court and who has failed the magistrates' court means test should be permitted some form of legal aid if they would be eligible under the Crown Court means test.

81. I therefore suggest that the income threshold for committals for sentencing be changed to allow limited legal aid for those with an income of less than £37,500 in the magistrates' court. I suggest an individual whose gross income is below this level should be entitled, at least, to single advice at the plea/allocation stage, albeit capped at the going rate. It is worthwhile noting that an acquitted defendant who had been refused legal aid on means grounds can apply for costs to be assessed at legal aid rates; such an application will not be possible if no application was made for legal aid or if they have not been issued a refusal notice in order to apply for a Defendant's Costs Order (DCO) to claim their legal costs back. The DCO would be capped at legal aid rates.

82. Further, the LAA should be resourced to implement and administer these changes, including variations to their digital systems and to allow operations to continue as normal whilst these changes are made and to assist with the implementation of this recommendation. This change is necessary and would allow the defence to submit a new application to the LAA to obtain a variation to the legal aid certificate in any event.

83. The application of this recommendation may encourage defendants, where appropriate, to indicate a plea in the magistrates' court, rather than wait, in order to benefit from legal aid, and plead later in the process. This recommendation is also likely to save time and system costs,

given that more defendants are likely to be represented when committed for sentence, and, as set out above, trials for unrepresented defendants tend to take longer, given the need to explain the process to them.

84. To enact these changes, as I have set out, a Statutory Instrument (SI) should be laid before Parliament to increase the thresholds for committals for sentencing in either way cases to allow more people to qualify for legal aid in the magistrates' court via the Criminal Legal Aid (Financial Resources) Regulations 2013.[344]

Recommendation 29: I recommend that 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.

Interdependencies and Other Options Considered

85. My 2015 Review into efficiencies in criminal proceedings looked broadly at ways in which it might be possible to streamline the disposal of criminal cases and ensure that proposed reductions in criminal legal aid can be justified.[345] One recommendation that I had made was to place a duty of direct engagement between identified representatives who have case ownership responsibilities. This has been adopted in the Crim PR. I believe that effective engagement as early as possible is incredibly important: this always happens in civil and family litigation. I had considered whether there was appetite for including an early, paid meeting between identified representatives which could perhaps, through greater collaboration and discussions, lead to guilty pleas being made earlier. Again, as is a constant theme throughout this chapter, I would not want to incentivise, or risk the perception of seeking to incentivise, a guilty plea under pressure. I note that the CPS is planning to commence a pilot scheme across the CPS South West and CPS East Midlands Area which will allow for a joint plea and/or sentence document to be prepared for the judge ahead of the PTPH in appropriate cases. I shall therefore explore this further in the Efficiency Review.

344 The Criminal Legal Aid (Financial Resources) Regulations 2013.

345 Review of Efficiency in Criminal Proceedings (2015).

Conclusion

86. Perverse incentives, as I have seen through my engagement and through the submissions to this Review, are contributing to a general trend of guilty pleas being made later in the court process and causing decision to be made which are not always in defendants' best interests. This is delaying justice, adding to the open caseload and reducing confidence in the criminal justice system. Removing these perverse incentives and encouraging appropriate guilty pleas to be made earlier in the process may result in fewer cracked trials, a quicker route to justice and a reduction in the open caseload.

87. Having regard to the principles set out in the Introduction, I reiterate my view, set out in my 2015 Review, that early engagement is key, and the PTPH must therefore be used to maximum effect. This must be at a time when all parties are well equipped and well informed to make it as an effective hearing as possible, while at the same time giving defendants the information that they need to make decisions about their plea, with *Goodyear* indications commonplace.

88. I also recommend that there should be an increase in the maximum reduction for entering a guilty plea to 40% if made at the first available opportunity, decreasing to one third at the PTPH and, thereafter, at the discretion of the judge.

89. Finally, I believe that the provision of fees for lawyers should adequately compensate the work that they have done, and that legal aid should be more widely available for defendants.

Chapter 8

Crown Court Structure

Chapter 8 – Crown Court Structure

Introduction

1. The Crown Court plays a vital role in the delivery of criminal justice. As set out in Chapter 2 (Problem Diagnosis), however, and as evidenced by the necessity of this Review, its caseload has risen substantially over recent years. This chapter considers whether changes to the current structure of the Crown Court would encourage more effective management of the caseload.

2. The chapter first sets out the current structure of the Crown Court, before considering options for change. While I note the merits of options including an Intermediate Court, I recommend instead the creation of a new Division of the Crown Court, which for convenience I have named the 'Crown Court (Bench Division)' (CCBD).

3. My recommended model would help to ensure efficient and proportionate use of resources whilst still upholding the same high standards of fairness, independence and justice provided across the Crown Court in the Divisions I propose. This chapter sets out the proposed scope of the CCBD's work, the process of allocation to the CCBD and the safeguards that would be integral to its work.

The Current System

4. The criminal court system in England and Wales has two courts of first instance, where cases are heard for the first time and a decision on liability is reached: the magistrates' court and the Crown Court. As set out in more detail in Chapter 5 (The Magistrates' Court Process), the magistrates' court is the first level of the criminal court system and handles more than 90% of all criminal cases.[346] Cases are heard, without a jury, by either two or three magistrates or a DJMC.

346 Source: Criminal court statistics quarterly (2025). See also About Magistrates' Courts (Courts and Tribunals Judiciary).

5. The magistrates' court deals with less serious offences, known as 'summary offences', which include most motoring offences, minor criminal damage and common assault.

6. The magistrates' court can also deal with some either way offences. These are offences which can be dealt with in either the magistrates' court or the Crown Court, such as burglary and drugs offences. The Sentencing Council's guidelines on allocation state either way offences should be tried summarily unless 'the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea'.[347] As noted, magistrates have custodial sentencing powers of up to 12 months, so where magistrates assess that a particular 'either way' case may be subject to custodial sentence in excess of 12 months, the case is sent to the Crown Court to be tried. For either way offences, the defendant may also elect for a Crown Court trial. Where magistrates do retain and conduct the trial of an either way case, the court hears the evidence and decides whether or not a defendant is guilty. If the defendant is found guilty, the magistrates' court will either sentence the defendant or send the defendant to the Crown Court for sentencing, depending on whether the likely sentence length is then within the magistrates' powers (12 months' imprisonment being the maximum).

7. Cases in the Crown Court are usually heard by a judge and a jury made up of 12 adults selected at random from the electoral register.[348] As set out in more detail in Chapter 9 (Trial by Judge Alone), the jury decides whether or not a defendant is guilty based upon the evidence presented in the case, and in compliance with the judge's directions. If the jury finds the defendant guilty, the judge alone then decides the appropriate sentence.

8. The most serious cases, known as 'indictable only' offences, such as murder, rape and robbery, start with a formal appearance in the magistrates' court, where a decision is made on bail,[349] but are then immediately sent to the Crown Court.

9. The Crown Court also fulfils other functions. These include, as noted, cases sent for sentence from the magistrates' court if, having heard

347 Allocation and committal for sentence (Sentencing Council).
348 Jury service: How jury service works.
349 Bail in murder is always dealt with in the Crown Court.

the case, the magistrates' court decides that a sentence longer than 12 months may be required. The Crown Court also hears appeals against decisions made by the magistrates' court. These appeals are normally heard by a Circuit Judge and two magistrates. I deal with appeals in more detail in Chapter 6 (Appeals from the Magistrates' Court).

Justice Delayed is Justice Denied

10. As I set out in Chapter 2 (Problem Diagnosis), the outstanding caseload is at a record high. The open caseload in the magistrates' court at the end of 2024 was around 310,000 cases – a 14% increase on the same quarter for the previous year.[350] In the Crown Court, the open caseload stood at around 75,000 at the end of December 2024 – an 11% increase on the same quarter in 2023.[351] While the size of the outstanding caseload in the magistrates' court may appear to be of greater concern than that of the Crown Court, cases in the Crown Court almost invariably take longer (and, in some cases, very much longer) before they come to trial and also take longer to try. The time taken for cases in the magistrates' court has remained relatively stable since 2010 (with the exception of 2020 to early 2022) with most cases completed on the same day. In 2024, the average first listing to completion for all cases was 25 days (excluding those sent to the Crown Court). In contrast, in the Crown Court, cases have shown a significant upward trend in the time taken to be heard, reaching an average of 239 days from receipt to completion, and 63 days from main hearing to completion in 2024. This increases further when looking only at those cases which go to jury trial, with an average of 503 days from receipt to completion, and 75 days from main hearing to completion. Comparable information is not available in relation to the magistrates' court.[352]

11. As I explained in Chapter 2 (Problem Diagnosis), the cumulative extent of changes in the criminal justice system over the last 50 years has had an extensive impact on trial length in the Crown Court. This includes the guidance now given to jurors; development of criminal law and procedure (including special measures for victims and witnesses); the ever-more complex nature of charges being pursued in the Crown Court; the nature of the evidence adduced in support of these charges

350 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025).

351 Ibid.

352 Ibid. Note: the use of not-guilty-plea trials as a proxy for jury trials.

(particularly the potential for digital and expert evidence); and the defendants' circumstances (leading to a requirement for interpreters and intermediaries). This has all led to trials being prolonged. That also has an impact on how long the delay will be before a trial slot can be found in the court system, which has adverse effects that I have rehearsed above.[353]

12. I am concerned that the Crown Court is failing to deliver justice in a timely fashion. As a matter of principle, that must be addressed. I have, therefore, examined the current structure of the Crown Court and whether structural changes might increase the efficiency of the criminal court system, and in doing so go some way to addressing the outstanding caseload in the Crown Court.

13. The concept of amending the current structure of the criminal courts is not new. Most notably, in his Review, Lord Justice Auld suggested the introduction of an 'Intermediate Court'. He described this as a third tier of court which would sit between the magistrates' court and the Crown Court, with cases heard by a District Judge (Magistrates' courts) or a Deputy District Judge and two magistrates. This, he argued, would introduce a 'middle-range of cases that do not warrant the cumbersome and expensive fact-finding exercise of trial by judge and jury, but which are sufficiently serious or difficult, or their outcome is of such consequence to the public or defendant, to merit a combination of professional and lay judges'.[354] Support for this, or variations of this model, has been voiced as part of my engagement. For example, in its recent report, the Times Crime and Justice Commission recommended the introduction of an 'Intermediate Court' sitting within the Crown Court, with cases tried by a judge sitting with two magistrates rather than a jury.[355]

14. Having considered all options, including these proposals for the creation of a new intermediate tier of court, I agree that a change to the current structure has the potential to streamline the criminal court process and therefore increase timeliness of the delivery of justice as well as efficiency.

353 I have examined the impact of reduced funding and capacity in further detail in Chapter 2 (Problem Diagnosis) paras 38–43 and 53.

354 The Rt Hon. Lord Justice Auld, Review of the Criminal Courts of England and Wales (HMSO, October 2001), p. 277.

355 A Report into the state of the criminal justice system (Times Crime and Justice Commission, 2025).

The Crown Court (Bench Division)

15. Rather than an Intermediate Court of the type described in the Auld Review, I propose the introduction of a new branch of the Crown Court, which might be called, for example, the Crown Court (Bench Division). I will set out the make-up of this branch in more detail in paragraphs 29 to 32 below, but in summary, the CCBD would be constituted by a judge sitting alongside two magistrates without a jury. This reflects the existing composition of a bench hearing an appeal in the Crown Court. Rather than forming a separate tier of court in the structure, it would be a Division of the Crown Court. The Crown Court can already sit, in some capacities, with a judge and up to four magistrates, and legislation already recognises magistrates sitting in the Crown Court to be judges of that court.[356] Although this recommendation would clearly require primary legislation to implement, there is already a clear precedent for magistrates serving as judges of the Crown Court. I return to the composition of the Crown Court in more detail below.

16. Analysis suggests that by diverting cases from a jury trial in the Crown Court to the CCBD, it would be possible to increase the throughput of cases (see Modelling Boxes B and C below). It is recognised that seeking to model how much time would be saved is extremely difficult. For example, one must try and estimate the time saved by removing processes such as: making allowance for the time taken by a jury to be selected and sworn; juries given instruction; and reluctant jurors or other jury complications. For the purposes of modelling, I use an estimate of 20% for the total hearing time saved in a CCBD versus a Crown Court trial with a jury. Based on my experience, I believe this to be a conservative estimate and that the time-saving would be greater and, perhaps, substantially greater than 20%. However, I recognise there are contrary arguments. Further investigation and analysis on this assumption is provided below (Modelling Box C). I do acknowledge that the time-saving may vary (both upwards and downwards) depending on the case type. In introducing this new Division of the Crown Court, I hope that it will significantly reduce the time it takes for any defendant, victim and witness to receive justice, including addressing the risk of cases falling due to witness attrition (as set out in Chapter 2 – Problem Diagnosis). Should the MoJ consider pursuing this course of action, it may wish to consider undertaking further detailed analysis in order to understand the potential time-saving fully.

356 See ss. 8(1)(c) and 73 of the Senior Courts Act 1981.

17. This model, working within the current framework of the Crown Court, provides a number of benefits over the Intermediate Court proposed by the Auld Review. Given that this new Bench Division would sit within the Crown Court, the costs and logistical challenges involved in its creation would be limited. In contrast, the creation of a new tier through an Intermediate Court, for example, would incur significant costs to establish, would require new fee structures and would mean that existing magistrates' courts would have to be adapted to hear more serious cases. In my preferred model, by aligning the CCBD within the set-up of the existing Crown Court, my proposal could be quickly established within the existing estate, structures and professional regulatory regime.

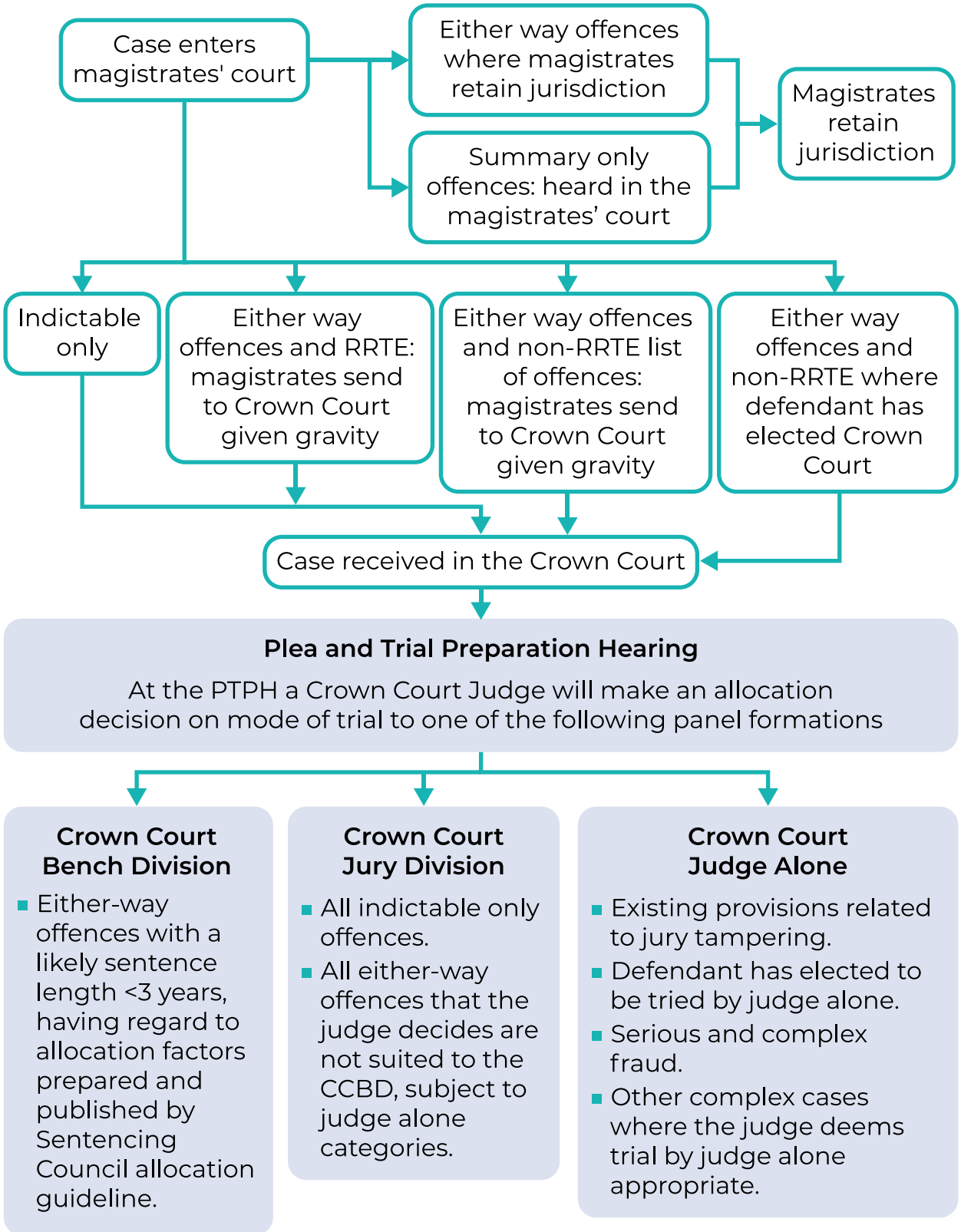
18. Under this proposal, the defendant retains, in the magistrates' court, the right to elect Crown Court trial (subject to the recommendations in Chapter 5 (The Magistrates' Court Process). A Crown Court Judge (whether sitting full-time or part-time) would preside in all CCBD cases, and Crown Court procedures would apply. Additionally, legal professionals would be remunerated appropriately for a Crown Court trial. Appeals from the CCBD would follow the same route as appeals from the Crown Court as currently structured: neither the defendant nor the prosecution would lose any existing appeal rights available. A further saving by comparison with the proposed Intermediate Court is that whereas the Intermediate Court would need to commit some cases to the Crown Court for sentencing, taking up further valuable Crown Court time and resources, the proposed CCBD would be a new branch of the Crown Court with full Crown Court sentencing powers, and as such would not need to commit any case for sentence. That would mean efficiency gained was not subsequently lost.

19. The new CCBD would offer the highest level of operational flexibility. As I will go on to set out, the CCBD will be established in such a way as to be able to, potentially, try all either way cases and in such a way as to be able to adapt as and when new either way offences are introduced by future governments.

20. This model offers an effective way of ensuring a proportionate allocation of cases across the magistrates' court and the Crown Court by matching the trial forum to the severity and nature of the alleged offences. The recommendations I make on the allocation of cases will build in safeguards on fairness while reducing the risk of decisions that may disadvantage defendants. By redistributing the workload across the magistrates' court and the Crown Court (the new CCBD and trial by a judge and jury and trial by judge alone[357]), the model reduces delays which, in turn, could lower victim and witness attrition rates. The fairness of process for the defendant would be maintained as they would retain an independent and impartial tribunal in all cases, and a right to appeal conviction and sentence. Crucially, the recommendation would ensure consistency to all defendants by its uniformity of application. The following section explains how this model would work in more detail, with Flowchart 8.1 illustrating the passage of cases through the new structure.

357 As explained in Chapter 9 (Trial by Judge Alone) below.

Flowchart 8.1 – Allocation in the CCBD[358]



358 The recommendations generating the possibility for trial by judge alone, for both by election and by complexity are set out in Chapter 9 (Trial by Judge Alone).

Offences in Scope

21. In considering which types of case should be heard in the CCBD, I have received different suggestions from court users and legal professionals on where appropriate limits might be set. I initially considered a model whereby the CCBD would only be eligible to hear allegations of certain offences where the ACSL for that offence type was three years or less. Initial indicative modelling of this approach suggested that the impact on the open caseload in the Crown Court would be minimal. I have therefore settled on a proposal that I believes strikes a proportionate approach, maintaining fairness, improving timeliness (including impact of delays on victims) and increasing efficiency.

22. My proposal is that the CCBD should have the potential to hear all either way offences. The allocation decision as to whether an individual case should be tried in the CCBD would be based on a number of factors, principal amongst those being whether the likely custodial sentence on conviction in that case would be three years or less. In instances where a defendant faces multiple counts which individually would not result in a sentence of three years but which cumulatively would exceed that, then the allocation decision should consider the likely overall sentence for all offences and that the overall likely sentence would be unlikely to exceed three years. This process reflects the allocation process in the magistrates' court. I recognise that ultimately it is a matter for the government and Parliament where the threshold is set in terms of the types of cases and the likely sentence length which would render a case suitable for the CCBD.

23. In the magistrates' court, a magistrate at the allocation hearing determines whether an either way case should be sent to the Crown Court.[359] In the Crown Court, whether the case has been sent or the subject of election for trial by the defendant, the allocation of the case between the different new Divisions of the Crown Court would take place at the PTPH. I have covered this in more detail in Chapter 7 (Maximising Early Engagement in the Crown Court). As shown in Flowchart 8.1 above, at the PTPH a Crown Court Judge (or, as I have suggested, an approved Recorder) would decide whether the case should be heard by the CCBD, by a judge and jury, or by (as I discuss in Chapter 9 – Trial by Judge Alone) judge alone.

359 In accordance with the Sentencing Council's allocation guidelines as set out in para. 6 of this chapter.

24. My aim is to ensure that a large body of appropriate either way offences would be tried in the CCBD. The strong presumption would be that all cases where the likely custodial sentence on conviction would be three years or less should be heard in that court. The presumption would be capable of being rebutted in exceptional circumstances. It is difficult to see how an offence which attracted a *maximum* custodial sentence of three years would not be tried in the CCBD but I would leave that decision to the judge at the PTPH.[360] It is important to underline that such cases are likely to be the least serious of the Crown Court cases heard, given that such a maximum reflects Parliament's considered view of the gravity of the offence. The judge's allocation decision should be in accordance with the framework set by Parliament and founded on the principles of proportionality and fairness of proceedings, together with the need for a timely resolution of the case. The judge would also need to consider broader issues of legal principle including the likely complexity of the case based on factors such as the number of live witnesses and the volume of expert evidence. I note the recommendation made by the Independent Sentencing Review ('the Sentencing Review') which was chaired by the Rt Hon. David Gauke. It recommended that the upper limit for applying a Suspended Sentence Order to custodial sentences should be extended from two to three years. As I recommend that the pool of offences captured by the CCBD should include any either way offence where the likely sentence in the individual case would be less than three years,[361] I endorse the Sentencing Review recommendation and suggest that it should be applied in the CCBD and as well in the Crown Court.

25. I see no reason in principle why the CCBD cannot deal with cases commonly involving multiple defendants (for example, affray). I anticipate that the number of defendants and the likely complexity of the evidence involved will be factors that are important in the Crown Court Judge's decision on allocation. This is a further matter that would need to feature in the Sentencing Council allocation guideline that would inform the judge's decision and maintain consistency and transparency in decision-making.

360 For modelling purposes, it is assumed all offences with a maximum custodial sentence length of three years or less are automatically allocated to the CCBD.

361 This will mean that all either way cases in which the allocation judge at the PTPH anticipates a suspended sentence will be likely to be allocated to the CBBD.

26. If the recommendation for a Crown Court Bench Division is accepted, I further recommend that, based on the parliamentary guidance and after appropriate consultation, the Sentencing Council creates Crown Court Division Allocation guidelines. Once the legislative drafting is finalised, it is essential that this is done expeditiously so that the guidelines are in force to coincide with the commencement of any primary legislation provisions establishing the CCBD.

Recommendation 30: I recommend 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 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 below. Parliament should set a framework within which the Plea and Trial Preparation Hearing judge would be required to operate.

Recommendation 31: I recommend the Sentencing Council creates Crown Court Division Allocation guidelines following its required consultation process.

Sentencing Powers

27. The CCBD, as part of the Crown Court, would have the same sentencing powers as the Crown Court in its current form. Therefore, if on conviction after a trial in the CCBD, the court were to consider that the case merited a sentence greater than three years, the CCBD would have the power to impose a sentence up to the maximum for that offence, if appropriate to do so. By way of illustration, if a case of assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861 were to be allocated to the CCBD (with the allocation judge anticipating a sentence of three years or less), but at trial in the CCBD it became clear that the offence was more serious, the CCBD would be able to sentence up to the statutory maximum for that offence, which is five years' custody.

Recommendation 32: I recommend that 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.

Constitution of the Crown Court Bench Division (CCBD)

28. My recommendation is that the CCBD would be constituted by a judge eligible to sit in the Crown Court and two magistrates. Judges eligible to sit in the Crown Court are High Court Judges, Circuit Judges, Recorders of the Crown Court and District Judges (Magistrates' courts).[362] The decision as to which judge would be best suited to hear a particular CCBD case would be a matter for the Resident Judge at the Court Centre in which the case will be heard, and the presiding Judge of the Circuit, applying the usual listing criteria.

29. In considering the bench for a new CCBD, my starting point would be that any judge appointed to sit in the Crown Court in its current form should be eligible to sit in the new CCBD, as a branch of the Crown Court. In a typical case, however, my recommendation is that the judge sitting may be a Recorder (a fee-paid judge), sitting alongside two magistrates, for the reasons set out below. I would anticipate that a proportion of this work would also be undertaken by serving Circuit Judges.

30. Resident judges, who have important leadership roles in the Crown Court system, would play an important role in overseeing the listing of the CCBD caseload to Crown Court Judges and, in particular, Recorders. It will be important that regard be had to the Recorder's experience and the level of support that they may require, not only in deciding which cases they should hear in the CCBD, but in which venue the court sits.[363]

362 Note: many DJMCs also sit as Recorders in the Crown Court but by section 8(1)(b) of the Senior Courts Act 1981 (as inserted by the Courts Act 2003), District Judges (Magistrates' courts) can also exercise the jurisdiction of the Crown Court.

363 See para. 71 on venue.

31. I recognise the vital role fee-paid judges play in the criminal system. Using fee-paid judges would provide flexibility and allow Circuit Judges to deploy their greater expertise in managing jury trials. This would also allow Recorders presiding over cases in the CCBD to build their own expertise, which may, in due course, widen the pool for future recruitment of Circuit Judges – which I expand on later in this chapter.

Recommendation 33: I recommend that 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.

Magistrates in the CCBD

32. My proposal for two magistrates in the constitution of the CCBD would ensure that this branch of the Crown Court retains community participation, in the absence of a jury. As I noted above, when magistrates sit in the Crown Court they are already treated in law as being judges of that court.[364] Magistrates sitting in the Crown Court take an equal part in the decision-making of the court (and may outvote the professional judge).[365] As such, they take part in all the decisions of the court including on matters of the admissibility of evidence and sentence. As the Court of Appeal has acknowledged,[366] the only limitation on the role of lay justices, 'so obvious that no doubt the draftsman did not think it necessary' to include in the 1981 Act, is that they must accept a ruling from the professional judge on any matter of law in the same way a jury is required to accept the trial judge's instructions as a matter of law. Any questions magistrates have on matters of law should be dealt with procedurally by the judge in the same way as when they sit on appeals in the Crown Court.

364 Sections 8(1)(c) and 73(3) of the Senior Courts Act 1981.

365 Section 73(3) of the Senior Courts Act 1981 provides that where a judge of the Crown Court sits with Justices of the Peace, the decision may be made by majority decision and, if the members of the court are equally divided, the judge of the Crown Court shall have a second and casting vote.

366 *R v Orpin* [1975] QB 283. Lord Widgery CJ was analysing the equivalent provision in the Courts Act 1971.

33. I am confident that sufficient magistrates would be willing to sit with a judge in the new Division of the Crown Court. As part of this Review, a survey was sent to all magistrates (14,576 in total) with 27% (4,001) providing complete responses. Respondents were asked about their willingness to sit in the Crown Court. Of those who responded, 84% were 'very willing' and 12% 'somewhat willing' to sit in Crown Court with a judge if they were involved in all decisions. This was followed by 48% of respondents being 'very willing' and 24% being 'somewhat willing' to sit if involved in the verdict only. Additionally, over three quarters of respondents (76%) would be willing to sit between 1 and 20 additional days in the Crown Court each year.[367]

34. In a similar vein, the inclusion of two magistrates in the composition of the bench would also ensure that the CCBD would satisfy the expectation of providing a judgement of 'one's peers'. I have outlined my thoughts on the expectation of being judged by one's peers in Chapter 5 (The Magistrates' Court Process) and will not revisit those arguments here. I do, however want to acknowledge the diversity of the current magistracy, which I believe goes some way to satisfying this expectation and would help ensure a fair and balanced representation in the CCBD.

35. As I have already set out in Chapter 5 (The Magistrates' Court Process), improvements seen between 2014 and 2020 in relation to diversity within the magistracy have brought it closer in line with that of the overall population of England and Wales. The magistracy is broadly representative of the population in terms of gender (around 57% of magistrates are female compared to around 51% as a proportion of the population of England and Wales) and ethnicity (see Table 8.1 below), and is therefore well placed to provide a representative presence on the CCBD panel. I acknowledge there is still work to be done to ensure a fully representative, diverse and inclusive magistracy in terms of ethnicity, age, disability and broader socio-economic representation.

367 Source: Survey of magistrates conducted by the Independent Review of Criminal Courts.

Table 8.1 – Ethnicity of magistrates

Ethnicity bracket	Proportion of England & Wales population 20–74 (2021)	Magistrate
White	82%	87%
Asian or Asian British	9%	7%
Black or Black British	4%	4%
Mixed	3%	2%
Other	2%	<1%

Source: 'Diversity of the judiciary: 2024 statistics', MoJ, 2024, 'Ethnic group, England and Wales: Census 2021', ONS, 2022

36. I welcome the continued efforts of the relevant Advisory Committees on their appointment process. Efforts to achieve this have stagnated since 2020 and renewed efforts are needed to achieve greater representation. My view is, therefore, that while the current diversity of the magistracy goes a long way to meeting the expectation of judgement by one's peers, work must continue to improve diversity further.

37. Magistrates sitting alongside a Crown Court Judge or Recorder in the CCBD would have the additional benefit of drawing on the magistrates' valuable knowledge, grown of experience when sitting in the magistrates' court. It would also follow that given their training, magistrates are likely to be capable of understanding the nuances of a hearing more quickly than members of a jury, and I would therefore expect to see cases concluding more efficiently, resulting in increased timeliness in outcomes for parties. In turn, this will help address the issue of outstanding caseload.

38. I anticipate that the magistrates will receive training by the Judicial College on any aspects of the work that would be new to them – such as working with the Digital Case System or digital bundles. I do not consider that this would need to be extensive or expensive to deliver. I anticipate that it could be achieved remotely using video link. Again, I would urge expedition in the delivery of the training so that the CCBD can be operational as soon as primary legislation establishing it is commenced.

39. Having regard to the provisions of the Senior Courts Act 1981, magistrates sitting in the CCBD would consider the admissibility of evidence (as they do when sitting in the magistrates' court) with the assistance of judicial directions as to the law. As noted, this would mean that the magistrates would also be able to have sight in advance of any witness statements and other documents prepared by the parties and shared with the judge. In that way, the trial process would be more streamlined as the entire bench would be fully prepared and be far better placed than a jury to focus in directly on the relevant issues in the case. The verdict would be reached by the entire bench, with each magistrate having an equal vote to the professional judge. Further, in any instance in which the court starts proceedings with two magistrates and one has to retire mid-trial, then I recommend the hearing should continue with a judge and the remaining magistrate. Section 73(3) of the Senior Courts Act 1981 already provides for the professional judge to have a casting vote if for some reason the court has had to sit as a bench of two.

40. It would be for the judge to provide a judgment explaining the verdict in the context of the evidence the court has heard, although I anticipate that would not need to be lengthy or in writing necessarily. This will serve to enhance the quality of justice by providing a greater level of transparency and accountability in relation to the verdict and reasoning than is currently the case in a Crown Court jury trial.

41. The professional judges sitting in this CCBD would already have experience in routinely delivering rulings (on admissibility, case to answer and procedural issues) as is presently the case in every trial. I anticipate that these familiar judicial skills will be applied in preparing and delivering a judgment of the court on its verdict. Similarly, the obligation to provide a judgment would not, in my view, be unduly burdensome. Again, as with a jury trial, the judge would always be keeping a running note of the evidence and producing a route to verdict setting out the steps required. With those as a foundation in every case, the production of a reasoned judgment will be far from onerous particularly in the types of less serious offences which will be tried before the CCBD.

42. By way of illustration of what I anticipate in a judgment, and in order to demonstrate that the production of a judgment would be neither too onerous nor time-consuming, it would generally be sufficient if the judgment: identified the issues in the case; made clear that the approach had been to apply the burden and standard of proof; included reference to other appropriate directions of law (such as alibi, lies, bad character, hearsay, adverse inferences etc.); and provided an explanation for the verdict by answering the questions in the route to verdict with short reasons for those conclusions and with appropriate reference to the evidence heard. In the event of an acquittal, the reasons can be suitably brief, but it is important to underline that victims and witnesses are also entitled to know why the case which they supported has not caused the court to be sure of guilt.

43. Although this is a matter for the Lady Chief Justice and the Judicial College, I anticipate that it will not be difficult to supplement its current training on judgment writing which is, in any event, compulsory for all judges when they are appointed. I also anticipate that the Judicial College will comparatively easily be able to expand the Crown Court Compendium to provide judges with examples to illustrate the level of detail expected in a CCBD judgment. It may be possible for templates for judgment writing also to be produced. That would additionally assist on appeal as the Court of Appeal could assess more swiftly whether the law had been approached correctly.

44. Finally, for the sake of completeness and given the statutory position under the Senior Courts Act 1980, magistrates could sit on sentence if it were to be passed immediately following the trial but would not be obliged to return to do so if the case were adjourned (if, for example, a pre-sentence report were required).

45. In Modelling Box B below, I present an initial assessment of the impact of CCBD on Crown Court sitting days, and the expected financial impact of my recommendations (along with introducing additional capacity to support these recommendations).

Modelling Box B – Impact of CCBD on workload and costs

Using available data and evidence and the assumptions, caveats and qualifications expressed below and throughout this chapter, it is estimated that this recommendation would save approximately 5,000 sitting days in the Crown Court each year, if implemented in isolation. It is estimated that the cases that would be in scope of the CCBD would constitute approximately 38,000 sitting days' worth of work in a Crown Court with a jury. Given it is estimated the CCBD would hear cases quicker than the Crown Court, these cases would be able to be seen in the CCBD using approximately 33,000 sitting days. The remaining 5,000 sitting days could be retained in the Crown Court with a jury to hear the most serious cases.

Illustratively, to hear all the 38,000 sitting days annually in the Crown Court with a jury, the running cost would be £1.80 billion over three years between 2027/28 and 2029/30. The equivalent running cost in the CCBD (for only 33,000 sitting days but the same number of cases) would be £1.50 billion over the same period (assuming recommendations are implemented in 2027/28) with 5,000 additional sitting days freed up annually in the Crown Court with a jury. There would be no cost savings from the freed up 5,000 sitting days as it is anticipated this will be used to hear the most serious cases in a Crown Court with a jury.

The above is included for illustrative purposes only, the total financial impact of this recommendation is of course dependent on whether additional capacity is used to support the Crown Court (which includes the CCBD). As has been repeated throughout this Review, in order for the CCBD to have maximum impact, it is essential that the government invests in additional sitting day capacity to support my recommendations (see paragraph 50 onwards for a fuller discussion of capacity). The costs presented below are for additional capacity only and therefore do not include any costs associated with the current sitting days level of 110,000. Note that additional capacity may be agreed as part of the Spending Review settlement, in which case, a large proportion of the costs associated with increasing capacity may already be absorbed as part of any departmental spending plans.

It is estimated that for an additional 5,000 sitting days (on top of the current sitting days level of 110,000), the cost of increasing capacity in the Crown Court (which includes the CCBD) would be approximately £230 million between 2025/26 and 2029/30 (with recommendations and

additional capacity implemented in 2027/28). The introduction of the CCBD would also free up 5,000 additional sitting days annually from 2027/28 in the Crown Court with a jury. More specifically, these costs consist of £200 million day-to-day running costs (which is approximately £65 million per year from 2027/28)[368] and £30 million set-up costs (note that this is HMCTS' assessment of set-up costs which include £10 million for new estates provision and £20 million for staff and judiciary onboarding costs).

It is estimated that for an additional 20,000 sitting days (on top of the current sitting days level of 110,000) the cost of increasing capacity in the Crown Court (which includes the CCBD) would be approximately £1.0 billion between 2025/26 and 2029/30 (assuming on an illustrative basis recommendations and additional capacity implemented in 2027/28). The introduction of the CCBD would also free up 5,000 additional sitting days annually from 2027/28 in the Crown Court with a jury. More specifically, these costs consist of £930 million day-to-day running costs (which is approximately £310 million per year from 2027/28 (recognising that it is not possible to increase Crown Court capacity to this extent during the current Spending Review period) and £115 million set-up costs (note that this is HMCTS' assessment of set-up costs which include £70 million for new estates provision and £45 million for staff and judiciary onboarding costs).

The following key assumptions and caveats are worth noting and are explained further in Annex F (Technical Annex), along with full details on methodology and data:

- All sitting-day saving estimates have been rounded to the nearest thousand.
- Estimates do not include the impact of allocating existing cases to the CCBD retrospectively i.e. they do not apply to cases in the existing open caseload, only to new cases entering the court system from the assumed dates of implementation in 2027-28.
- Modelling assumes that recommendations are implemented in 2027-28, however, as is made clear in this Review, recommendations should be implemented as quickly as is feasible.
- The modelling assumes that all cases that should be heard by the CCBD (as set out above) are heard by the CCBD. It may be that this does not materialise in reality, and this uncertainty is explored further

368 Note: this assumes an approximately £13,000 per sitting day figure as at 2027-28 which includes staff, judiciary, legal aid and CPS. Total costs also account for estate costs, inflation and optimism bias. For further details see Annex F (Technical Annex).

in the Technical Annex.

- Modelling assumes cases sent to the CCBD are 20% quicker to try than Crown Court cases with a jury and that the same proportion of cases ultimately plead guilty. However this is 20% assumption is highly uncertain, see Modelling Box C for further exploration of this assumption.
- The set-up costs do not include a comprehensive assessment of the judiciary, magistrates, CPS and legal aid costs, which may include estates, recruitment, training and onboarding costs, and the MoJ would need to explore these costs further.
- Capacity assumptions do not consider capacity constraints in the system for legal aid, CPS and the judiciary (see further discussion of this from paragraph 50 onwards).
- A 20% optimism bias has been applied to the costs to account for any uncertainty related to upward pressure on costs.
- Note that the results in this modelling box cannot be directly compared to the results in Modelling Box A (due to different assumptions on sitting-day capacity).

Modelling Box C – CCBD time-saving assumption

One of the more challenging areas to quantify and model has been the impact of a CCBD on Crown Court hearing time. As I have stated earlier, based on my experience, I personally believe that the time-saving would be greater and, perhaps, substantially greater than 20%. However, I recognise there are contrary arguments.

Whilst there is some international evidence that time is saved by a judge-only trial in other jurisdictions, this is limited. Also owing to notable differences in process, points of law and day-to-day running of these other criminal courts, these comparisons do not necessarily align with how a CCBD would work in practice. In order to bolster the evidence base, the Review team:

- carried out a set of quantitative analyses;
- held a structured elicitation workshop with operational staff from HMCTS to gather expert views to draw out a quantitative estimate of impact; and
- held a light-touch engagement session with judges to understand their personal expectations of potential time-savings.

Further information on these can be found in the Annex F (Technical

Annex). The findings from these work strands were varied and suggested that anticipated net hearing time savings for not-guilty-plea cases heard in the CCBD (compared to a trial with a jury) may be expected to be in the range of 10 to 30% (and would likely vary by offence type). However, the evidence base remains incomplete and I would encourage the MoJ to do further research.

For the purpose of providing central modelling outputs, an indicative estimate of 20% has been used. This is associated with high levels of uncertainty but is in line with the median time-savings indicated by the evidence base.

The table below explores the potential impact of varying this estimate on Crown Court sitting days (see Table 8.2). Across the three scenarios, gross Crown Court sitting days saved remain consistent. This is because the number of cases moved from the Crown Court remains the same regardless of how long it is assumed to take to hear them. The additional sitting days needed to hear those cases in the CCBD is lower than in the Crown Court, varying by the assumed percentage of hearing time saved in each scenario. The net sitting-day impact is the overall number of sitting days which would be saved. As noted, the net sitting-day saving is greater if assuming a higher hearing time saved, ranging from 5,000 sitting days assuming 20% hearing time is saved to 9,000 sitting days assuming 40% of hearing time is saved.

Table 8.2: Indicative gross Crown Court sitting days saved, additional CCBD sitting days needed and net sitting day impacts by different hearing time saving estimates

Hearing Time Saved Assumption (all other assumptions held constant)	Gross Crown Court Sitting Days Saved (CCBD)	Additional CCBD Sitting Days Needed (CCBD)	Net Sitting-Day Impact (CCBD)
20%	38,000	33,000	5,000
30%	38,000	31,000	7,000
40%	38,000	28,000	9,000

Note: All sitting-day saving estimates have been rounded to the nearest thousand and therefore figures may not sum correctly.

46. In reaching my conclusion, I have considered carefully the principle of delivering fair proceedings that safeguard against disproportionate outcomes. I do not treat lightly the concern that there is a risk of disproportionality in Crown Court trials being conducted without a jury. As discussed in Chapter 5 (The Magistrates' Court Process), I am aware that data shows that defendants from ethnic minorities are more likely to elect for trial by jury,[369] and that the Lammy Review was clear that the jury trial is one area where those from an ethnic minority do not face disproportionate outcomes.[370] However, I am certain that a CCBD constituted by a judge (usually a Recorder) and two magistrates would maintain fair trial standards. I have already noted the community representation and diversity that the magistracy offers. Recorders are also well equipped to undertake this role in the CCBD. They receive mandatory intensive training on law and procedure and shadow a judge before sitting for the first time. They also receive regular training from the Judicial College once in post, including training on diversity and inclusion. I have no doubt that they would ensure that a fair trial ensues in every case.

Capacity

47. For my package of reforms to be their most effective, they will need to be accompanied by increased capacity and investment across the system. I recommend an increase in sitting days in the Crown Court to support my reforms to both jury trials and the CCBD. As illustrated in Modelling Box E below, it is clear that only by combining the introduction of these reforms with additional sitting days will the level of output that is so desperately needed be achieved.

48. I recognise this will not be easy to deliver; the government has already funded 110,000 sitting days for 2025/26, itself a record high which is near to current maximum judicial capacity (113,000 sitting days per year), and I endorse the work being done to maximise the use of this allocation. I also recognise that too rapid and substantial an increase could overwhelm criminal justice partners, including the bar, CPS, judiciary and magistracy.

369 According to MoJ statistics, in 2022, the black ethnic group had the highest proportion of defendants electing themselves to be heard at a Crown Court (27%). This was followed by defendants from the mixed ethnic group (21%), Asian and other defendants (18%) and white defendants (15%). Source: Statistics on Ethnicity and the Criminal Justice System, 2022 (MoJ, March 2024). Note: the MoJ no longer publish election rate data due to data-quality issues. Therefore, this data should be used with caution.

370 The Rt Hon. David Lammy, Lammy review: final report (September 2017), p. 33.

49. Determining an exact figure for increased sitting days in the Crown Court is complex and dependent on multiple factors, including prioritisation of the caseload within the courts, fiscal constraints, system infrastructure, capacity and recruitment and the extent to which my recommendations are accepted in full. My team have therefore modelled for a range of scenarios. As shown in Modelling Box E, introducing the reforms at the start of financial year 2027/28 with the current sitting-day allocation of 110,000 would see the workload decrease by an estimated 68,000 sitting days compared to current workload projections by the end of 2034/35. However, at the higher end of the range presented, ramp-up to an additional 20,000 sitting days (130,000 sitting days per annum from 2030/31) could see workload savings of an estimated 198,000 sitting days.

50. Based on this, I recommend that when it is possible (bearing in mind funding, alongside capacity across the Criminal Justice System) sitting days in the Crown Court should be increased over time, including for jury trial and the CCBD, to 130,000 per year. I recommend that HMCTS ramp up toward this goal over several years, through a range of 110,000 (the current allocation) to this new target and this sitting-day level be regularly reviewed until the system reaches a more stable position. This figure provides a balance of high ambition but plausible, if challenging, delivery. In forming this recommendation, I have accounted for the ways the reforms I recommend will critically enable the scaling up of capacity, including, as I have already set out, more flexible use of physical court space, lower running costs and more efficient hearings. I will return to the issue of capacity across the system more fully in the Efficiency Review.

Recommendation 34: I recommend that 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 Tribunal Service should build towards this goal over time, through a range of 110,000 (the current allocation) to the new target and this sitting-day level should be regularly reviewed.

51. In Modelling Box D, I present an assessment of the impact of Crown Court Bench Division, RRTE and reclassification, if all these recommendations were implemented, on Crown Court sitting days, and the expected financial impact of my recommendations.

Modelling Box D – Overall impact of CCBD, RRTE and reclassification on workload and costs

Using available data and evidence and the assumptions, caveats and qualifications expressed below and throughout this chapter, it is estimated that, by bringing just the modelled recommendations together - reclassification, the RRTE model, and the CCBD – this will save approximately 9,000 sitting days in the Crown Court in total each year post introduction. It is estimated that the cases that would be in scope of these recommendations would constitute approximately 39,000 sitting days' worth of work in the Crown Court with a jury. However, given quicker hearing times in the CCBD and the magistrates' court (for reclassification and RRTE), these cases would require 30,000 sitting days in the CCBD and under 1,000 additional sitting days in the magistrates' court, instead of the current 39,000. The remaining 9,000 sitting days could be retained in the Crown Court with a jury to hear the most serious cases.

Illustratively, to hear all the 39,000 sitting days in the Crown Court with a jury, the cost would have been £1.80 billion over three years between 2027/28 and 2029/30. The equivalent running cost in the CCBD (for only 30,000 sitting days but the same number of cases) and the magistrates' court (for less than 1000 sitting days but the same number of cases) would be £1.40 billion and £5.1 million respectively over the same period (assuming recommendations are implemented in 2027/28), with 9,000 additional sitting days freed up annually in the Crown Court with a jury. There will be no cost savings from the freed up 9,000 sitting days as it is anticipated this will be used to hear the most serious cases in the Crown Court with a jury.

The above is included for illustrative purposes only. As discussed above, the total financial impact of this recommendation is of course dependent on whether additional capacity is used. The costs presented below is for additional capacity only and therefore does not include any costs associated with the current sitting days level of 110,000. Note that additional capacity may be agreed as part of the Spending Review settlement, in which case, a large proportion of the costs associated with increasing capacity may already be absorbed as part of departmental spending plans.

It is estimated that for an additional 5,000 sitting days (on top of the current sitting days level of 110,000), the cost of increasing capacity

would be approximately £240 million between 2025/26 and 2029/30 (with recommendations and additional capacity implemented in 2027/28). The introduction of the reforms would also free up 9,000 additional sitting days annually from 2027/28 in the Crown Court with a jury. More specifically, costs consist of £210 million day-to-day running costs (which is approximately £70 million per year between 2025/26 – 2029/30, with recommendations implemented in 2027/28) and £30 million set-up costs (note that this is HMCTS' assessment of set-up costs which include £10 million for new estates provision and £20 million for staff and judiciary onboarding costs). [371]

It is estimated that for an additional 20,000 sitting days (on top of the current sitting days level of 110,000), the cost of increasing capacity in the Crown Court (which includes CCBD) would be approximately £1.0 billion between 2025/26 and 2029/30 (with recommendations and additional capacity implemented in 2027/28). The introduction of the reforms would also free up 9,000 additional sitting days annually from 2027/28 in the Crown Court with a jury. More specifically, costs consist of £940 million day-to-day running costs (which is approximately £310 million per year between 2025/26 – 2029/30, with recommendations implemented in 2027/28) and £110 million set-up costs (note that this is HMCTS' assessment of set-up costs which include £70 million for new estates provision and £40 million for staff and judiciary onboarding costs).

The following key assumptions and caveats are worth noting and are explained further in Annex F (Technical Annex), along with full details on methodology and data:

- All sitting-day saving estimates have been rounded to the nearest thousand.
- Estimates do not include the impact of allocating cases to the CCBD retrospectively i.e. they do not apply to cases in the existing open caseload, only to new cases in the court system from the assumed date of implementation in 2028-28.
- Modelling assumes that recommendations are implemented in 2027-28, however, as is made clear in this Review, recommendations should be implemented as quickly as is feasible.
- Set-up costs do not include a comprehensive assessment of the judiciary, magistrates, CPS and legal aid costs, which include estates,

371 Note: this assumes an approximately £13,000 per sitting day figure as at 2027-28 which includes staff, judiciary, legal aid and CPS. Total costs also account for estate costs, inflation and optimism bias. For further details see Annex F (Technical Annex).

recruitment, training and onboarding costs, and the MoJ would need to explore these costs further.

- Capacity assumptions do not consider capacity constraints in the system for legal aid, CPS and the judiciary (see further discussion of this from paragraph 50).
- A 20% optimism bias has been applied to the costs to account for any uncertainty related to upward pressure on costs.
- It has been assumed that disposals per day in the magistrates' court are in line with the current average excluding SJP cases.

Note that the results in this modelling box cannot directly be compared to the results in Modelling Box A (due to different assumptions on sitting-day capacity).

Modelling Box E – Impact on workload

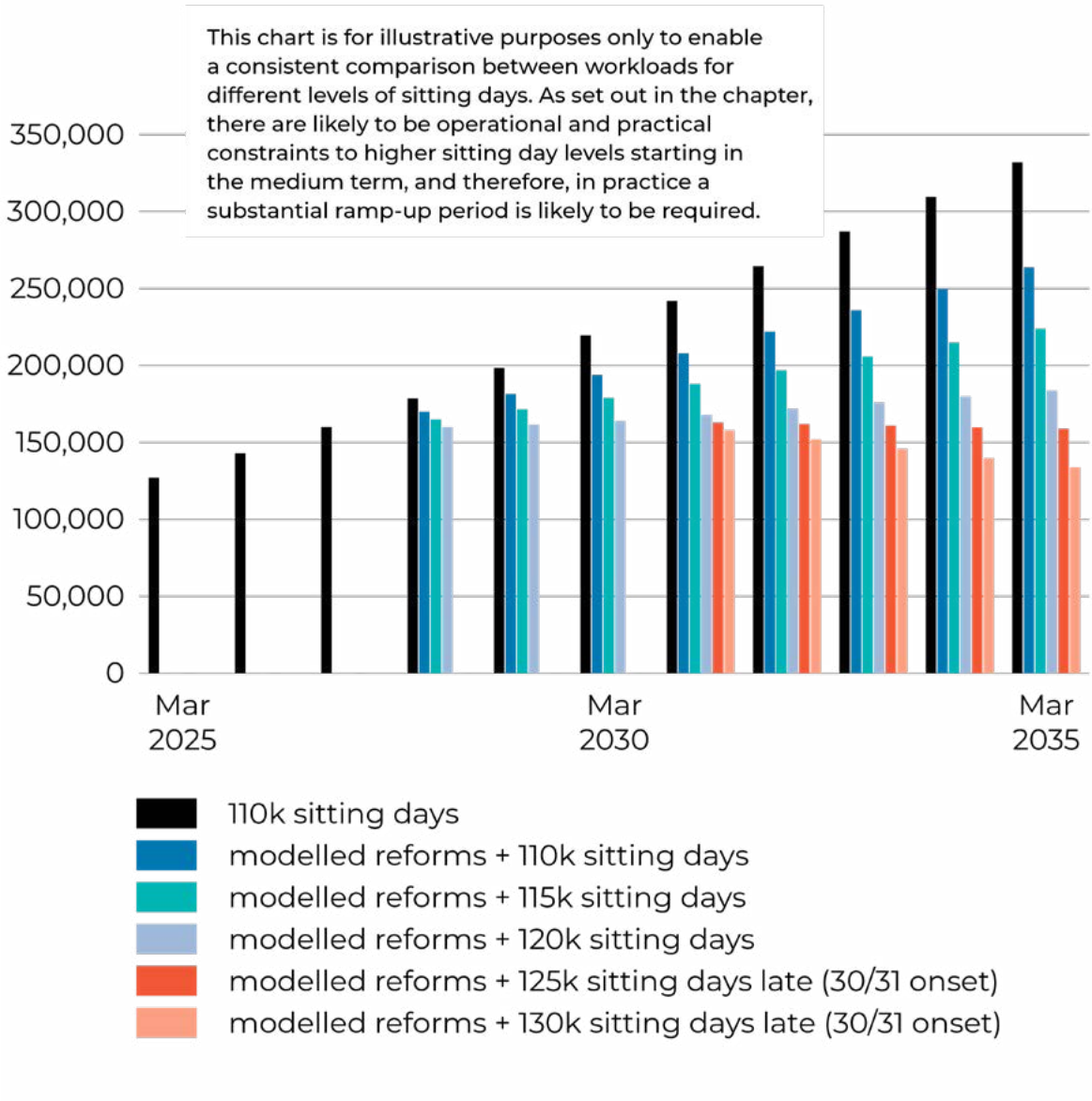
As explained in Chapter 1 (Introduction), workload (i.e. sitting days) is used in this context as an alternative to caseload (i.e. the total cases in the system) which is highly sensitive to assumptions about how the court prioritises work. Open workload is an estimate of how many sitting days' worth of work would be required to clear the open caseload. As the open workload decreases, it is expected that the timeliness of cases through the system will increase.

In order to understand the overall impact of the CCBD, the RRTE model and reclassification on the open workload, a range of scenarios has been tested that also increase capacity across the Crown Court (including the CCBD). As is clear in this chapter, additional capacity will be required to maximise the impacts of the recommendations. Figure 8.1 below looks at the illustrative impact of my recommendations on the Crown Court open workload assuming these policies, and any increases in capacity, were implemented from March 2027.

Figure 8.1

Illustrative impact of modelled reforms (reclassification, RRTE, CCBD) and increased sitting day capacity on open workload (in sitting days per financial year)

England and Wales, projections from March 2025 to March 2035



Sources: IRCC projections, Crown Court open caseload projections: 2025-2029

This analysis looks only at those recommendations that have been modelled – CCBD, the RRTE model, and reclassification – not the broad range of recommendations that have been set out in this Review. With these recommendations alone, it is estimated that by the end of 2034/35, they will lead to an approximately 20% decrease in the estimated open workload (versus current projections) if the MoJ continue with the current allocation of 110,000 sitting days. However, as is made clear in this chapter, additional capacity will be required to maximise the impacts of my recommendations. Increasing capacity to 120,000 sitting days from 2027/28 could result in a decrease in the estimated open workload of approximately 40% and, at the higher end of the range presented, a ramp up to an additional 20,000 sitting days (130,000 sitting days per annum from 2030/31) could see this decrease by approximately 60%.

There is always some level of open workload in the system due to incoming demand and this is desirable for the courts to be running efficiently. However, as set out in the problem diagnosis chapter, the current level of workload is increasingly unmanageable and driving considerable delays. As figure 8.1 shows, open workload begins to decrease with the modelled reforms and sitting days of approximately 124,000 annually from 2027/28. Any additional measures beyond these (including the introduction of the other recommendations made in this Review, the Efficiency Review or further capacity) would see the open workload decrease at a faster pace. This Review sets out a radical but necessary package of measures in this phase of the review, not all of which have or could have been quantified. There will be further recommendations in the Efficiency Review that will make further inroads into the open workload.

Further details of the underlying data and methodology can be found in Annex F (Technical Annex), however the following details are worth noting:

- This modelling looks at the impact of the modelled recommendations and capacity scenarios to clear the open workload .
- The baseline assumes that sitting days continue at 110,000. Alongside the modelled policy impacts, the following sitting-day scenarios are presented: 110,000, 115,000, 120,000 sitting days (with each beginning in 2027/28) and two potential ramp-up periods for reaching 125,000 and 130,000 sitting days at a later date (March 2030). The modelling makes no assessment of the operational feasibility of increasing capacity at this pace but instead is used to show potential impact.

- This modelling assumes incoming demand in the Crown Court is in line with projections by the MoJ (see further detail in Chapter 2 – Problem Diagnosis). MoJ Crown Court demand projections run to the end of financial year 2030/31, after this it is assumed demand will continue to be stable.
- The net impact of reforms is considered to be 9,000 sitting days each year (as above). This is highly indicative and there are some important elements missing from this analysis (see below).
- Due to time and/or evidence constraints, there is no assessment of trial by judge alone, jury waiver or wider recommendations made throughout this Review. Some of these are extremely challenging to model. As evidenced throughout this Review, I would consider these to have a considerable impact on the open caseload/workload.
- This makes no assessment of potential behaviour changes in the system as a result of my recommendations (including changes in early guilty pleas).
- This does not include any assessment of the impact of the recommendations that will be set out in the Efficiency Review.

This should therefore be considered a minimalist assessment of the impact of the modelled recommendations in this Review.

Judicial Capacity

52. In response to an increase in allocated sitting days there must be available judges to sit on those cases. I will start by providing a simplified overview of the judicial recruitment process and then make some recommendations where the current recruitment process could be amended to address this. I will return to this more fully in the Efficiency Review.

53. The Judicial Appointment Commission (JAC) is an independent body responsible for the running of selection exercises and making recommendations for the appointment of judicial office holders.[372] The JAC runs an annual, rolling programme of recruitment exercises to the judiciary for key salaried offices, which also replenishes the pool of fee-paid offices from which salaried judges are recruited. Annual recruitment programmes are determined with reference to

372 About us - Judicial Appointments Commission.

supply-and-demand modelling, which takes account of trends in judicial departures, as well as changes to demand.[373]

54. The Lord Chancellor, in consultation with the Lady Chief Justice, agrees the annual recruitment rounds prior to the launch of the annual recruitment programme, which runs from April to March. The JAC will then launch the agreed recruitment rounds, which will follow a rigorous recruitment process from application through to selection decision and feedback.[374]

55. Recruitment rounds for Circuit Judges currently take place approximately every 12 months. These rounds combine recruitment to the crime, civil and family jurisdictions. Once selected, candidates are deployed to the relevant jurisdiction by the senior judiciary. Recruitment rounds for Recorders (fee-paid equivalents of Circuit Judges) tend to take place every 18 months. Over the period April 2022 to February 2025, the average number of vacancies per judicial selection exercise for Circuit Judges was 72 and for Recorders it was 132.[375] The JAC will generally commence a new recruitment round when an existing one for the same office has completed; although, when possible, it does recruit in a more agile way based on factors such as business need.

56. In 2022/23, a Circuit Judge exercise filled all vacancies in civil and family, but vacancies remained in crime in London and the South East. Following the 2023/24 exercise, there were 42 recommendations for 52 vacancies; whilst deployment is not yet concluded, the MoJ expects to be carrying some vacancies in crime.[376] It appears that crime is facing particular recruitment challenges compared to other jurisdictions. For this reason, it may be necessary to consider a more focused recruitment round for crime and then launch a separate civil and family jurisdiction round at a later date.

57. I am aware of a specific London and the South East recruitment round in another jurisdiction to address acute recruitment and retention issues most apparent in that location.[377] The shortfalls in meeting

373 Ministry of Justice Evidence Pack: Judicial Pay Annual Award for 2025/26 (MoJ, December 2024), p. 10.

374 Guidance on the application process (JAC).

375 Completed exercises 2022-2025 (JAC).

376 Ministry of Justice Evidence Pack: Judicial Pay Annual Award for 2025/26 (2024), p. 11.

377 Vacancy details: District Judge (JAC).

crime vacancy requests suggest that a focused recruitment round should be being considered irrespective of the necessary scale-up in capacity that I have recommended already. The JAC may wish to take lessons learned from the current location-specific recruitment round to ensure it can be most effective once launched, and whether further work is needed on geographical disparities in recruitment.

58. Some might suggest that recruitment rounds, especially for criminal positions, could also take place on a bi-annual basis or with a greater vacancy request.

Recommendation 35: I recommend that a vacancy request be addressed to the Judicial Appointments Commission so as to generate a specific 'Circuit Judge – crime' and 'Recorder – crime' recruitment competition.

59. However, there are notable risks of depleting the number of eligible candidates for future recruitment rounds and reducing the number of available defence and prosecution representatives. It is for this reason that I have made recommendations on matching pupillage funding (which I come to later in this chapter) and greater parity in remuneration through legal aid to attract people to the profession in the first place. I do not consider now to be the time to recommend a bi-annual recruitment round, given the capacity challenges in the legal profession. However, it may be critical to launch a crime-specific recruitment round for Recorders in light of this Review, who, if appointed, can continue to practise as a defence or prosecution representative, whilst also sitting as a Recorder. I urge that the JAC, with the support of the judiciary, MoJ and HMCTS, start a review of their appointments processes to consider where time-savings could be made. This is something to which I will return in the Efficiency Review.

60. Recruitment rounds take around 12 months to complete (from launch to appointment). Subsequently, the Judicial College needs to train the judges, and some must complete 'sitting-in days' before they are able to sit on a case themselves – it is estimated that this takes around six to nine months. Upscaling capacity at the pace necessary to address the open caseload requires more pace and commitment than what amounts to a timeframe of approximately 18 months from application to first sitting. Should recruitment rounds continue on an annual rolling basis, then I consider it paramount that the JAC starts to consider its current recruitment processes and identifies where

time-savings could be made. If it is helpful, I can turn to this with more specific recommendations in the Efficiency Review.

61. Expanding capacity cannot await a review of processes; efforts to expand capacity must start now. I understand that the vacancy requests are agreed based on a close analysis of available budget and so on to fund new appointments. In line with section 94 of the Constitutional Reform Act 2005, where the number of appointable candidates is greater than the previously agreed vacancy request number, the Lord Chancellor can request that the JAC identify the persons who would be suitable for selection on request.[378] This then takes the form of a 'reserve candidate list' which normally remains in place until the next recruitment round for the same judicial office commences, unless an extension of the vacancy request is agreed by the Lord Chancellor and the Lady Chief Justice.

62. The Lord Chancellor may wish to consider making greater use of this power to appoint eligible candidates over and above the previously agreed vacancy request numbers for any recruitment of judges of the Crown Court. It seems counterintuitive that should there be suitable, appointable candidates, that these candidates are not formally appointed when the Crown Court needs to scale-up now to meet growing demand and have any chance of reducing the open caseload. Following my recommendations in this Review, even whilst legislation is passing through Parliament, it would be appropriate for the Lord Chancellor to exercise this power in relation to recruitment rounds that are already ongoing where the number of appointable candidates exceeds that of the original vacancy request. Action must start now, especially if indeed it will take 18 months from the launch of a recruitment round for a judge to start sitting.

Recommendation 36: I recommend that 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.

63. Similarly, I consider it necessary for HMCTS to maximise the capacity of already appointed Recorders and those eligible who are sitting-in-

378 Section 94 of the Constitutional Reform Act 2005.

retirement. This should happen concurrently with legislation passing through Parliament for the CCBD. The terms and conditions for Recorders vary but generally say they are expected to be available for a minimum of 30 days of sitting or 30 days of judicial business each year.[379]

64. According to the 2024 Judicial Diversity Statistics, there are 988 Recorders, 69 Circuit Judges sitting-in-retirement and six Recorders sitting-in-retirement.[380]

65. Whilst this data does not breakdown by jurisdiction, I imagine the majority would be in crime. Should all fee-paid judges deployed in crime sit for at least 30 days, where they are available and subject to further allocated funding to HMCTS, this again is a start to expanding the capacity of the Crown Court, without facing lengthy recruitment rounds, time spent training judges or to risk depleting the pool of defence and prosecution practitioners. In the forthcoming Efficiency Review, I intend to analyse the extent to which Recorders and Deputy District Judges (Magistrates' courts) are fulfilling their commitment. It is clear from one of those who responded to the Review that there may be Recorders who are sitting well in excess of their required commitment: having regard to the challenges being faced, that is commendable.

Recommendation 37: I recommend that His Majesty's Courts and Tribunals Service maximise sitting days for Recorders, and for Circuit Judges and Recorders sitting-in-retirement.

66. Finally, I must acknowledge the constitutional boundaries. Deployment is a matter reserved solely for the judiciary in order to protect their independence. To the extent that the approval of the Lord Chancellor is required, it is also a matter for her. It is, however, primarily for the judiciary to consider this recommendation should they wish to do so.

67. I am aware that the Lady Chief Justice and her nominees can also deploy judges flexibly to meet demand: I encourage them to continue doing so. The greater use of flexible deployment into the Crown Court may be most effectively done by allowing DJMCs and Deputy DJMCs to sit in the Crown Court (especially the CCBD). Such flexible deployment

379 Ministry of Justice Evidence Pack: Judicial Pay Annual Award for 2025/26 (2024), p. 22.
380 Diversity of the judiciary: 2024 statistics (MoJ, updated December 2024).

by way of sitting-up is also beneficial in the longer term as it should build the experience of DJMCs, who may in turn wish to apply for a higher judicial office, or indeed Deputy DJMCs who may then apply for salaried judicial office. This will ensure there is an experienced pool of eligible candidates for future judicial recruitment rounds, supporting the gradual increase of sitting days in the Crown Court.

Recommendation 38: I recommend that the judiciary consider 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 appointed Recorders could also gain criminal experience sitting in the Crown Court Bench Division.

Venue for hearings

68. I have carefully considered where the new CCBD would physically hear its cases and consider this another critical feature of achieving any increase in allocated sitting days. I have preferred a model that would see the introduction of a new branch of the Crown Court since it would avoid the costs and logistical challenges that would be inevitable with the creation of an Intermediate Court.

69. I recommend that any suitably equipped courtroom should be used to hear CCBD cases, whether that space be in the magistrates' court or Crown Court estate. Indeed, I would go further and repeat my suggestion from my 2015 Review which called for creative efforts to make use more flexibly of assets, such as town halls held by statutory agencies within a local area.[381] Alternatively, any appropriate courtroom used in other jurisdictions or tribunals, should space allow, would be equipped. All that is required is recording equipment for the judge, the witnesses and the advocate. Maximising the use of the overall court and tribunal estate, as managed by HMCTS, and combining this with use of buildings in local communities, is one means by which increased sitting-day allocations could be achieved in practice.

70. I will consider in more detail the criminal court estate in the Efficiency Review later this year. What is important to note in policy terms is that

381 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015), p. 93.

the court venue must respect fundamental principles of ensuring open justice, access to the public and, of course, the effective participation and safety of all parties. I consider that in many trials for the offences under consideration, these principles can be respected with trials conducted in civic buildings. A secure dock would not always be necessary. If, after conviction, the court wishes to impose a custodial sentence, the case could be adjourned to premises with a secure dock as happened during the pandemic.

71. One additional advantage of this proposal is that it would bring Crown Court justice to local communities where witnesses and others involved in a case might otherwise have a difficult journey to make on public transport to take part in or witness a trial. By way of example, in Wales, it would mean bringing Crown Court justice to many areas of the country outside the Crown Court centres which are essentially based in North and South Wales.

Recommendation 39: I recommend that 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.

Rights of audience

72. Finally, I consider the rights of audience for the CCBD – noting that a significant increase in sitting-day allocations will require a corresponding increase in availability of defence and prosecution practitioners.[382] Currently, only barristers and solicitors with 'higher courts rights' have rights of audience in the Crown Court. The exception to this is in appeal hearings from the magistrates' court under section 108 of the MCA 1980, which are heard – as cases in the CCBD would be – by a judge and two magistrates. In these cases, audience rights extend to include solicitors without higher courts rights and accredited CILEX representatives. Solicitors without higher rights of audience are also entitled to appear in the Crown Court for committals for sentencing. Through engagement with the Law Society, I recognise that it is in favour of adopting a similar approach in relation to rights of audience for any reformed Crown Court

382 Rights of audience refer to the legal entitlement that allows members of the legal profession to represent parties by addressing the court.

that I may recommend. I also recognise the value of the contribution from solicitors if given this additional responsibility.

73. Whilst I acknowledge these arguments for rights of audience before the new CCBD, I have concluded that appearance should, at least at this stage, be limited to those possessing rights of audience in the Crown Court currently (namely only barristers, and solicitors with higher courts rights). It is crucial that the Bench Division be understood as a Division of the Crown Court and that, in line with other recommendations I have made throughout this chapter, it should therefore have the same status in law. Given the sentencing powers I propose for the CCBD, for example, it seems appropriate that rights of audience in that court should mirror those in the Crown Court as at present. In January 2025, there were 6,350 criminal barristers in England and Wales undertaking some criminal work and there were 4,119 solicitors qualified for criminal proceedings requiring higher rights of audience.[383] This restriction on rights of audience can always be reviewed with the benefit of experience of the operation of the court and in response to the progressive increase in sitting-day allocations; it need not be immediate.

74. I am aware, of course, of the significant recruitment and retention challenges that the Criminal Bar is facing, as discussed in Chapter 2 (Problem Diagnosis). To provide a relatively swift boost to numbers and retention at the Bar, I recommend that the government implements a match-funding scheme for criminal barrister pupillages. Under this scheme, the MoJ would match the funding that selected chambers have set aside for criminal pupillages. This would increase the number of available pupillages for aspiring barristers and would have very swift results. Within six months of the pupillages commencing, a new pool of junior barristers would be eligible to appear in courts and would be routinely appearing in the magistrates' court. If this scheme were adopted for a number of years, there would be a substantial injection of new criminal barristers and over such time the sitting-day allocations in the Crown Court could then feasibly increase in parallel.

75. I recognise that not all of these barristers would necessarily stay, and not

383 Source: with thanks to the Bar Council for its submission to this Review. Note: this relates to all criminal barristers, including employed, self-employed, publicly funded or not. If a barrister has more than one practising address and the addresses are in different regions, they will be counted in each relevant region; Number of practising solicitors having Higher Rights of Audience (Solicitors Regulation Authority).

all would remain practising in criminal law,[384] but this would provide a valuable contribution to the number of barristers. Over time, this would have positive impacts for more experienced barristers by reducing their workloads. Finally, I note that this proposal aligns with a recommendation made in the 2021 Independent Review of Criminal Legal Aid by Sir Christopher Bellamy KC to improve diversity in the profession by providing additional funding to schemes that support new barristers.

76. I am under no illusion that this recommendation alone would solve the workforce crisis in the Criminal Bar or wider legal profession. Further attention is needed on how to increase retention in the Criminal Bar and replenish the pool of solicitors undertaking criminal defence work, and I will return to these considerations in greater detail in the Efficiency Review.

Recommendation 40: I recommend that only those eligible to appear in the Crown Court would have rights of audience in the Crown Court Bench Division.

Recommendation 41: I recommend that the Ministry of Justice implements a match-funding scheme for criminal barrister pupillages to start immediately to address the shortage of criminal advocates.

Appeals

77. I have carefully considered how to address the issue of appeals from the new Division of the Crown Court. It is my view that appeals should, as now, go from the Crown Court to the Court of Appeal, Criminal Division (CACD); this reflects that the CCBD would be part of the Crown Court and therefore the appeals should follow the same route as the Crown Court as it is currently structured.

78. As I set out in Chapter 6 (Appeals from the Magistrates' Court), for an appeal to proceed to the CACD it would need to have either: a) a certificate for appeal from the CCBD; or b) permission from a High Court Judge or the full court under section 31 of the Criminal Appeal Act 1968 and from there (should a certificate of general public

384 The arrangement for matched funding could be contingent on continued practice at the Criminal Bar for five years.

importance be granted) to the Supreme Court with leave of that court or the CACD. This would be identical to an appeal from the Crown Court as it stands.

Recommendation 42: I recommend that appeals from the Crown Court Bench Division be on the same basis as appeals from the Crown Court as currently constituted.

Implementation

79. In order to establish this new branch of the Crown Court, I anticipate the need for primary legislation. I propose this legislation should specify as a minimum:

a. that the Bench Division is a branch of the Crown Court;

b. that no 'indictable only' offence can be tried in the CCBD (subject to the views of the Lord Chancellor and Parliament);

c. that the CCBD must be presided over by a judge eligible to sit in the Crown Court.

80. The overarching principles for the work of the CCBD are:

a. to ensure a fair trial for the defendant;

b. to ensure timeliness of proceedings;

c. to adopt a process that is otherwise proportionate to the gravity of the alleged offending and its consequences for defendants, victims and witnesses; and

d. to maximise the efficiency of delivering criminal justice.

81. In my view, the CCBD could undertake work that is presently in the Crown Court outstanding caseload. Whether by election for trial or sending by the magistrates, the defendant would be guaranteed a fair trial, but not one which would be necessarily conducted in a particular way.

82. The introduction of the Bench Division (that is to say, a judge and two magistrates trying cases on indictment) would require primary legislation. Aside from the general point that Parliament is sovereign, there are clear examples in modern legislation in which Parliament has amended the criminal process with the effect of removing jury trial from defendants, and doing so in a way that applied to cases already in

the criminal justice system.[385] Parliament is free to choose whether to make the new scheme of CCBD allocation and trial apply to a) relevant offences *committed* after the date of the commencement of the legislative provision or b) some other point in the criminal process, for example for all relevant offences charged after the commencement,[386] or sent to the Crown Court after the commencement, or all relevant offences for which the Crown Court trial has not yet started on the date of legislative commencement. There are examples from existing legislation of Parliament adopting different points in the process as the cut-off point for commencement of provisions that curtail jury trial for defendants.[387]

83. Unsurprisingly, the appellate courts have accepted Parliament's right to do so.[388] General comments to that effect can be found in, for example, *Humphreys v The Attorney General of Antigua and Barbuda*[389] where the Privy Council considered whether the application of a new criminal procedure to pending cases, as the legislation in dispute expressly required, offended against the principle of retrospectivity and deprived a prospective defendant of a fair hearing. The starting point for the Board's analysis was the general principle that the courts will not ordinarily construe legislation as operating retrospectively if doing so will have an unfair result. The presumption, however, will rarely, if ever, apply to changes in court procedure.[390] Lord Hoffmann, giving the opinion of the Board, confirmed at paragraph [4] that defendants in criminal proceedings:

> 'do not have a vested right to any particular procedure and there will generally be nothing unfair in applying whatever procedure is in force when the case comes to court. It is

385 For example, the Criminal Justice Act 1988 made changes to mode of trial arrangements and adopted a number of different approaches to the retrospective allocation of different offences to summary only status.

386 As with some of the changes introduced in the Criminal Justice Act 1988 which applied to offences committed and charged before the legislative amendment came into force. See the Criminal Justice Act 1988 (Commencement No. 2) Order 1988 and *R v Leeds Crown Court*, ex parte Wood [1990] COD 84.

387 Criminal Justice Act 1988.

388 The principle of parliamentary sovereignty was expressly recognised in the context of the retrospective removal of a constitutional right to jury trial in *R (Misick) v Secretary of State for Foreign and Commonwealth Affairs* [2009] EWCA Civ 1549 on appeal from the decision of the Divisional Court [2009] EWHC 1039 (Admin).

389 *Humphreys v The Attorney General of Antigua and Barbuda* [2008] UKPC 6.

390 *L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co. Ltd* [1994] 1 AC 486, 523–529

> however unnecessary to examine the scope of the doctrine because on any view it is a principle of construction which must yield to the express language of the statute.' [391]

84. I therefore recommend that the legislative amendments required to introduce the CCBD be drafted in such a manner that the widest pool of either way cases in the outstanding caseload can be allocated to, and tried by, that court. It will be a matter for the Office of the Parliamentary Counsel and those instructing them as to how that can be achieved most simply and clearly.

85. The consequence of that drafting recommendation is that every either way case in the outstanding caseload for which a trial has not yet commenced could be listed before a Circuit Judge for allocation between the different Divisions of the Crown Court. At that hearing, the other recommendations that I have made will also apply: if my recommendation is accepted, the judge will be able to offer a *Goodyear* indication (see Chapter 7 – Maximising Early Engagement in the Crown Court) and apply the more flexible sentencing reduction scheme that I outlined in Chapter 7. I anticipate that this could make significant and immediate inroads to the outstanding caseload.

86. During the time taken to enact the provisions in primary legislation, there will be ample time for: a) the Criminal Procedure Rule Committee to create clear amendments; b) the Sentencing Council to prepare Crown Court allocation guidelines; c) the Judicial College to conduct relevant training perhaps through video and written material; and d) HMCTS to prepare courtroom facilities etc. It will be for the Lady Chief Justice to consider the extent to which additional judges need to be appointed but, at least in my view, that process need not hold up preparations for these provisions to take effect if enacted.

A Caveat

87. Whereas I do not believe that there is an alternative to removing the expectation of a jury trial in the cohort of cases that I have identified, I recognise that serious questions have been raised about the sufficiency and availability of the cadre of magistrates to staff the court. I have identified the enthusiasm shown for sitting in the Crown Court by reference to the survey which was conducted, and I underline

391 The court also rejected arguments that this construction offended against fair trial rights equivalent to Art. 6 of the ECHR.

that I believe that magistrates bring local community values and a measure of local accountability to the CCBD in a similar way to that provided by juries. I value the diversity of the magistrates and the additional balance which I trust they would bring to decision-making. But the recommendation which I have made does carry risk.

88. First, it will require magistrates to be available to sit over a number of days (preferably a week at a time) so that cases can follow on and disruption be avoided. My preference may not be possible, not least because of the voluntary nature of the magistracy and the fact that most will have other commitments to their families and their employers which will not permit such a commitment. The effect of the difficulties that are likely to affect the younger cohort of magistrates could mean that only (or mainly) those who have retired would be able to make themselves available. That would inevitably impact on the diversity of the bench. Issues of organisation will arise for those who are prepared to sit for periods of two or three days to ensure that they can be used effectively while ensuring the appropriate throughput of work.

89. Second, although I am aware that there is a recruitment campaign for magistrates, I am equally aware that, at least in some areas, there is a real shortage even to deal with the work presently before the magistrates' court. This would not be made easier by the additional criminal work that this Review is proposing. It must be borne in mind that magistrates not only staff the adult court and the SJP – they are also required for the Youth Court and the family court, to say nothing of the work that is undertaken out of court (such as in relation to search warrants).

90. As I have made clear, I am not in a position to model the precise number of days that are or can be made available and, without information about the availability and potential commitment of judges or Recorders, neither am I in a position to model precisely how the days that can be made available would be staffed. I am sure, however, and this is supported by extensive data modelling and forecasting, that without a substantial increase in the availability of courts and judges to dispose of the business of the Crown Court, the system overall will fail: the outstanding case load would increase and trial delays become longer. If, for whatever reason, it is not possible to staff a CCBD with magistrates, the only way forward would be to conduct those trials (which will be the least serious of those which come before the Crown Court) by judge alone. I return to this mode of trial in Chapter 9 (Trial by

Judge Alone) and I emphasise that, for this cohort of cases without the consent of the defendant, this is not a suggestion which I make with any enthusiasm. The absolute priority, however, is to ensure a fair trial within a reasonable timeframe: I entirely endorse the proposition that justice delayed is justice denied – for victims, witnesses and defendants.

Conclusion

91. In this chapter I have presented recommendations on how reform of the criminal court structure would ease the current crisis in the system. The purpose of this Review, as set out in the Terms of Reference, was to make recommendations on the reform of the criminal courts that would ensure that cases are dealt with proportionately, leading to a more efficient system and improved timeliness for victims, defendants and witnesses. As I have explained in the chapter, it is my view that redistributing work in the Crown Court between different divisions of that court could play a critical role in tackling the current issues. I have presented what I believe to be a fair and proportionate solution to the existing issues faced by the criminal court system, addressing the significant open caseload that exists in the Crown Court system and the need to ensure timeliness in proceedings.

92. In addressing these issues, I recommend that a new division of the Crown Court be established – the Crown Court (Bench Division) – in which a judge and two magistrates would hear many either way offences. I also recommend various routes by which the capacity of the Crown Court can be improved, including changes to judicial recruitment and a funding scheme to address the shortage in criminal barristers.

93. Through these recommendations, I aim to reduce delays and ensure fair and efficient delivery of justice. It is my belief that, by implementing these changes, the Crown Court system would provide timely resolutions for all parties involved.

94. The recommendations I have outlined provide a proportionate response to the current issues facing the criminal justice system. They provide for an allocation of cases that is proportionate to the gravity of the offence whilst maintaining fairness in the judicial process. I have adhered to the principle of appropriate and fair decision-making and the defendant's effective participation in the process, as defendants retain the right to elect when it is proportionate to do so. The swifter

trial process in the CCBD should reduce unnecessary delays for victims and witnesses, providing a prompt hearing in a proportionate forum.

95. My aim is that the recommendations presented in this chapter should provide enduring solutions to deliver justice swiftly and appropriately. The modelled recommendations presented in this chapter, together with those presented in Chapter 5 (The Magistrates' Court Process) could save 9,000 sitting days from the Crown Court, and will go some way to reducing the open caseload. These are not the only possible ways of doing so, however, and in the next chapter, I shall present further recommendations on how judge only trials and changes to fraud and other trials could further deliver on this aim.

Chapter 9

Trial by Judge Alone

Chapter 9 – Trial by Judge Alone

Introduction

1. Juries have always been viewed as a vital component of the criminal justice system, even though they are only used in approximately 1% of criminal cases in England and Wales.[392] Of primary concern in this chapter is whether it is proportionate to provide a trial by jury in all Crown Court cases that are not suitable for the CCBD. In addressing this question, I consider whether juries are necessarily the most appropriate and fair decision-makers in all cases that are tried in the Crown Court. The chapter considers the challenges posed by jury trials, such as the increasing length of trials and the substantial burdens placed on jurors in long trials. I have also assessed the effects on participation for defendants, victims and witnesses as well as the general public if alternatives to jury trials are used, and any related issues with disproportionality.

2. This chapter should be read alongside the recommendations for the CCBD (Chapter 8 – Crown Court Structure), which would also try cases without a jury. The main focus of this chapter is the more serious cases that would not be allocated to the CCBD and on the use of juries in those Crown Court trials. I first consider the context of challenges faced by juries in today's criminal trial process, then turn to various ways in which the jury system should be adapted to address these challenges.

3. I recommend that a system allowing for a trial by judge alone should be introduced where: a) the defendant elects such a mode of trial, subject to the approval of a judge in the Crown Court; and b) a judge directs trial by judge alone in limited circumstances, having regard to the need for timeliness and the anticipated length or complexity of the case. In the relatively small number of cases in which I anticipate that this would occur, this change should result in a reduction of the open caseload and faster resolution of the allegations for defendants, victims and witnesses without diminishing the quality of justice. In addition,

392 Source: Criminal court statistics quarterly: October to December 2024 (MoJ, March 2025). This proxy assumes not-guilty-plea trials have a jury, and 1 defendant = 1 case. In 2024, there were 127,468 defendants dealt with, whereas disposed cases were 121,579. This gives a ratio of 1.12 defendants per case. Additionally, this contains a double counting of cases in the magistrates' court that were sent straight to the Crown Court.

I make recommendations for serious and complex fraud cases to be tried by a judge alone. Once again, this is a principled reform based on the need for cases to be resolved in a more timely manner, with a forum well suited to the demands of the case. This recommendation follows the series of previous suggestions for similar reform that have been made by distinguished reviews and Royal Commissions over the last 40 years.

The Current System

4. In England and Wales, whether a case is allocated to be tried by a jury is determined by several factors, not just offence type. As set out in Chapter 5 (The Magistrates' Court Process) all indictable only offences (e.g. murder, rape and robbery) must be tried by a jury but, for either way offences, the mode of trial depends on the decision of the magistrates and/or the defendant. In brief, the magistrates can send a case to the Crown Court for jury trial based on the allocation guideline and, in particular, the likely sentence that would be imposed if there were a conviction. A defendant can also exercise their 'right to elect' to be tried in the Crown Court, irrespective of the gravity of the allegation in either way cases. I have made recommendations to change this process in Chapter 5 (The Magistrates' Court Process), by removing the right to elect for some less serious offences. By whatever means an indictable only or either way case currently ends up in the Crown Court, where a defendant enters a not guilty plea, they are subsequently tried by a jury.

5. The jury consists of 12 people, randomly selected to sit in an identified Crown Court centre, usually for a period of two weeks. There are very few categories of people aged between 18 and 76 who are now ineligible to serve as jurors.[393] The jury's role in each case is to hear the evidence and, in compliance with the judge's directions, to decide whether a defendant is guilty or not guilty. The verdict must be unanimous unless (after a period of time) the judge allows a majority verdict (the minimum majorities are 11:1; 10:2; or where jurors have already been discharged, 10:1 or 9:1). If the jury has reduced in size to nine by jurors being discharged, the jury must be unanimous.[394]

393 Juries Act 1974.

394 Ibid, s. 17; Crown Court Compendium (Courts and Tribunals Judiciary, April 2025).

6. Of the cases that juries decide, this involves approximately 12% of Crown Court defendants.[395] Despite the small proportions and numbers of jury trials overall, juries are often perceived as the cornerstone of the criminal justice system, particularly in promoting its openness and transparency. I have taken great care to analyse the options for jury trials with this in mind, but I maintain that radical, principled solutions are needed to address the crisis being faced and the jury system should not be immune from reform.

Lengthy Jury Trials

7. I have already outlined the right to elect and history of jury trials in Chapter 5 (The Magistrates' Court Process). I summarise here that there exists no constitutional or indeed any form of general common law right to trial by judge and jury. Neither Magna Carta nor the ECHR provides a legal basis to claim a right to a jury trial as a constitutional right. I will therefore outline the context of jury trials in operation within the current criminal justice system.

8. Jury trials for the most serious (indictable only) offences have more than doubled in hearing time length since 2001.[396] As shown in Fig. 9.1, the number of days taken for jury trials from the start of the main hearing (usually the trial) to its completion in the Crown Court is increasing (with not guilty plea used as the proxy).[397] Whilst the average time taken from the start of the main hearing to trial completion has increased significantly, the median has only increased slightly. As the median is the value in the middle (50th percentile) and is less sensitive to outliers, this shows that trials of a long duration have become even lengthier.

395 Calculated as 15,600 'for trial' defendants who pleaded not guilty, out of 125,949 total defendants in 2024, that gives 12%. This is a proxy for the percentage of defendants in the Crown Court who have a jury trial. Source: Criminal court statistics quarterly (2025).

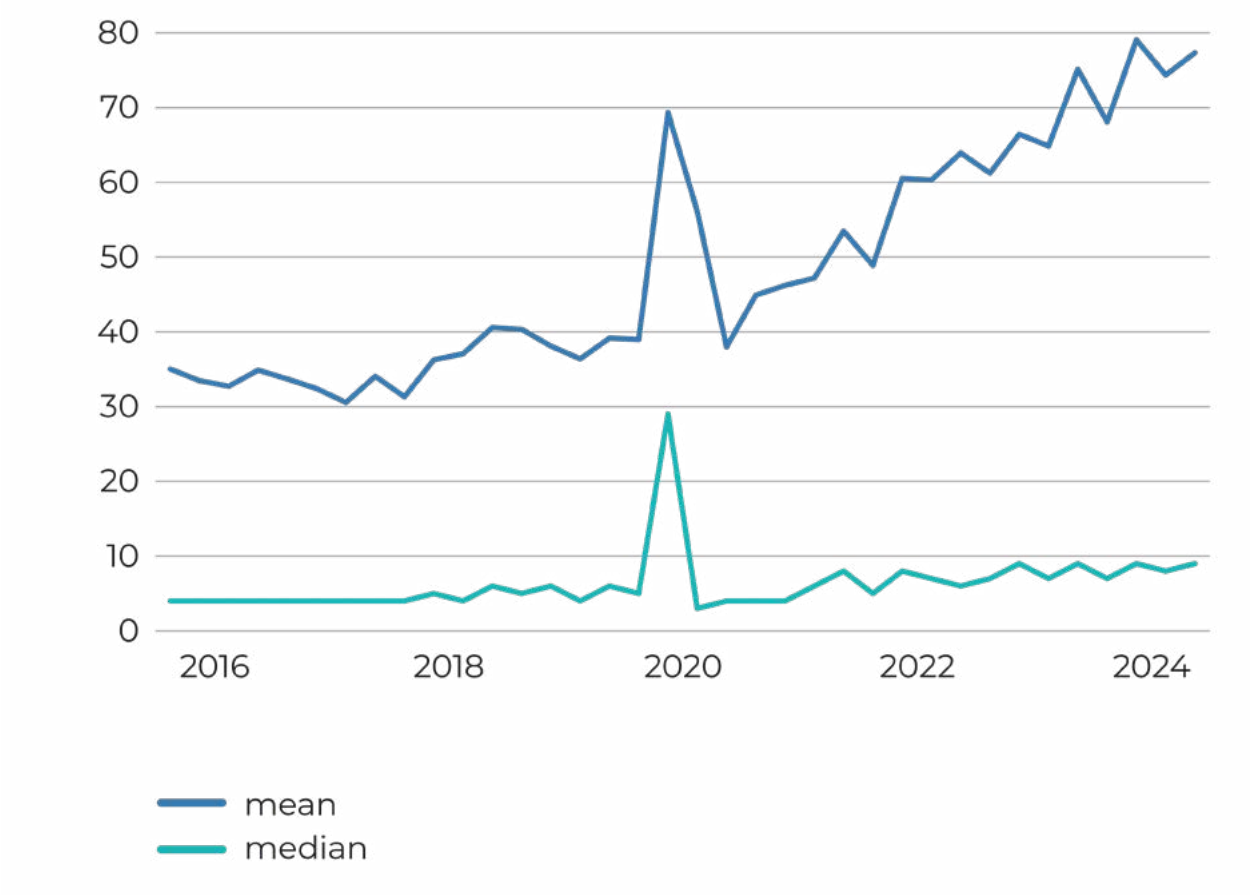
396 Using hearing time. Source: Criminal court statistics quarterly: July to September 2024 (MoJ, December 2024); Criminal court statistics quarterly: January to March 2019 (MoJ, June 2019); Judicial and court statistics (annual) 2010 (MoJ, June 2012); Judicial and court statistics 2006 (MoJ, November 2007).

397 Defendants who enter a not guilty plea are scheduled (listed) for a trial hearing where a jury will determine the verdict. Therefore, 'not guilty plea' is used as a proxy for jury trial defendants in this instance.

Figure 9.1

Quarterly averages of days from main hearing to completion for not guilty pleas in the Crown Court

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

9. As discussed in Chapter 2 (Problem Diagnosis), I recognise that some of the delays can be attributed to advances made in the fairness and quality of justice, including transcription of interviews, disclosure resulting in more evidence being deployed at trial and greater reliance on digital material and communications data.

10. However, I consider that one of the reasons for the longer time taken for jury trials is because of the increased efforts made to provide support and guidance to jurors, which has become more extensive along with the increased complexity of the evidence. Judges now give more detailed introductory instructions to juries, known as jury homilies.[398] These are in part to ensure jury compliance with their oath, especially to avoid the risk of misuse of social media, but also to assist jurors in understanding the evidence and their role in evaluating it. Throughout the trial, more comprehensive judicial directions are now provided and, in many cases, need to be repeated at the time the evidence is introduced, and again in summing up.[399] Some forms of evidence require ever more careful explanation to jurors, as for example with the often highly technical expert evidence which is a feature in many criminal trials and particularly in complex ones. As one judge put it in the course of engagement, in such cases it is necessary for the advocates to ensure the evidence can be followed by every member of the jury. In practice, that means advocates need to adopt a cautious attitude, seeking to address what they perceive might be the lowest level of numeracy or scientific confidence likely to be found on the jury panel.

11. Judges now also devote more time to providing jurors with written directions on the substantive matters they must consider. I have no doubt that these have been welcome developments to assist jurors.[400] Some measure of the time and effort that judges now devote to managing the jury and assisting them in their decision-making role can be gleaned from the length and detail of the Crown Court Compendium – which is the guide judges use to direct juries in criminal trials. The most recent volume now spans 560 pages (Part I).[401] In short, I endorse the value of the additional support provided to jurors, but I also acknowledge the significant impact on timeliness in jury trials that such changes have had. Of course, as outlined in Chapter 2 (Problem Diagnosis), I recognise that delays in the system are not all because of prolonged trial times in jury trials.

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398 Crown Court Compendium (2025).

399 See examples in the Crown Court Compendium on matters such as hearsay: Crown Court Compendium Part I - July 2024 (April 2025 update) (Judicial College).

400 In the Crown Court Compendium (July 2024), the Lady Chief Justice praises written directions to juries as 'one of the most significant innovations in recent years'.

401 Crown Court Compendium, Part I: Jury and Trial Management and Summing Up (Judicial College, July 2024–April 2025).

12. In any Crown Court trial, jurors are required to give up their time to undertake an important civic duty, not infrequently at considerable personal cost. As I set out in 2015, those costs can be significant in lengthy trials. The cost involves financial commitment, where juror expenses in some cases do not sufficiently cover loss of earnings and other expenditure. These are exacerbated in longer trials, albeit that after the first ten days of jury service, the rate paid to jurors for loss of earnings increases.[402] There are also, however, burdens on other aspects of their private lives. Survey research by Professor Thomas (2020) considered the pressures on jurors and found that, of 201 people who had recently completed jury service, 14% said they would 'definitely' use a helpline if this were available, and 32% said they 'maybe' would. Of those, 33% said they might call it to discuss how jury service was affecting their life. However, it should be noted that the same research found that jurors found jury service interesting (78%) and/or educational (58%).[403] As trials take longer, the time commitment demanded of individual jurors is growing, and so too is their personal and financial burden in fulfilling the duty.

13. There can be no precise forecast at the outset of any trial as to the likely length of the proceedings. Problems can arise when trials unexpectedly go beyond their predicted trial time. Some of the jurors may then be unable to continue. This can arise even in the typical cases where jury service of ten days is required but is more serious when trials last longer. Requiring 12 people to clear every working day in their diary for weeks (let alone months) inevitably produces difficulties and will lead to days in the trial when one or more jurors is unavailable for good reason. This all adds to the length of the trial.

14. A separate but related problem arises in trials anticipated to take longer than two weeks, particularly given the risk that something might happen which impacts on one or more jurors. The selection of jurors in such cases has become a more time-consuming exercise, now necessitating the use of jury questionnaires to ensure that jurors are likely to serve for the full term of the trial but also in ensuring that potential jurors are not associated with the case in any way. Given the expected trial length, those potential jurors able to commit to the longer time are often retired or unemployed and, as a result, there is

402 Jury service: What you can claim if you're an employee.

403 Cheryl Thomas, The 21st century jury: contempt, bias and the impact of jury service [2020] Crim LR 987–1011.

an impact on the composition of the jury panel. [404] The defendant's expectation of a jury of their peers is delivered in only a partial sense. In 1986, Roskill described the eventual composition of juries for lengthy trials after selection and self-selection as made up of a demographic less likely to understand complex evidence.[405] In contrast, research by Cheryl Thomas provided to the charity JUSTICE (2016), which compared ten standard trials (of two weeks or less) with ten long trials (of four weeks or more, with many months long), found that there was not much difference in the range of backgrounds represented in each, with only a 20% higher rate of representation of those in full-time employment in standard-length trials.[406] I note that this is such a small sample size so may not fully reflect the realities of jury composition.

15. The cost to jurors lives from the impacts of serving on these longer trials cannot be monetised of course. Moreover, the costs to consider are not only those to the jury, but those generated by the jury. Rightly, the public have an interest in the financial and human costs of the criminal justice system and how best to apply its limited resources. I do not recommend that changes to jury trials should be made based on the costs to the state alone; as I noted in Chapter 5 (The Magistrates' Court Process), according to Hansard records this was an argument made against the Mode of Trial Bill(s). However, the costs to the system do need to be examined.

16. In the 2023/24 financial year, £36 million of the Crown Court annual operational costs were made up of costs associated with a jury.[407] I note that this number has been provided without context, but it shows that a significant amount of Crown Court costs are attributed to such a small volume of criminal cases overall. If jury trials were to continue at the same volume as they are, then the criminal justice system would have to be adequately funded to reflect the costs associated with them. Although, as I set out in Chapter 2 (Problem Diagnosis), funding

404 I have been told that, in potentially long trials, judges routinely reject requests by jurors to excuse their service on grounds of impact on employment or other reasons in order to ensure diversity and skill set. It has to be recognised, however, that this places a real burden on those required to perform this civic duty which (in the case of exceptionally long trials) can affect career and earning potential as well as impacting on private life.

405 The Rt Hon. The Lord Roskill, Fraud Trials Committee report (HMSO, 1986), p. 138.

406 Complex and lengthy criminal trials (JUSTICE, 2016), p. 61. 'Range of backgrounds' covered: gender, age, employment status (including self-employed), profession, income, ethnicity, religion and first language).

407 HM Courts & Tribunals Service Annual Report and Accounts 2023-2024 (July 2024), p. 15.

is not the only problem; I am required to approach this Review having regard to the fiscal constraints of the government.

17. In my view, reform of jury trials is merited to address the principled problems generated by involving a jury in the resolution of criminal charges, particularly those trials which are of substantial length or complexity. Reform to address these concerns will be likely to have positive impacts in terms of efficiency, by reducing the open caseload, and, in addition, in terms of financial savings.

Possible Solutions

18. For the sake of completeness, in the following section I will summarise some possible solutions that I have considered but will not be recommending.

Jury Composition

19. The size of a jury being set at 12 people was not a product of exact science. In other jurisdictions with a jury system, there is no universal panel size. There is very little data, including internationally, to suggest that changing the size of a jury would improve the timeliness of proceedings. Jury size varies between countries – for example, most other common law countries have 12 jurors, whereas Scotland has 15. Scotland has considered reducing the size of its juries to 12, but this was on the basis that it would act as a balance to other proposed changes to verdict choice and was not related to timeliness.[408] Regardless of the purposes behind the reform, the proposals to reduce jury size were subsequently dropped as the relevant committee considered they had no bearing on verdict choice. I also note that Scotland is not directly comparable as it has a system of three criminal courts (High Court of Justiciary – all trials heard by jury; Sheriff Courts – some trials by jury and others by judge alone; and Justice of the Peace courts – no jury).[409]

20. Anecdotally, some suggest that fewer jurors in a panel should lead to quicker deliberation times as there are not as many individuals to reach a verdict, but I have not been presented with any strong

408 Policy Memorandum: Victims, Witnesses, and Justice Reform (Scotland) Bill (Scottish Parliament, 2023), p. 49.

409 Scotland's criminal justice system (Crown Office and Procurator Fiscal Service, July 2024).

evidence to back such claims. The Law Commission of Canada consulted on reducing the number from 12, and concluded that the jury size was workable, manageable and able to discharge its functions, with no evidence to suggest fewer jurors would increase effectiveness or efficiency of trials.[410] Professor Rebecca Helm recently compared jury size internationally and concluded that jury size does not have an impact on results, with studies showing that reducing or increasing the size does not impact on efficiency.[411]

21. Lord Justice Auld suggested a system of reserve jurors in particularly long cases to mitigate the risks of a re-hearing due to a non-quorate jury.[412] The concern was that as a trial becomes prolonged, more jurors may need to drop out as they have unavoidable commitments elsewhere (e.g. caring commitments etc.). If the jury panel drops below nine in number, the law requires the trial to be aborted and it would have to recommence. There have been some developments in this regard, with the Crim PR now recognising the appropriateness of a judge swearing in 14 jurors for the prosecution opening, with the requirement to reduce the number to 12 by the time the presentation of the evidence begins. This has proved useful in ensuring that long trials with lengthy openings do not have false starts owing to jury availability. The Crim PR do not sanction a jury panel of more than 12 when the presentation of evidence commences, and the Juries Act 1974 also makes no provision for that.

22. There are also difficulties with any proposal for reserve jurors to sit through the trial in anticipation that one or more reserves could be moved into the decision-making panel of 12 in the event that an original juror is discharged during the trial. This would mean that extra jurors would be compelled to sit through all the evidence, could not discuss the case with the 12 and, unless called upon, would be discharged without taking part in deliberations. In addition, there would be two or more reserve jurors whose lives and finances were impacted by sitting through a long trial – and perhaps to no purpose. That could lead to significant frustration on their part. Whilst a system involving reserve jurors might reduce the numbers of ineffective trials

410 The Jury in Criminal Trials, Working Paper 27 (Law Reform Commission of Canada, 1980).

411 Rebecca K. Helm, How Juries Work; And How They Could Work Better (Oxford University Press, 2024).

412 The Rt Hon. Lord Justice Auld, Review of the Criminal Courts of England and Wales (HMSO, October 2001), p. 143.

where jurors need to be discharged for whatever reason, I have not received evidence that this is a major problem. At present, the Crown Court can accept a majority verdict of a jury so long as the number of jurors is not less than nine.[413] A system of reserve jurors is likely an unnecessary administrative burden on HMCTS staff and a cost to the MoJ that is otherwise unnecessary if the reserve jurors are rarely, if ever, used. Whatever the size of a jury, I do not have sufficient data or evidence to conclude that an increase or decrease in jury size is a factor that influences the timeliness and effectiveness of jury trials.

23. To conclude, I maintain that the size of the jury should remain at 12. As Lord Justice Auld concluded rather succinctly, 'it is a matter of tradition rather than logic'.

Introducing a Time Limit on Jury Trials

24. Jurors are required to dedicate significant personal time to undertake an important civic duty. A prescribed time limit on the duration of any jury trial time could mitigate this but would be likely to increase the open caseload. It would be possible to introduce a specific period of time within which a jury trial had to be completed. That would be undesirable for obvious reasons, including that there would be unmeritorious acquittals where a trial unavoidably and unpredictably overran. Such a system might also be manipulated by a defendant to delay the proceedings in an effort to run the trial out of time.

25. Alternatively, it would be possible to introduce a time period that should act as a threshold for a judge in deciding whether to order a trial by judge alone even where the defendant has not elected one, assuming such a trial option was available. If trial by judge alone were to apply in cases (or at least some cases) where the predicted trial time was over a specified threshold (e.g. three months) that could mitigate the impacts on jurors' personal lives and thereby limit the number of trials that are not disposed of owing to jury difficulties related to trial duration. Similarly, a scheme could be created whereby after a specified trial duration a judge would dispense with the jury and continue alone.

26. There is no doubt that there are some cases in which a time limit might have been appropriate. One high-profile example was *R v Rayment and Others*, commonly known as the Jubilee Line corruption trial. In

413 Section 17 of the Juries Act 1974.

that case, the trial was terminated after 21 months in part due to two jurors being discharged and one going on strike (although the inquiry found the trial length was due to various shortcomings in the criminal justice process).[414] In the wake of an earlier case in which the Court of Appeal had quashed convictions because of the length and complexity of the case, guidance had been released by the then Lord Chief Justice suggesting that no trial should take more than three months.[415] These were two extreme cases, but there are numerous examples of cases where any such limit would be vastly exceeded. I have been told that there are cases recently tried at Southwark Crown Court which have extended to 12 months, and trials of five or six months are not uncommon. However, although this applies to fraud cases, there are other cases that are also exceptionally lengthy. I will explore later in this chapter how these various challenges can be addressed.

27. The question I must address is whether a time threshold would be of value in promoting principles of timeliness in trials, promoting the best quality decision-making by the fact finders, and preventing the waste of court resources. Any recommendation would, of course, assume that a trial by judge alone would be capable of dealing with the kinds of allegations involved in such long cases, and of doing so no less fairly and more efficiently.

28. A time limit on jury trials would present challenges in advance of trial where legal professionals and judges would have to be much more precise in predicting likely duration and tailoring the charges and evidence appropriately. It would also be challenging to enforce during a trial – particularly when the trial was approaching a conclusion. It would lead to arbitrariness in charging and trials, and to unmerited acquittals.

29. Whilst the prospect of meeting any such statutory time limit could be considered before commencement of the trial (perhaps at the PTPH), in many instances it can be hard to predict the length of trials so far in advance, whether that is because of the unpredictable time that will be needed for jury deliberation or because more complex cases evolve in the way they will be presented up to the point of trial itself.

30. If the decision about whether a trial should be conducted without

414 Jubilee Line Case Investigation and Criminal Proceedings (HMCPSI, June 2006).

415 *R v Cohen* [1992], CA (Criminal Division); Protocol for the Control and Management of Heavy Fraud and Complex Criminal Cases (Courts and Tribunals Judiciary, March 2005).

a jury had to be made at the start of the trial based on anticipated length beyond a fixed limit, it would present significant difficulties. In addition, by that point of the trial being about to commence, there would already have been time taken to summon a jury.[416]

31. If a fixed time limit were to be imposed, the time limit would also need to be considered throughout the trial, as it would result in disruption to the way the trial had been planned and would undoubtedly result in more ineffective trials. This would waste significant Crown Court resources and time for both the court and the jurors themselves, and have significant impacts thereafter on the open caseload, timeliness and the lives of victims, witnesses and defendants should the trial need to be re-heard or if charges were dropped.

32. I therefore do not recommend implementing a time limit on jury trials. I would encourage the senior judiciary to consider issuing further guidance on trial duration being managed in a way which respects jurors' commitments. However, insofar as it affects my recommendations, situations where trials are expected to be lengthy would be a factor in the judge's decision-making in any model where the judge had the power to order trial by judge alone. I will return to the question of trial and judicial management in the Efficiency Review.

33. I will now outline the context for the options I will be recommending in relation to trials without jury.

Trials without Jury

34. Data analysis and modelling suggests that Crown Court trials conducted by a judge sitting with magistrates but without a jury would save 20% of Crown Court sitting time. As I set out in Chapter 8 (Crown Court Structure), I consider this time-saving figure to be a very conservative estimation of the time that is likely to be saved, both based on my personal experience following discussion with the Expert Advisers to this Review and an analysis of the ways in which time would be saved if the judge was involved in the fact finding and therefore would direct the parties to the essential issues in the case. This is to say nothing of the additional savings expected from the absence of judicial time spent managing the jury. It is therefore important that I consider beyond my recommendation for a CCBD

416 During my engagement with judges, it was reported in one court centre at least that two hours a week are spent dealing with new jurors.

whether there are other instances in which a jury trial might not represent the most proportionate forum in which to try allegations in the Crown Court. In this section, I assess trials without jury, which should offer time-savings and in doing so support the reduction of the open caseload due to the swifter throughput of cases.

35. Many arguments against jury reform have been presented over the years. I have considered each with care, and their cumulative weight, but I remain unconvinced that these arguments hold enough weight to change what I recommend. I summarise some of these arguments here.

36. Any argument (of perception or otherwise) that trial by judge alone is harsher in sentencing than trial by judge and jury is fundamentally misplaced, because the jury play no part in sentencing decisions in England and Wales. Jurors are only required to provide a verdict on guilt of the defendant – it is the trial judge alone who sentences the defendant and provides reasons for the penalty imposed. In submissions to the Review, I have heard that some defendants elect Crown Court trial in the hope of receiving a lighter sentence, but I believe this to be misconceived, if indeed it does occur at all.[417]

37. A further argument that is often raised is that evidence suggests jury trials are less likely to lead to disproportionate outcomes for ethnic minority defendants. Research from Professor Thomas, in her 2010 study 'Are juries fair?', concluded that 'one stage in the criminal justice system where B[A]ME groups do not face persistent disproportionality is when a jury reaches a verdict'.[418] Professor Thomas outlined this further in her research for the Lammy Review, which concluded that a jury's deliberation as a group deters and exposes prejudice or unintended bias.[419]

38. There are several arguments as to why this should not be a major concern. First, it is worth emphasising that there is no evidence that

417 Some defendants might consider that where a jury has reached their verdict, and the judge cannot be sure of the basis on which it has done so, the judge would adopt the least serious interpretation of the basis for verdict. That is simply not the case. In such a scenario, the judge is to be satisfied themselves as to the basis of the guilty verdict from the options on which the jury might have reached their conclusion. See the example in a different context: *R v King* [2017] EWCA Crim 128

418 Cheryl Thomas, Are juries fair? (MoJ Research Series, 2010); Cheryl Thomas, 'Ethnicity and Fairness of Jury Trials in England and Wales 2006–2014' [2017] Crim LR 860–876.

419 The Rt Hon. David Lammy, Lammy review: final report (September 2017), p. 6.

professional judges alone making decisions in criminal cases produce decisions with disproportionate outcomes. I note that all professional judges in the criminal courts have equality, diversity and inclusion (EDI) training, as well as training on unconscious biases, and are supported by many Judicial College resources including the comprehensive 'Equal Treatment Bench Book'.[420] Second, whereas the evidence from the Lammy Review is that juries as a collection of individuals are not acting in a disproportionate manner in decision-making, the evidence recognises that some jurors adopt biased attitudes towards defendants. The conclusion in the Lammy Review was that a jury's deliberation as a group deters and exposes prejudice or unintended bias.[421] However, where a trial is being conducted by a professional judge alone, there is far less risk of any prejudice or bias in the decision-making in the first place. Third, I note that the arguments imply a lack of scrutiny and evaluation of a decision by a judge to guard against unfounded prejudices. But, again, this appears flawed since it ignores that, under any model without a jury in the Crown Court, as with a jury, there would always be a route of appeal to the Court of Appeal (Criminal Division). Fourth, on this issue, I underline the fact that judges sitting without a jury must provide reasons for their decision whereas juries do not. There is a greater opportunity to scrutinise and hold to account the reasoning of the judge and their approach to the evidence than would ever be achieved with a jury trial.

39. I acknowledge that the jury ensures some community representation in the decision-making which would be lost with trial by judge alone, However, I also note that at least in cases of a defendant electing trial by judge alone, the lack of community representation involved will have been the defendant's choice.

40. Based on my engagement throughout this Review, I anticipate that there are some judges who are concerned that trial by judge alone would impose too great a burden on the judge. Judges may be concerned about the increased responsibility imposed by having to write judgments but, in my view, that concern is misplaced. The judges who would be faced with the task are all qualified lawyers with many years' experience (even to be eligible to apply to sit as a judge). They are professional judges, having been appointed and trained to deal with all criminal matters arising in the Crown Court. They are used to delivering many rulings during the course of a case. These include:

420 Equal Treatment Bench Book (Courts and Tribunals Judiciary, July 2024).

421 Lammy review: final report (2017), p. 32.

a. decisions about the admissibility of evidence;

b. decisions on the sufficiency of the evidence at the close of the Crown's case;

c. the appropriate legal framework including routes to verdicts;

d. analysing the necessary directions of law and fashioning a review of the facts in such a way as to assist the jury;

e. the factual basis for sentencing;

f. sentencing remarks (within a complex framework of sentencing law) justifying their personal decision on the penalty; and

g. orders in confiscation proceedings which require decisions of fact and law.

41. They are professional decision-makers selected for these prestigious positions in the Crown Court on that competence and ability; they are expert in decision-making and in effective communication of their decisions.[422] Whilst I acknowledge that some judges might be concerned about the responsibility of making decisions on fact and on the ultimate verdict, I am therefore unconvinced that these concerns carry significant weight.[423] Having said that, there are likely to be some cases where it is always in the public interest that there is a jury trial. That is likely to be so in relation to homicide and some terror-related offences; and there may be other types of offence.

42. In short, I am confident that the judiciary would be well suited to the task of trying such cases (and in allocating them to judge-alone trial in the first place: see below paragraph 51 onwards). There is limited evidence on which to substantiate the concerns based on experience in the Crown Court. I note that judge-alone trials are required when jury tampering is suspected (under the Criminal Justice Act 2003), and there have been several such cases where a judge has decided to discharge the jury and continue alone. Judges have demonstrated

422 Judges in the criminal courts make many factual decisions: these may concern the circumstances surrounding the way in which evidence is obtained (leading to arguments for its exclusion), the gravity of offending after a guilty verdict or decisions following a Newton hearing. I am also aware that several cases in the Chancery Division and the Commercial Court also take many months but the complexities of law and fact in these cases may well exceed those in the Crown Court. One of the consequences of the need to keep criminal cases to within reasonable bounds of time has meant that a similar fact is often excluded to the detriment of a consideration of all the relevant evidence: this does not present an issue in the civil courts.

423 My recommendations could increase scrutiny on individual judges. I note that this is a wider problem that needs to be addressed.

their ready ability to do so.[424] In addition, I note that judges of the Crown Court, including Recorders, often sit in a panel with magistrates to re-hear cases on appeal from the magistrates' court. There is no evidence that they struggle to deal with such cases fairly and expeditiously without a jury, or that they are overburdened with judgment preparation.

43. I also acknowledge the argument that, as juries decide so few cases in the overall scheme of the criminal justice system, some critics might question whether such controversial reform is worth it given the limited estimated impact the changes might have on the open caseload. My response is, first, that whilst I accept that the changes to jury trial that I recommend are controversial, as I have already rehearsed, I have been careful not to be swayed by the political dimension in reaching my conclusions. The likelihood of political controversy while enacting these recommendations is not a matter for me. There must be a commitment to the necessary changes based on sound principles to ensure swifter delivery of justice and adopting reasonable measures that should reduce the open caseload. As I have said before, the consequence of not dealing with the present state of the criminal justice system is its collapse. Second, as noted, I consider the data analysis and modelling estimates to be very conservative.

Jury Waiver (Defendant's Choice to be Tried by Judge Alone)

44. A 'jury waiver' would introduce a scheme which would permit a defendant to opt for trial by a judge alone. Previous suggestions to introduce a power for a defendant to opt for trial by judge alone have taken various forms. Lord Justice Auld recommended that a defendant could elect, with consent from the prosecution, to be tried by a judge alone.[425] I took a similar view in 2015.[426] The situations in which such an election might be permitted have been suggested to include cases where a defendant is advancing a highly 'technical' defence such that the case turns on legal interpretations of agreed facts, and cases where a defendant's conduct would generate substantial adverse publicity or opprobrium. Furthermore, defendants in cases turning on alleged confessions or identification may be more attracted to trial by judge alone on the basis that judges might be expected to be more

424 Trials without a jury as a consequence of jury tampering are discussed in para. 102.

425 Review of the Criminal Courts of England and Wales (2001), p. 181.

426 The Rt Hon. Sir Brian Leveson, Review of Efficiency in Criminal Proceedings (Judiciary of England and Wales, January 2015), pp. 88–89.

rigorous in their evaluation of the weight afforded to such evidence. Such a scheme creates an element of choice for the defendant, though it is not unlimited, and also attracts protections in the form of judicial discretion to consider whether such a choice is reasonable and in the interests of justice.

45. Without rehearsing the arguments addressed in Chapter 5 (The Magistrates' Court Process), there are nuanced and unique factors whereby a defendant may elect to be tried in the Crown Court. I do not see any legitimate reason why a defendant should not then also be provided with a choice on mode of trial to be heard by a judge alone. Of course, the defendant would not know in advance who the specific judge trying their case would be. Allowing a defendant, particularly if they have had professional legal advice, to elect a trial by judge alone can be seen as an enhancement of the defendant's effective participation in the criminal process. I am well aware of the compelling literature on how litigant confidence in the process enhances perceptions of satisfaction in the outcome of the trial. Research by Tom Tyler has found that people are more likely to have confidence in a decision when they believe it has been made fairly.[427]

46. Jury waivers have been utilised successfully in several common law jurisdictions without any identifiable impact on the fairness of proceedings, as evaluations have shown. Other jurisdictions evidence the successful uptake, time-saving and equitable results of trial by judge alone following a defendant's request. I have drawn upon the various practices and evaluations from the Australian territories and Canada in Case Study F. Whilst I recognise the different legal cultures in different jurisdictions and how those might affect the take-up of jury waiver, the evaluations have supported my conclusion and should provide invaluable evidence on which the government might wish to base its decision.

427 Tom R. Tyler, 'Procedural Justice and the Courts' (2007) 44(1/2) Court Rev: J American Judges Assoc 26–31.

Case Study F: Jury waiver common law comparators

Australian territories

Australian Capital Territory:

- A judge-alone trial can only be ordered when a defendant elects for one. In such circumstances, the court has no discretion to refuse a defendant's election. Initially, this provision was available for all indictable offences.
- Examining statistics from 2004–8, the Department of Justice and Community Safety found that 56% of all trials were judge-alone trials. The significant take-up and the low conviction rates (particularly for murder) led to the Supreme Court Act excluding certain offences to curtail the high number of elections.

New South Wales (NSW):

- Judge-alone trials have existed in NSW since 1990. Following the request of a defendant, the court may decide if it is in the interests of justice. The judge must balance the interests of the parties and larger questions of legal principle, the public interest and policy considerations.
- A study from the NSW Bureau of Crime Statistics and Research by Jonathan Gu found that in the period 2011 to 2019, judge-alone trials were associated with a statistically significant increase of 12% in probability of acquittal, with a statistically significant decrease in average trial days for prejudicial and complex offences.
- Gu observed that they produce efficiency benefits because of 'increased flexibility in how evidence is presented, and hearings are scheduled'. Individually, these factors are likely reduce the number of hours each trial day but together can cut whole days from trial proceedings.

South Australia:

- A defendant can elect to be tried by judge alone with prior legal advice. They must do so before their first arraignment date and can only revoke their election with the leave of the court.

Canada

- A defendant can elect to be tried by judge alone in the superior court. There are some exceptions to this, including murder and related offences, crimes against humanity, treason, piracy and bribery of a judicial office holder. In these exceptions, the defendant can elect trial by judge alone, but Attorney General consent is required.
- The right to waive a jury trial is uncontroversial in Canada.

New Zealand

- A case study can be found in the serious and complex fraud section (Case Study H) later.

Sources:
With thanks to Professor Laura Hoyano, Emeritus Professor of Law at the University of Oxford, and Dr Natalie Hodgson and Dr Matt Thomason from the University of Nottingham, School of Law for their submissions to this Review.
Debates - Legislative Assembly for the ACT (Australian Capital Territory, 17 February 2011), p. 255.
Jonathan Gu, The effect of judge-alone trials on criminal justice outcomes, *NSW Bureau of Crime Statistics and Research*, Crime and Justice Bulletin 264 (July 2004).

47. I note also that the data analysis and modelling for estimated time-savings discussed above was based on the jury being replaced by two magistrates in the CCBD. In that data analysis and modelling process, it was widely considered that a trial by judge alone may have greater time-savings than trial by a judge with two magistrates. I regard the 20% estimate used in modelling as an underestimate, but I have no doubt that trial by judge alone would save even more time than trial with two magistrates.

Offences

48. As I have said, my view is that the trial judge is best suited to making the final decision on whether a defendant's preference for trial by judge alone should be honoured for any offence. Limiting the eligibility of a jury waiver only to specific offences may disproportionately impact certain categories of defendant and may fail to maximise defendant autonomy. In other jurisdictions, certain offences are made ineligible for jury waiver by legislation: this is the position in Australia, Canada and New Zealand.[428] The government may wish to consider whether to restrict the range of offences, following an evaluation of the provisions over a set time. Based on the evidence currently available to me, I would recommend that the judiciary should make the final decision on a defendant's application for waiver on a case-by-case basis following representations from the defence at the PTPH. I anticipate that there would be a new Crim PD issued by the Lady Chief Justice which would provide more detail on the factors that should influence a judge's decision in this regard. Election for trial by judge alone will be personal to each defendant, but always subject to the final decision of the judge as to the interests of justice. One factor that the judge will take into account would, obviously, be the views of the prosecution. Another would be the views of any co-defendants in the case. My recommendation is that in relation to 'election' for trial by judge alone, the judge would only be in a position to order such a trial where every defendant on the indictment had expressed the preference for trial by judge alone. In some instances, the judge will therefore have decisions to be made about severance (as an example where the main defendants seek trial by judge alone and a co-defendant who played only a minor role seeks a jury trial). These matters can all be addressed within the primary legislation that would be needed and in any revisions to the Crim PR and Criminal Practice Direction that would inevitably follow. I return below to this same question when considering judge-alone trial ordered by the judge without a defendant's waiver.

428 Criminal Proceedings Legislation Amendment Act 2011 (Australian Capital Territory); Section 558 of the Criminal Code RSC 1985 C-46 (Canada); Sections 4(1)(q), 6 and 74(2) of the Criminal Procedure Act 2011.

49. I have no doubt that there would be cases where a jury trial is appropriate, even where the defendant would prefer trial by judge alone. The government may wish to evaluate this later although, to my mind, one certain exception should be an allegation of murder. The government should also consider whether the defendant should be required to receive legal representation prior to electing for a trial by judge alone. That may be an important safeguard.

Appeals

50. To respect the finality of the decision made by the judge, and to avoid the additional burden of appeals, my recommendation is that where a judge orders a trial by jury despite a defendant's preference for a judge-alone trial, there should be no right to appeal that allocation decision.[429] Similarly, to promote finality, where a judge honours the defendant's choice for trial by judge alone, that decision should not be capable of interlocutory appeal by the prosecution and the defendant should not be able to change their mind at a later stage in court proceedings.[430]

Recommendation 43: I recommend that 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.

429 Unless this decision is being made as part of a Preparatory Hearing under the Criminal Justice Act 1987 or Criminal Procedure and Investigations Act 1996 to which I return below.

430 Unless it is a decision made as part of a preparatory hearing. If necessary, it could be made clear it is not within s. 57 of the Criminal Justice Act 2003.

Serious and Complex Fraud Cases – Judicial Direction for Trial without Jury

51. There has long been a concern about the suitability of the jury trial for long and complex fraud trials which have been subjected to extensive formal reviews over the last 40 years. In 1983, Lord Roskill was appointed to chair a Fraud Trials Committee to consider how long serious fraud cases should be conducted more justly, expeditiously and economically.

52. Lord Roskill suggested a definition for a complex fraud case, wherein 'the complexity lies in the fact that the markets, or areas of business, operate according to concepts which bear no obvious similarity to anything in the general experience of most members of the public'. He also outlined that 'the frauds are usually committed by people who are acknowledged experts in their field, and it is often their very expertise which enables them to identify and exploit a flaw in the system'.

53. The Fraud Trials Committee concluded that juries for serious fraud cases should be replaced by a panel made up of a High Court Judge or Circuit Judge and two specially qualified lay members (with 'skill and expertise in business generally and experience of complex business transactions') in a tribunal known as the 'Fraud Trials Tribunal'.[431] The Auld Review, in 2001, came to similar conclusions, citing the 'ever lengthening and complexity of fraud trials' and lack of change following the Criminal Justice Act 1987 procedural reforms as a justification for revisiting this recommendation.[432]

54. The recommendation was taken up by government and found its way into the Criminal Justice Act 2003, section 43 of which provided for an application by the prosecution at the preparatory hearing in the Crown Court for the trial to be conducted without a jury. The condition for such an order was that the complexity of the trial or length of the trial (or both) was likely to make the trial so burdensome to the members of a jury hearing the trial that the interests of justice required that 'serious consideration' should be given to the question of whether the trial should be conducted without a jury. The judge had to have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial (without causing significant

431 Fraud Trials Committee report (1986), p. 147.

432 Review of the Criminal Courts of England and Wales (2001), p. 204.

disadvantage to the prosecution): see section 43(3), (5), (6) and (7). Significantly, the judge could not make such an order without the approval of the Lord Chief Justice or their nominated judge: section 43(4) of the Act. This legislation was enacted but not implemented. That failure does not detract from the fact that this significant reform was accepted by Parliament only 20 years or so ago. It was a principled decision on the appropriate approach to these trials. In the event, with different political considerations, the provision was repealed by sections 113 and 115(2) of, with Part 10 of Schedule 10 to, the Protection of Freedoms Act 2012.[433]

55. The problems presented by serious and complex fraud cases need little rehearsal and the issues that arise from these trials are growing. I start by examining whether the definition for 'serious and complex fraud' as identified by Lord Roskill now remains appropriate in the light of the changing nature of fraud in a digital world with so much internet-based offending (including cyber ransom attacks) all of which can be affected in jurisdictions far removed from this country and can have a truly devastating impact. Suffice to say that the National Crime Agency research shows that the volume of fraud offences has increased due to generative AI and cybercrime from overseas; the prevalence of offending is likely to have been exacerbated by continued cost of living pressures.[434] I return to the question of definition below.

56. Aside from the volume and type of offences being committed, as seen in Fig. 9.2, since 2020 the hearing time for jury trials in fraud cases has been increasing, especially when compared to all offences. However, this graph should be interpreted with caution as the data includes all fraud offences (a number of which will be straightforward). The present focus is on the subset of serious and complex fraud offences which are the most likely to have dramatically increased the average hearing time for not guilty pleas.

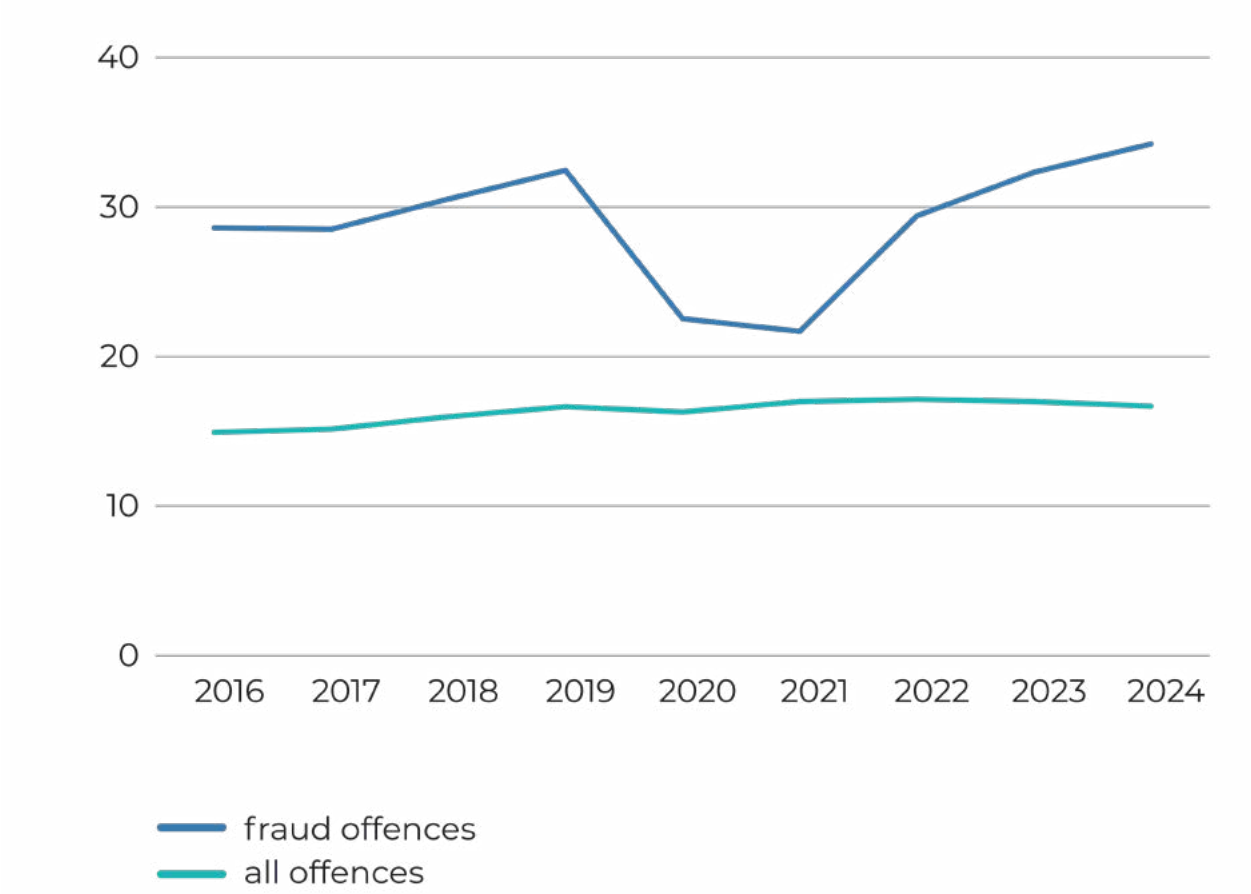
433 See also Protection of Freedoms Act 2012: Explanatory Notes.

434 National Strategic Assessment 2025 - Fraud (National Crime Agency, 2025).

Figure 9.2

Annual averages of hearing time (hours) for not guilty pleas in the Crown Court

England and Wales, 2016-2024



Source: Criminal court statistics quarterly, October to December 2024

57. Based on the prolonged duration of serious and complex fraud trials in particular, and the adverse impacts that they have as discussed above, I recommend making changes to the manner in which these cases are tried in the Crown Court. I seek to ensure that they are heard in a more proportionate forum given the nature of the allegations and the volume and nature of the likely evidence in the case. My recommendations should also speed up their progression through the criminal trial process, thereby respecting the need for timely resolution.

Current Law

58. In this section, I first set out the current law in relation to managing the length and content of fraud trials, before considering ongoing challenges and outlining my recommendations.

59. Special provision for 'preparatory hearings' in cases of serious fraud is made in the Criminal Justice Act 1987 (enacted following Lord Roskill's report). The relevant provisions are contained in sections 7 to 11 of the Act, and these are supplemented by the Crim PR (Part 3) and the Protocol for the Control and Management of Heavy Fraud and other Complex Criminal Cases issued by the then Lord Chief Justice in 2005 (hereafter referred to as the 'Fraud Protocol').[435] The Fraud Protocol is supported by the Southwark Practice Note No. 1/2024 Judicial Control and Management of Heavy Fraud and Other Complex Criminal Cases (1 July 2024). The aim of these preparatory hearings is to ensure that the management of serious and complex fraud cases is more efficient, and to allow for issues of law to be resolved, to secure proper disclosure and to identify the issues in advance of trial commencement.

60. The scheme under the Criminal Justice Act 1987 was extended by the Criminal Procedure and Investigations Act 1996 to other cases which, by reason of their length, seriousness and/or the complexity of the issues or evidence, would derive 'substantial benefit' from early and active case management. Further extension of the scheme renders it applicable in cases where a trial is being continued by judge alone after jury tampering, and in terrorism-related cases. The judge must decide whether the case is one of sufficient seriousness, length or complexity as to qualify for a preparatory hearing in principle, and then whether 'substantial benefits are likely to accrue for one or more of a specified list of purposes for which such a hearing can be held'. These purposes are:

    a. to identify the issues which are likely to be material to the verdict of the jury;
    b. to assist the jury's comprehension of those issues;
    c. to expedite the proceedings before the jury;
    d. to assist the judge's management of the trial; and
    e. to consider questions of severance or joinder of charges.

435 Protocol for the Control and Management of Heavy Fraud and Complex Criminal Cases (2005).

61. The consequences of a decision to order a preparatory hearing are substantial. First, once that hearing begins, it is treated as to the commencement of the trial itself: this is unlike other trials. Second, from the start of the preparatory hearing the judge attains greater powers of case management, including over disclosure.

62. There is no doubt that the management of fraud cases poses numerous challenges. As the Jubilee Line Review, 2007, explained:

> 'A three-way tension exists between the prosecution's legitimate wish to demonstrate the full criminality alleged in the case, the equally legitimate duty of the defence to test the prosecution evidence, and the manageability of the resulting trial. Upon the trial judge devolves the sometimes-difficult task of ensuring that justice is done to both sides, while at the same time the case is kept within such limits as will enable the jury to follow, to assimilate, and eventually to deliver verdicts which reflect the evidence they have heard.'[436]

63. That influential review also noted:

> 'A series of high-profile fraud cases, which came before the courts in the 1990s, showed that, although proper use of the preparatory hearing regime and firm case management can substantially improve the position, the sheer size and complexity of cases produced by the modern economic and commercial environment continues to test, often to breaking point, the criminal system. Even where prosecutions were brought to a satisfactory conclusion, the cost to the public purse is often very high and proceedings very lengthy.'[437]

64. That rings as true today as in 2007. The Fraud Protocol seeks to keep the trial length manageable; for example, it requires the prosecution team to justify the length of trial where it will exceed eight weeks.[438] The trial judge is also expected to 'consider what steps should be taken to reduce the length of the trial, whilst still ensuring that the prosecution has the opportunity of placing the full criminality before the court'.[439]

436 Jubilee Line Case Investigation and Criminal Proceedings (2006), para. 3.1.

437 Ibid, para. 3.2.

438 Protocol for the Control and Management of Heavy Fraud and Complex Criminal Cases (2005), p. 3.

439 Ibid, p. 8.

65. The Southwark Practice Note No. 1/2024 (1 July 2024) also places responsibilities on the parties designed to ensure more manageable trials. These include the preparation of a full case summary by the prosecution, which should begin with a short statement of the prosecution's case, the role of each defendant and the case against them, and any defence known at that stage.

66. Notwithstanding all the above attempts to reduce the burden of these lengthy trials on the individuals concerned and the wider criminal court system, they have not had the intended effect.[440] The approach to cases of this nature now needs to be reconsidered not only for reasons of principle but also because of the even greater impact these trials have upon the overall operation of the courts and the outstanding caseload. Suffice to say, I take the same view as Lord Justice Auld that the still continuing ever lengthening and complexity of these trials is justification enough for a review of the way in which they should be addressed. Both Lord Roskill and Lord Justice Auld considered several other options, including trial by special juries or by a panel of judges. Again, I take the same view that these options should be discounted because I am not aware of sufficient evidence that these options would be worth reconsidering; there would be considerable burdens involved in their creation and implementation.

67. Opposition to such panels has been reiterated by those who have engaged in this Review. Some submissions I received have gone further by suggesting that financial thresholds should be introduced for fraud trials to determine whether they are heard by a judge of the Crown Court and two assessors, or by a District Judge and an accountant in the magistrates' court. The thresholds would be set by the financial value of the fraud. I do no more than repeat what I said in Chapter 5 (The Magistrates' Court Process) to the effect that I consider the use of financial thresholds to be an arbitrary measure of the seriousness of an offence and not a proxy against which it is appropriate to align my recommendations.

68. The Auld Review outlined several arguments for and against the use of jury trials in serious and complex fraud cases. The key arguments for retaining jury trials which I reiterate here are: that the randomness of the panel ensures fairness; jurors are best placed to determine matters of dishonesty; and it keeps cases open for the public as

440 To which I might add the discussion in ch. 10 'Out of Scope' in the Review of Efficiency in Criminal Proceedings (2015), pp. 89–92.

information needs to be presented in a simple format. The CPS in its submission to the Review expressed the view that a jury brings a clear assessment as peers of the defendant on concepts such as 'dishonesty' and 'intention', on which expert evidence adds a layer of complexity. I will consider this argument further in a later point in this chapter, paragraphs 72 and 88, but I am of the view that dishonesty is context-specific, so the dishonesty in the particular circumstances of the crime may be difficult for jurors to identify where the facts of the case are difficult to understand.

69. The key points Lord Justice Auld outlined against jury trials in serious and complex frauds are: for jurors to be considered as the defendant's peers, they should have a similar level of commercial experience in the area of the crime; complexities of trials can be difficult to understand; and, in particularly long cases, the jury is unlikely to be truly representative of the community due to the type of jurors who can make themselves available for trials of such length.[441]

70. I regard each of these latter points from the Auld Review to be as compelling now as they were 25 years ago, although I acknowledge that there is research to suggest that jurors do sufficiently understand the complexities of at least some of these trials, for example as Sally Lloyd Bostock outlined in relation to the Jubilee Line trial (although it was the trial length rather than the complexity of the mechanisms involved in the criminality alleged): this trial and research is featured below.[442]

The Role of Juries in Fraud Trials

71. There is ongoing debate as to whether jurors can fully understand the technical detail and complexities of some fraud cases. The way that evidence is presented impacts on the jury's understanding of the facts of the case. Evidence presented to juries is becoming more complex and therefore more time is needed to present it to the jury. Although I recognise the empirical evidence (albeit almost 20 years ago) conducted in relation to the extreme situation that arose in the Jubilee Line case, I remain of the view that it is difficult for the jury to understand or assess the complexity of some of the evidence in these

441 Review of the Criminal Courts of England and Wales (2001), p. 203.

442 Sally Lloyd Bostock, 'The Jubilee Line Jurors: does their experience strengthen the argument for judge-only trial in long and complex fraud cases?' [2007] Crim LR 255–273.

cases in its entirety.[443] There are strong arguments advanced as to why real jury research with sitting jurors may be desirable, but that is beyond the scope of this Review.[444] Those opposed to the idea of removing juries for serious fraud trials suggest measures to focus on improving jury comprehension instead, but I do not believe that this would guarantee a solution to the problem. I am conscious of the fact that there have been too many missed opportunities to adopt radical solutions recommended by previous reform bodies.

72. Juries play a key role in assessing the dishonesty of defendants. There are additional dimensions to this issue of juror comprehension which arise in the context of serious fraud cases. First, it may well be that the jury is left to determine dishonesty without having an understanding of the technical nature of the transactions involved or their regulation. Second, in such cases, jurors may well hear from experts on accountancy or banking etc. That expert evidence may well be highly technical and difficult for many to comprehend. I acknowledge that in many cases the technical expert evidence should be directed to the ultimate issue of dishonest conduct. I also accept that jurors are capable of dealing with the dishonesty issue – in the abstract. However, where the dishonesty alleged relates to particular banking or trading practices that are not commonly understood, there is a risk that jurors would not be well placed to make determinations on whether conduct *in that context was dishonest*.

443 Research conducted after the conclusion of the Jubilee Line trial showed that there no comprehension issues with the facts of the case: 'All the jurors were adamant that the jury had a very good understanding of the evidence, some commenting that it was not all that difficult' (Bostock, ibid).

444 Some of the arguments for further jury research can be found here: Lewis Ross, The curious case of the jury-shaped hole: A plea for real jury research (2023) 27(2) Int'l J Evidence & Proof 107–125; Baroness Carr of Walton-on-the-Hill, Lady Chief Justice, To Know The Law And Observe It Well - Magna Carta and Criminal Justice (Kalisher Lecture, 19 March 2024).

Case Study G: Lengthy fraud trials

Jubilee Line trial

- The case of *R v Rayment and others*, colloquially known as the Jubilee Line trial, is one of the longest running jury trials in British history. The trial began in June 2003 and ran for 21 months. The case was for alleged fraud and corruption regarding contracts for the construction of the Jubilee Line extension undertaken by London Underground Ltd in the 1990s.
- The trial was terminated following a defence application to discharge the jury. The application was successful on the grounds that the jury should not be expected to remember key evidence that had been presented as much as 18 months prior. The prosecution did not seek a re-trial and the defendants were acquitted. The case collapsed and cost the public purse over £25 million.
- The length of the trial was due to a combination of factors, with the three most significant being: 1) the inclusion of count 2 in the indictment; 2) the slow and disjointed court proceedings; and 3) the illness of one of the defendants.
- The impact on jurors' lives was significant. A letter from one juror to the judge outlined: 'We acknowledge the fact that we were told … this could take between 14–18 months. We all accepted this without fully understanding the consequences this would have on our lives. Some of us have suffered financially; all of us are now suffering with our jobs and careers in one way or another.' Most jurors were still facing employment problems five months on from the end of the trial
- Despite the stresses and personal impacts, most jurors, when interviewed after the trial collapse, insisted they had a good understanding and recollection of the facts of the case.

Blue Arrow

- The trial began in February 1991 and ran for 13 months. The trial cost an estimated £40 million (£70 million adjusted for inflation). The case was an alleged agreement to rig the stock market.
- Four high-profile bankers were convicted, but this was overturned a few months later by the Court of Appeal which ruled that the jury could not have reached a fair verdict due to the length of the trial and the complexity of the subject.

Polly Peck theft

- The trial began in January 2012 and ran for seven months. The case accused Asil Nadir of theft of nearly £29 million from Polly Peck International.

Barton and Booth fraud of elderly residents in a care home

- The trial began in May 2017 and ran for 12 months. The case accused Barton and Booth of 25 counts relating to the targeting of wealthy residents at a care home.
- This case clarified the legal test for dishonesty in criminal law.

Sources:
Jubilee Line Case Investigation and Criminal Proceedings (2006).
Sam Francis, 'Did Blue Arrow make bank fraud untriable?', *BBC News* (14 April 2014).
'Asil Nadir jailed for 10 years for Polly Peck thefts', *BBC News* (23 August 2012).
Update: CPS case redefines the legal test for 'dishonesty' in criminal law (CPS, June 2020).

73. Aside from the issue of comprehension, there is the undoubted impact that long fraud trials have on jurors' lives. As I mentioned previously in this chapter, the Jubilee Line trial is a striking example of the prolonged duration of a fraud trial and the impacts that had on jurors' personal lives. I explore this further in Case Study G. Many jurors experienced adverse impacts on their careers, finances and relationships, well beyond what it is reasonable to expect them to be experiencing in performing their civic duty. I do, however, recognise the conclusion from the official review that that specific trial would have been unlikely to have been eligible for trial by judge alone, on the grounds that it would not have fallen within the SFO criteria or the conditions of section 43 of the Criminal Justice Act 2003.[445] There are several other lengthy fraud trials which I outline in Case Study G which may well have qualified for trial by judge alone applying the section 43 criteria. I note that these examples are not all recent, however they do convey the gravity of fraud trials which still rings true today.

74. With these considerations in mind, I will assess two models for juryless trial which could be introduced for serious and complex fraud cases. My primary recommendation is for the second model, namely that serious and complex fraud cases should be tried by a judge alone, but I entirely recognise the merits of the first: the decision as to the way to proceed is for the government.

445 Jubilee Line Case Investigation and Criminal Proceedings (2006).

Model 1: Fraud Panel (Judge with Two Expert Lay Members)

75. In cases of serious and complex fraud, trials could be conducted by an eligible judge of the Crown Court sitting with two qualified lay assessors who are experts in their field. From this point, I will refer to this configuration as a 'Fraud Panel'. I am confident that the current systems of listing allow for such cases to be allocated to a judge of sufficient expertise and training in the subject matter, as many criminal judges have vast experience of commercial and financial issues. The judge would be responsible for all matters of law in the trial before the Panel. The assessors' role would be limited to reaching conclusions on matters of fact. They would play no part in matters such as the admissibility of evidence or the questioning of witnesses. Unlike with trial by jury, there would be a judgment of the court, and I accept that judges may require additional reading and writing time for delivering such judgments.

76. Ancillary provisions would have to deal with the manner in which judgments etc. would be available to interested members of the public or the press. There are already detailed provisions dealing with this in relation to court documents to ensure that the open justice principle is fully respected. Those provisions would need to be amended accordingly.[446]

77. The criteria for the experts sitting on the Panel should be that they have relevant commercial and financial experience and some knowledge of the criminal justice system. The Panel experts should be remunerated appropriately on a fee-paid basis and the MoJ should determine the appropriate fee rate. The MoJ should also be responsible for creating and maintaining a list of suitable expert lay members, but those on the list should not be considered to be statutory judicial office holders. Training for sitting on a Fraud Panel should be provided through the Judicial College. I recognise that more detail is needed on what training and support would be required and what is considered requisite experience. A significant amount of work would be required to select, maintain and allocate assessors, possibly requiring the set-up of a new body to do so. This organisation would have to take responsibility for ensuring diversity of the Panel, to negate impacts of not having a diverse jury present in a serious or complex fraud case.

446 Criminal Practice Directions 2023, ch. 2.

78. The principal benefits of this model have been examined in full in the Roskill Report and in subsequent debates. I need not repeat them other than to note the obvious advantages in terms of time saved and that the impact on two professional (paid) financial assessors carries none of the difficulties faced by jurors in long and complex trials. All concerned should be more confident that the tribunal should have full comprehension of the issues. That applies equally to the defendant; I do not see why a defendant should have any legitimate concern because a tribunal would be better placed to understand the issues. There is the distinct challenge to such a model that it means that the defendant would no longer be tried by their peers. The contrary argument to that is that experienced financial assessors would be much more likely to be understood as peers of someone who is alleged to have engaged in serious and complex fraud.

79. I have no doubt that there would be real-time savings although, without more, it is not possible to quantify the extent of any such saving. I note that the deliberations with two expert lay members and the judge would be likely to take more time than by judge alone due to the deliberations of the Panel, but would, I am sure, be likely to be much faster than jury deliberations. Should the government pursue this model, it may wish to conduct some modelling comparing the deliberations of different panels (e.g. a judge and non-legal members) in the First-tier Tribunal. Regardless, the judge would have the assistance of other professional expertise and be able to direct and lead deliberations more succinctly, with less referring back to evidence required.

80. There would also be other costs to be considered – for example, these would include the creation of a body that would appoint and accredit a pool of suitable financial expert lay members, the training of those assessors, their payment and deployment, and probably other matters of administration. Regarding the fiscal constraints of the government, I acknowledge there would likely be concerns with this recommendation, and I therefore turn to my recommended model – trial by judge alone.

81. I recognise that this model was the preference of Lord Roskill and Lord Justice Auld, and I believe it to be entirely viable as a model and leave it to the government to consider. Many of the judges who conduct this type of trial should have had considerable experience of fraud (and many would have been civil practitioners well used to the complexity of the Commercial Court and the Chancery Division).

Model 2: Judge Alone

82. An alternative option which would mitigate some of the difficulties with the previous model, is that serious and complex fraud trials could be tried by a judge alone. When previously enacted in section 43 of the Criminal Justice Act 2003, the scheme was that these cases should be tried by judge alone where the prosecution applied to a judge of the Crown Court and the judge granted permission for that course to be followed.[447]

83. I have already outlined my recommendation that defendants should have a right to elect trial by judge alone. As I have already argued, there would in addition be circumstances in which the decision as to whether a trial should be by judge alone would be one for the judiciary to take. Serious and complex fraud cases are good examples of the category of case in which judges should be in a position to decide to try cases alone.

Case Study H: New Zealand

- The Criminal Procedure Act 2011, section 102 sets out that 'long and complex' cases can be tried by judge alone. For the court to order a judge-alone trial, the following criteria must be met: the duration of the trial is likely to exceed 20 sitting days; and the defendant's right to a jury trial is outweighed by the likelihood that potential jurors will not be able to perform their duties effectively. The provision applies to any offence that carries a maximum penalty of less than 14 years' imprisonment. The provision does not specifically outline that serious and complex frauds are in scope, but due to the nature of these they make up a significant number of cases in scope.
- Although the Review has been unable to assess the impact of these judge-alone trials, the fact that they have been in legislation since 2011 shows that this model is tried and tested and there is a precedent to adopt a similar approach

Sources:
Criminal Procedure Act 2011 No. 81 (New Zealand Legislation).
With thanks to the Ministry of Justice New Zealand for its submission to this Review.
Criminal Procedure Act 2011 No 81, (New Zealand Legislation).

447 Section 43 of the Criminal Justice Act 2003.

84. The model of judge-only trials for long and complex cases have been successfully adopted in New Zealand, as outlined in Case Study H. I recognise the cultural and legal differences between the regimes but consider that the New Zealand experience shows support for their use in England and Wales.

85. Turning to composition, as with the model discussed above, I am confident trial judges should and would be selected from those with appropriate criminal and commercial experience to ensure they are best placed to deal efficiently and fairly with these cases. I note the extensive experience of those sitting in the Crown Court at Southwark as the leading Crown Court centre in England and Wales for long and complex trials principally involving economic crimes.

86. Long and complex heavy fraud cases comprise about 50% of its trial work and I am aware that this work is intended to move to the new building being constructed by the City of London Corporation where there will be courtrooms both suited for jury trial and without jury facilities. Most frauds do not require a dock (as the use of Chichester Rents for fraud trials 30 years ago demonstrated). This should allow more flexible use of the courts with docks and jury rooms generally. This court would be an ideal venue to pilot this recommendation if that is the preferred course.

87. A great advantage of this option is the further time-savings that would be made. A judge would deal with the entire process; make the decisions on admissibility; manage the trial and submissions; and have had full opportunity to see the evidence in advance of the trial. All this would be within their expertise in the area of law. It would be quicker than the judge working with two expert lay members who would require additional deliberation time, although I recognise that it would put further pressure on the judge and require time to prepare and then write a judgment (although no more than experienced by judges trying this type of case in the specialist Technology and Construction Courts).

Offences

88. Returning to the definition of 'serious and complex fraud', it must be recognised that it is not a term of art and there are many different interpretations which could be applied to the term. For my part, I have noted the suggestion that juries should still be used for trials which are decided based on determining the defendant's dishonesty in a fraud case. Although the argument that dishonesty is a concept

which is capable of being understood and applied by juries, and is therefore an important argument for the use of juries in fraud trials, I am not persuaded that it is conclusive of the matter.[448] The argument advanced by Lord Justice Auld still rings true: 'whilst the central issue in many fraud cases may be one of dishonesty, an ability to understand and analyse conflicting highly complex and/or technical evidence is vital for their determination of that issue'.[449]

89. The threshold to determine what constitutes a serious and complex fraud could be based on the definition from the Fraud Trials Committee. This would involve frauds where the dishonesty is not immediately obvious, the area of business lies outside the understanding of the general public and the defendant is an expert in their field.[450] That test may, however, be too narrow given the range of serious economic crimes that do not turn on dishonesty at all: e.g. with bribery and corruption offences. An alternative is to use a test based on economic crimes which the judge determines to be serious or complex in line with Schedule 11 to the Economic Crime and Corporate Transparency Act 2023. Whatever definition is adopted, it needs to be expansive enough to deal with internet-enabled crime and it must be recognised that the ways in which such criminals seek to exploit through fraud and like activities is only likely to increase further as advances in technology continue.

90. I also note the current mechanism by which cases are sent from the magistrates' court to the Crown Court under section 51B of the Crime and Disorder Act 1998, and the definitions provided for a serious and complex trial in the provisions of the Criminal Justice Act 1987 and/or the Criminal Procedure and Investigations Act 1996.[451] These provisions deal with a category of fraud cases 'of such seriousness or complexity' that would serve as a possible basis for identifying cases in scope, and certainly, with appropriate amendment, could deal with the efficient procedure for such cases to be expedited from the magistrates' court to the Crown Court and ultimately for trial by judge alone where appropriate.

448 Emily Finch, 'The elephant in the (jury) room: understanding of different approaches to dishonesty' [2021] Crim LR 513–531.

449 Review of the Criminal Courts of England and Wales (2001), p. 210.

450 I acknowledge, however, that some challenges have been raised to this definition. For example, the official review into the Jubilee Line trial (discussed above) speculated that the trial would have been unlikely to be eligible for trial by judge alone.

451 Section 51B of the Crime and Disorder Act 1998.

91. I am entirely satisfied that it is possible to construct a definition 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. I have considered whether the availability of juryless trial should be limited to offences prosecuted by the SFO: I believe, however, that this approach would be too prescriptive and risks being both under- and over-inclusive.

92. Before leaving this analysis, having made observations about the impact on juries, I recognise the fact that empirical evidence around the work of serving jurors is limited due to concerns of violating section 8 of the Contempt of Court Act 1981. There is a very substantial case for a broader approach to real jury research and I echo the comments of the Lady Chief Justice in her Kalisher lecture that more research and a wider range of researchers are needed to test and challenge the system.[452] In research by Lewis Ross, he went further to say that the indirect methods used to study juries to date (such as mock juries, attitude surveys and post-trial surveys) allow us to investigate only a limited number of issues, and there is a valid question as to the validity of results and conclusions drawn from these methods.[453]

Process for Allocation

93. I recommend that the procedural provisions applicable under the Criminal Justice Act 1987 for serious and complex fraud (with the definition amended to cover the wider aspects of serious complex fraud to which I have referred) should continue to apply.

94. Cases that are sent to the Crown Court under section 51B of the Crime and Disorder Act 1998 should then be dealt with in the Crown Court by way of a preparatory hearing. Other cases that are sent to the Crown Court or in which the defendant has elected Crown Court trial will be dealt with at a PTPH in the Crown Court (see paragraph 48 above). At that PTPH hearing, the judge will, after hearing submissions, conclude that the trial is one necessitating a preparatory hearing. I agree with Lord Justice Auld that the guiding principle for

452 To Know The Law And Observe It Well - Magna Carta and Criminal Justice (2024).

453 Lewis Ross, The curious case of the jury-shaped hole: A plea for real jury research (2023) 27(2) Int'l J Evidence & Proof 107–125 at 123.

the judge's decision should be whether the mode of trial selected is within 'the interests of justice'.[454]

95. At that hearing, either party (or the judge of their own motion) should be able to raise the issue of a trial without a jury. The judge will decide whether to allocate the case to be tried by a jury or by judge alone. That decision will be capable of interlocutory appeal[455] in accordance with the provisions on preparatory hearings under the Criminal Justice Act 1987 and the Criminal Procedure and Investigations Act 1996.

96. I agree with Lord Justice Auld that the guiding principle for the judge's decision should be whether the mode of trial selected is within 'the interests of justice'.[456]

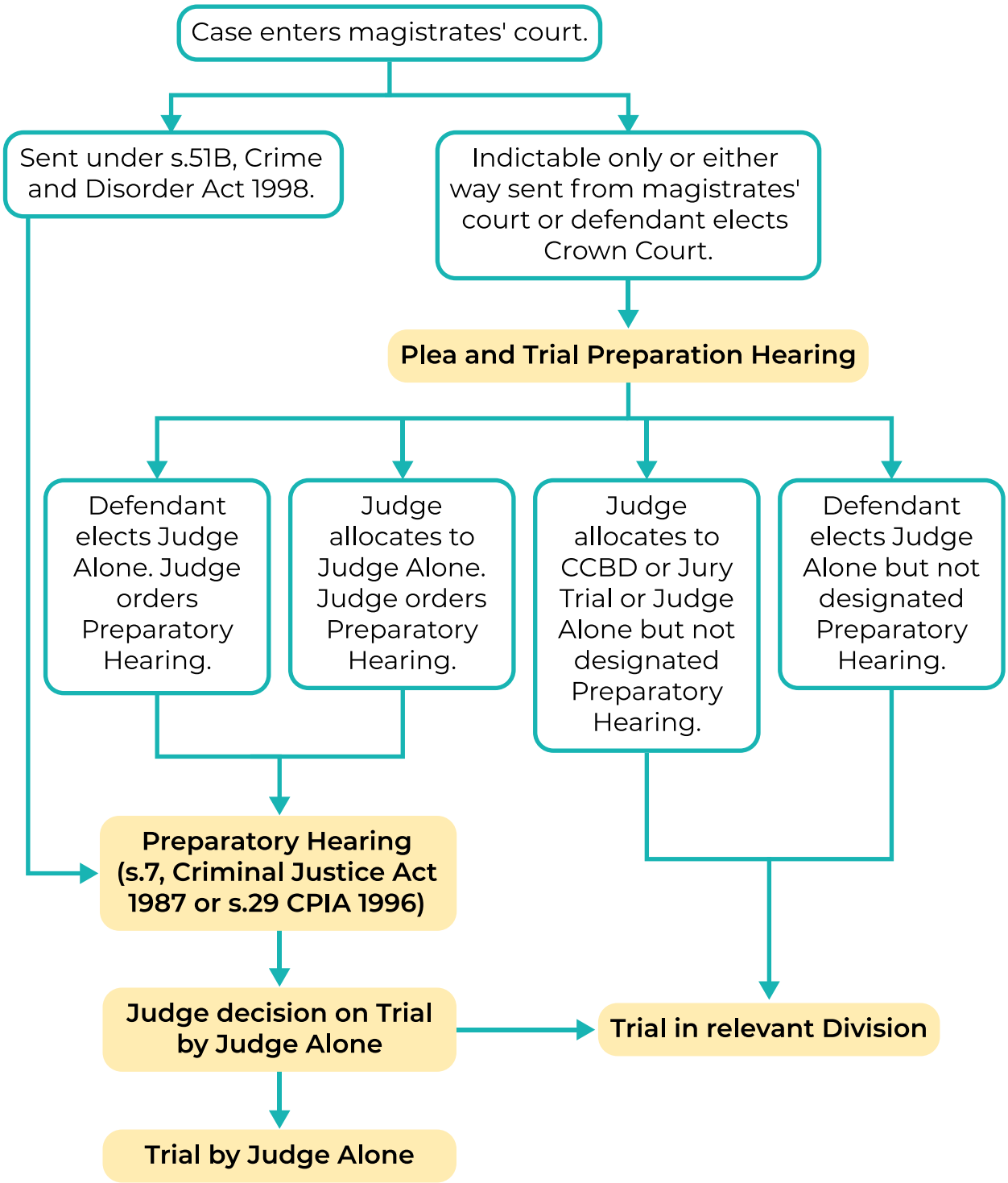
97. I anticipate that the flow of serious fraud cases through the Crown Court system will look as shown in Flowchart 9.1.

454 Review of the Criminal Courts of England and Wales (2001), p. 211.

455 Section 9(11) of the Criminal Justice Act 1987 would require amendment to allow an appeal against such a decision with the leave of the judge or the Court of Appeal. Given that the power to review that decision would then exist, I see no additional value of requiring the approval of the Lady Chief Justice or a judge nominated by her (reflecting s. 43(4) of the Criminal Justice Act 2003).

456 Review of the Criminal Courts of England and Wales (2001), p. 211.

Flowchart 9.1 Flow of serious fraud cases through the Crown Court system



98. In deciding within the Crown Court allocation system whether trial by judge alone is appropriate, the judge would have to have regard to relevant factors which could be published in a new Criminal Practice Direction, and these would include matters such as the likely duration of the trial, the volume and complexity of the evidence etc. The Criminal Practice Direction would also have to make clear provision for the situation where there are multiple offences on the indictment and which in isolation or combination should render a trial eligible to be tried by judge alone. I do not suggest restricting those rights of appeal at a preparatory hearing to exclude from the ambit of matters that might be appealed.

Recommendation 44: I recommend that 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.

Impacts

99. Legislative provisions on jury waiver and judicial direction for trial by judge alone could be brought into force sooner than a CCBD as they would not require additional recruitment processes although primary legislation would be necessary. The timings for such legislation are the same as those set out in Chapter 5 (The Magistrates' Court Process). Practice Directions which limit the use of such powers to certain offence types should be issued consecutively, and I would estimate these would be introduced at any time to complement the new legislation. The ability to reconsider whether cases presently in the open caseload in the Crown Court should be reallocated should be identical to that visualised for the CCBD to which I refer in Chapter 8 (Crown Court Structure).

100. I envisage that trials without a jury would make for a more practical and effective use of the court estate. Trial by judge alone removes the need for dedicated space for juries in the courtroom and jury deliberation rooms. Trials should take place in the magistrates' or Crown Court estate where recording facilities are available (and not all such cases would require a secure dock). This should allow the best use of courtrooms that are currently under-utilised. I will consider facilitating the magistrates' court estate for Crown Court hearings further in the Efficiency Review.

101. Trials without a jury can ensure better timeliness of proceedings and would be more cost effective. As outlined in Chapter 1 (Introduction), given the time constraints under which this Review has operated, and the challenges that come with assuming defendant and judge decision-making behaviour, it has not been possible to complete specified data analysis and modelling on jury waiver and trial by judge alone. I do, however, follow the same rationale here for time and cost-savings per sitting day associated with such trials as in the CCBD, although I emphasise that the financial benefits are not a driver for this recommendation. More focus should be given to the time to be saved for trials without a jury as I have set out in data analysis and modelling on the CCBD; a consideration of the time saved in one-off trials of exceptional length may be too fact-specific. Whatever time is saved is, however, critical to ensure swifter throughput of cases and, therefore, more timely access to justice for other cases waiting in the queue.

Expanding Provision for Trials without a Jury by Judicial Direction on a Case-by-Case Basis

102. Putting serious fraud to one side, judges already have the power to direct trial by judge alone in two instances following a prosecution application. These are before a trial has commenced where there is a danger of jury tampering, and during trial, when the jury has been discharged due to jury tampering.[457] The phrase 'jury tampering' is intended to cover a range of circumstances in which the jury's independence is, may be or may appear to be compromised, including threats, intimidation or bribery.[458] To date, there has only been one instance of a trial commencing with a judge alone due to a danger of jury tampering.[459] There have also been a limited number of cases in which a judge has found the statutory conditions to be satisfied such that the trial has had to continue without a jury.[460] Whilst such powers are rarely exercised, as they are conditional on very specific circumstances, these provisions are a necessary protection to ensure the proper delivery of justice. I wholeheartedly endorse the continuation of these provisions.

457 Sections 44 to 46 of the Criminal Justice Act 2003.

458 Sections 44 to 46 of the Criminal Justice Act 2003: Explanatory Notes, para. 252.

459 See the judgments in *R v Twomey and Others* [2009] EWCA Crim 1035; *R v Twomey and Others* (No. 2) [2011] EWCA Crim 8; *Twomey, Cameron and Guthrie v The United Kingdom* [2013] ECHR (67318/09 and 22226/12).

460 *McManaman v R* [2016] EWCA Crim 3.

103. The question I now consider is whether the powers for a judge to direct trial by judge alone should be expanded to allow judges to direct trial in a range of other circumstances and, if so, what those might be. That involves analysis of whether there are sound and principled reasons for doing so, including the potential to improve timeliness of trials and whether, in terms of efficiency, it would ensure the most effective use of court resources. Given the limited use of existing judicial powers, some might consider that the introduction of any further provisions would be unlikely to be of significant impact. However, it can be argued that the limited use of existing powers is more attributable to the rare circumstances in which jury tampering is likely to or does occur. I set out some of the circumstances in which trial by judge alone might be appropriate and conclude by recommending that a judge should be allowed to direct trial by judge alone in cases that depend wholly or mainly on expert evidence of certain matters beyond the common understanding of a jury.

104. Some would argue that trial by jury is fairer than by judge alone. As part of that argument, there is an assumption that judge-alone trials might lead to higher conviction rates and tougher sentences. It is difficult to substantiate this claim. There are so few trials by judge alone in the Crown Court in England and Wales that no meaningful comparison can be made. Similarly, it is difficult to rely on data from the judge-alone courts in Northern Ireland where the trials in the 'Diplock courts' were not by defendant election and must be seen in the particular context of the sectarian conflicts and the types of offence that would be tried in that forum.

105. A comparison between either way offences that are retained and tried in the magistrates' court with those for the same either way offences that are tried in the Crown Court is far from exact. Although the offence is the same, the types of allegations for that offence that are tried in the Crown Court would be more serious and typically more complex and neither the facts nor the witnesses and their evidence will be the same. The Crown Court cases are also likely to be ones where the defendant might perceive that they have a stronger defence and are therefore keen to maximise the opportunity for a public airing of that claim. Crucially, the comparison is flawed because a trial in the magistrates' court is not usually by a professional judge (excluding those heard by a DJMC) as it would be with a trial by judge alone in the Crown Court.

106. A further argument against more frequent judge-alone trials is that judges may become case hardened and less likely to accept claims by the defence than a jury might have done. Again, I am not aware of sound evidence to support that in the Crown Court.[461] Basing any conclusions on a comparison of cases currently tried by judge alone in the Crown Court would be undesirable when the sample size is so small.

107. Jury welfare in certain types of cases is critical to the effective running of a jury system in which the public are willing to participate. In the main, however, existing provisions appear sufficient to address case-specific welfare concerns, but I easily visualise that the protection of the welfare of jurors may well render trial by judge alone appropriate. I do not underestimate that trials can be mentally arduous for jurors, whether that be due to personal resonation with facts of the case or otherwise, but I am also conscious that they approach their task with diligence. It seems the court already has the discretion to discharge jurors (including in circumstances where that is necessary on welfare grounds).[462] On that basis, it seems to me unnecessary to recommend reform in the form of judge-alone trials based only on subjective welfare concerns. Whilst I do endorse consideration of other initiatives to enhance additional support for jurors where needed, I do not consider there to be a sufficient foundation for this to be a specific provision to allow trial by judge alone.[463]

108. As noted above, the growing reliance on often complex and technical expert evidence means it is increasingly difficult to be confident that jurors understand the nature of the evidence before them, which may extend the length of the trial. Forensic science is developing, with a significant proportion of all Crown Court cases now including presentation of one or more types of forensic evidence. There is anecdotal evidence that such material may well be challenging for jurors to understand. Aside from the risks of injustice if verdicts are based on evidence that has not been understood, complex expert evidence risks delaying proceedings due to the additional time spent explaining

461 That was always the argument in relation to contested police evidence of admission but given the introduction of tape-recorded interviews by PACE 1984, the availability of evidence from body-worn videos and the greater reliance on circumstantial evidence (rather than the pure credibility of police officers), this argument has less validity.

462 See section 8.4 of the Criminal Practice Directions 2023.

463 I note with interest the HMCTS pilot in 15 courts that offer six free counselling sessions and a telephone helpline. Whilst additional support for juries is not within my Terms of Reference, interventions such as these are necessary enablers for an effective jury system.

such evidence in terms comprehensible to the perceived level of the least scientifically able member of the jury and/or the additional time navigating differing interpretation among jurors. I outline empirical evidence (albeit dated) elsewhere in this chapter which points to jurors being perfectly capable of understanding complex evidence (paragraph 71). Putting to one side whether there is sound evidence of juror comprehension, I am sure that more can be done to assist with complex topics. I firmly support, as I did in my 2015 Review, some form of 'primer' documents to assist jurors in their understanding of scientific evidence.[464] However, I believe that this might not go far enough in some cases to ensure timely justice that can support the reduction of the open caseload. Many of these cases relate to serious and complex fraud but they are not necessarily limited to that type of case.

109. Where an allegation relies heavily on a sound understanding of highly technical expert opinions (in whatever field it might arise), there is a case for trial by judge alone. In principle, it is essential to fairness that decisions about guilt in a criminal trial should be made by those who have a clear understanding of the evidence. That does not mean that all jurors must become, say, banking experts in a case involving alleged mortgage fraud. What it does require is that expert opinions on very specialist topics beyond the jurors' common understanding are presented in such a manner that they can be understood and applied to legal concepts such as dishonesty, which might not be the case.

110. In some cases, the time taken and cost of experts necessary to present the material in such a way that the judge can be confident the jury has understood might be substantial. I expect the trial judge is best placed to assess whether a jury is likely to be capable of understanding evidence and how much expert opinion evidence would be required. By way of example, there may be a prosecution for offences turning on technical environmental law, regulations or intellectual property concepts which would take substantial time to explain to a jury, but which should be readily grasped by an appropriately selected judge of the Crown Court, which would include a High Court Judge. This is no more than an extension of the provision for serious fraud to be tried by judge alone to other cases which have comparable complexity albeit in different fields.

464 The work of the Royal Society in this regard has been invaluable.

111. Based on my engagement with the judiciary during this Review, I anticipate that some judges may be apprehensive to take on a role as fact finder where so much turns on complex evidence. However, for several reasons I am unconvinced that these are significant concerns. First, I consider that it will rarely be invoked; in most cases, it will be unlikely that there would be scientific expert evidence of such complexity. This includes serious cases unlikely to generate volumes of complex expert material such as serious sexual offences or some terror-related offences. I also consider that there should be an exception to the judge's discretion where a case does involve expert evidence but where a jury trial is overwhelmingly in the public interest (for example, homicide, even in cases where there is complex evidence such as in cases of 'shaken baby syndrome').

112. There may also be a reasonable public expectation that certain types of other allegations ought always to be heard by a jury: the government should consider whether certain offences ought to be exempted from this scheme. The powers for a judge to direct trial by judge alone in these circumstances could therefore be limited by statute. It seems sensible, however, that even in cases not involving serious fraud, a judge of the Crown Court should have the power to order a trial by judge alone where it is determined that the volume or complexity of expert evidence in the case justifies that course, following the procedure set out in section 29 of the Criminal Procedure and Investigations Act 1996. The judge would have regard to the submissions of all parties and the interests of the public on the appropriateness of this procedure.

Recommendation 45: I recommend that in cases of anticipated exceptional length or complexity (within section 29 of the Criminal Procedure and Investigation Act 1996), a judge should 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.

Conclusion

113. Jury trial is the route by which the public is able to participate in the criminal justice system. However, it does not always represent the most proportionate mode of trial. The increasing length of jury trials is contributing to the open caseload and poor timeliness in the system. This mode of trial is also not necessarily the most proportionate use of court and jurors' time, given the small number of cases considered by juries overall. I have placed particular focus on the legislative context in relation to serious and complex fraud, and how these cases are particularly time-consuming and challenging for juries to consider.

114. Greater use of trial by judge alone would ensure trials are heard in a forum most proportionate to the alleged offence(s). Trial by judge alone should be focused on specific circumstances: a) when a defendant elects to be tried by judge alone, subject to the trial judge's consent; b) by judge's choice in limited circumstances, having regard to the need for timeliness and the exceptional anticipated length or complexity of the case; and c) for serious and complex fraud cases.

115. In line with my Terms of Reference, my recommendations should reduce the duration of trials in the Crown Court, leading to a faster throughput of cases and, subsequently, quicker access to justice via the courts. This is of particular importance for serious and complex fraud trials which place more significant burdens on court resources and jurors' time. Expanding the eligibility for trials by judge alone ensures a more proportionate tribunal for the resolution of the allegations where the mode of trial is better aligned with the nature of the evidence and complexity of the case. The range of offences to which this is applicable is limited and should depend on careful consideration by judges with vast experience, and therefore the most appropriate decision-makers in those instances.

116. Defendants would have a further opportunity to make representations on their mode of trial by giving them the option to waive a jury trial in favour of trial by judge alone. This would balance the defendant's rights and participation with the discretion of the judiciary, ensuring the trial process remains fair and accessible. It would also ensure, in those more complex cases, that evidence is understood and applied correctly, ensuring fair outcomes and decision-making for all parties involved.

117. I have deliberately set out a stepped approach to the consideration of trials without a jury in cases of complexity. The first is to consider the position of serious and complex fraud with its legislative history of permitting such trials (albeit not implemented). The second is to expand the category of cases permitted to be conducted by judge alone to other cases of such complexity or length (albeit with exceptions) that it would be unduly onerous and burdensome to subject a jury to a trial anticipated to last many months if not longer. These decisions could be taken sequentially so that an assessment can be made in relation to the impact in serious and complex fraud cases before implementing any extension. If the wider expansion of this power is to be considered, the definition of serious and complex fraud would become irrelevant because those cases could fall within the wider powers available in cases of complexity or length as then defined.

Annex A: Glossary

Acquittal

Where a person has been found not guilty of the charges against them. This occurs when the prosecution fails to prove the case beyond a reasonable doubt, leading to the defendant being cleared of all legal responsibility for the alleged crime.

Allocation

'Allocation' refers to the process where the magistrates' court must decide whether to send the case to the Crown Court for trial or to keep it in the magistrates' court.

Bad character

Refers to evidence of misconduct and/or evidence of a disposition towards misconduct.

By way of case stated

This is a specific type of appeal where a party appeals a decision of a lower court (a magistrates' court or Crown Court) to the High Court. It requires the parties to agree the facts and arguments and to identify a point of law for resolution. The High Court must agree the formulation of the point of law and can return it to the parties until satisfied that the point is properly identified.

Case management system

This is an IT system for case management which is used by the CPS and which receives electronic case material through links with police systems.

Case progression

The process of moving a legal case forwards, from its initial stages (investigation, filing) through to a resolution, such as a trial. It involves managing the case efficiently and effectively, ensuring timely completion of necessary steps and keeping all parties informed, including the court, lawyers and those involved in the case. Many courts engage Case Progression Officers whose responsibilities include ascertaining from the parties their readiness for trial.

Charging decision

In a criminal case, where there is sufficient evidence to provide a realistic prospect of conviction against each suspect on each charge, and it is in the public interest to prosecute, a decision to charge is made. Depending on the type and seriousness of the offence committed, this decision is made by the police or the CPS.

Code for Crown Prosecutors

The Code for Crown Prosecutors is issued by the Director of Public Prosecutions, the head of the CPS, under section 10 of the Prosecution of Offences Act 1985. The Code gives guidance to prosecutors on the general principles to be applied when making decisions about prosecutions and is primarily for prosecutors in the CPS.

Common Platform

The Common Platform is an IT system which allows the police, judiciary, solicitors, barristers and criminal justice agencies to access and edit case information.

Contested case

A case where the defendant pleads not guilty, or declines to enter a plea, thereby requiring the case to go to trial.

Conviction

Refers to a legal judgment where a person is found guilty of a crime. This means the court has determined, beyond a reasonable doubt, that the accused committed the offence.

Court orders/directions

An order or direction made by the court at a case progression hearing requiring the prosecution/defence to comply with a timetable of preparatory work for a trial. These orders are often made under the Criminal Procedure Rules.

Cracked trial

A trial that does not go ahead on the day as an outcome is reached and so does not need to be rescheduled. This occurs, for example, when an acceptable plea is offered by the defendant or the prosecution offers no evidence against the defendant (i.e. drops the charges).

Criminal Procedure Rules (Crim PR)

Criminal Procedure Rules provide detailed guidance on the way all aspects of a criminal case are managed as it progresses through the criminal courts in England and Wales. The rules (which are drawn up by a committee of judges and other agencies involved in criminal justice) apply in all magistrates' courts, the Crown Court and the Court of Appeal (Criminal Division).

Custody time limit (CTL)

The statutory time limit for keeping a defendant in custody awaiting trial. The time limit may be extended by the court in certain circumstances.

DARTS

In a legal context, 'DARTS' stands for Digital Audio Recording Transcription and Storage, a system used in the Crown Court for recording and transcribing court proceedings. This system replaced traditional stenographers in recording court proceeding.

Discontinuance

The formal abandonment of a case by the CPS through written notice (under section 23 of the Prosecution of Offences Act 1985).

Either way offence

An either way offence is an offence that can be heard either in a magistrates' court or Crown Court. It is more serious than a summary case and includes offences such as dangerous driving, theft and handling stolen goods.

Hearsay

Hearsay evidence can be defined in simple terms as a representation made by a person otherwise than in oral evidence during court proceedings.

Indictable only

Indictable only offences are the most serious offences, such as murder and rape, which must be heard at the Crown Court.

Indictment

The indictment is the document containing the charges against the defendant for trial in the Crown Court.

Ineffective trial

A trial that does not go ahead on the scheduled trial date and a further listing is required. This can be due to action or inaction by one or more of the prosecution, the defence or the court.

Independent Sexual/Domestic Violence Adviser (ISVA/IDVA)

A professional who provide specialist support to individuals who have experienced sexual/domestic violence, regardless of when the incident occurred.

Jury waiver

The voluntary decision by a party in a legal case to forgo their right to a jury trial and instead have the case decided solely by a judge, which is known as a bench trial.

Leave to appeal

'Leave to appeal' means permission from a court to pursue an appeal. This requirement arises when there is no automatic right to appeal.

Legal adviser

A lawyer who advises on legal points, practice and procedure in the magistrates' court.

Listings

The schedule of cases due for hearing in a court. The listing of cases is a judicial act and is mainly organised with the authority of the senior judge of each court through an official of His Majesty's Courts and Tribunal Service (HMCTS) known as the Listing Officer.

Mode of trial (also known as Allocation)

The process of determining whether a criminal case will be tried in the magistrates' court or the Crown Court in England and Wales. This decision is made after a defendant enters a plea for an either way offence, which is an offence that can be tried in either court.

Nightingale courts

Additional temporary courts created in England and Wales to support recovery following the COVID-19 restrictions and suspension of jury trials.

Open caseload

The open caseload refers to all open cases. An open case is a case where any defendant in a case has any offence without a final result recorded.

Pages of Prosecution Evidence (PPE)

Documents that are formally served in evidence – to determine litigators' fees. This can include digital evidence.

Part-time judge

A part-time judge is a judicial officer who work less than a full-time equivalent on a fee-paid basis. They can be found in any court but, in the context of the criminal jurisdiction in the magistrates' court (as Deputy District Judge (Magistrates' courts)) or the Crown Court (as Recorders). There are also a number of salaried part time judges.

Plea and Trial Preparation Hearing (PTPH)

A plea and trial preparation hearing takes place in every case in the Crown Court and is often the first hearing after the magistrates have sent the case to the Crown Court or the defendant has elected Crown Court trial. Its purpose is twofold: to take a plea from the defendant, and to ensure that all necessary steps are taken in preparation for trial or sentence and that sufficient information has been provided for a trial date or sentencing hearing to be arranged.

Probation Service

The Probation Service is a statutory criminal justice service that supervises offenders who are serving community sentences or those who have been released into the community from prison.

Reclassification of offences

Refers to the process of changing the offences that are triable either way to summary only offences that can be tried in the magistrates' court only.

Recorder

A part-time judge in England and Wales. Recorders typically preside over cases in the Crown Court and sometimes in the County Court, usually (but not invariably) handling less complex or serious matters.

Remand

Remand refers to being held in prison until the next hearing (remanded in custody) or released with or without specific conditions (remanded on conditional or unconditional bail).

Restorative justice

A mechanism for providing the opportunity for those harmed by a crime and the person responsible for causing the harm to share how the crime has affected them.

Right to elect

This refers to the ability of the defendant facing charges for an either way offence to insist on a trial by jury in the Crown Court, notwithstanding that the magistrates' court has determined that the charge is suitable for summary trial.

Rule of law

The principle that all institutions, individuals and governments are subject to and accountable to laws that are fairly applied and enforced.

Salaried judge

A salaried judge is generally a full-time judge (although there can be salaried part-time judges). Since 1995, such judges have been appointed to preside over cases in courts or tribunals by the monarch (or, in some cases, the Lord Chancellor) following a recommendation by the independent Judicial Appointments Commission.

Sentencing Council

The Sentencing Council for England and Wales promotes consistency in sentencing, whilst maintaining the independence of the judiciary. The Council was established by the Coroners and Justice Act 2009. It produces guidelines on sentencing for the judiciary and aims to increase public understanding of sentencing.

Single Justice Procedure (SJP)

A legal process in England and Wales that allows summary, non-imprisonable, victimless offences to be dealt with by a single magistrate, on paper, without a prosecutor or defendant present. Defendants submit a plea online or by letter. However, the defendant retains the right to request to have their case heard in a full magistrates' court hearing in open court if they wish.

Sitting day

A day when a court is in session, meaning judges or magistrates are actively hearing cases. The number of sitting days allocated each year helps determine how many cases can be processed within the judicial system.

Special measures

A range of measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. These include giving evidence though a live TV link, screens around the witness box and intermediaries.

Statutory framework

A set of legally binding rules and regulations established by primary or subordinate legislation or a legislative body to determine specific areas of activity or service provision.

Submission

A written or oral application or argument submitted to the court for determination.

Summary offence

This is a less serious offence — such as most motoring, minor public order and assault offences – which can only be dealt with in the magistrates' court.

Unrepresented defendant

An individual, company or organisation with no legal representation from a solicitor or barrister at trial.

Unused material

Material collected by the police during an investigation but which is not being used as evidence in any prosecution. The prosecutor must consider whether or not to disclose it to the defence.

Acronyms and Abbreviations

ACSL
Average custodial sentence length

ADR
Adjusted Disposal Rate

AGFS
Advocates' Graduated Fee Scheme

AI
Artificial intelligence

CACD
Court of Appeal (Criminal Division)

CBA
Criminal Bar Association

CCBD
Crown Court Bench Division

CCIG
Crown Court Improvement Group

CILEX
Chartered Institute of Legal Executives

CLAAB
Criminal Legal Aid Advisory Board

CLAIR
Independent Review of Criminal Legal Aid

CLSA
Criminal Law Solicitors' Association

COPFS
Crown Office and Procurator Fiscal Service

CPS
Crown Prosecution Service

Crim PR
Criminal Procedure Rules

CTL
Custody Time Limit

DCO
Defendant's Costs Order

DG6
Director's Guidance on Charging

DHSC
Department of Health and Social Care

DJMC
District Judge (Magistrates' courts)

DPP
Director of Public Prosecutions

DPS
Deferred Prosecution Scheme

ECHR
European Convention on Human Rights

EDI
Equality, diversity and inclusion

FPN
Fixed Penalty Notices

GCHQ
Government Communications Headquarters

HMCPSI
His Majesty's Crown Prosecution Service Inspectorate

HMCTS
His Majesty's Courts and Tribunals Service

HMICFRS
His Majesty's Inspectorate of Constabulary and Fire & Rescue Service

HMPPS
His Majesty's Prison and Probation Service

IFS
Institute for Fiscal Studies

IOPC
Independent Office for Police Conduct

JAC
Judicial Appointment Commission

LAA
Legal Aid Agency

LCJB
Local Criminal Justice Board

LGFS
Litigators Graduated Fees Scheme

MCA 1980
Magistrates' Courts Act 1980

MoJ
Ministry of Justice

NFA
No further action

NPCC
National Police Chiefs' Council

OOCR
Out of Court Resolution

PACE 1984
Police and Criminal Evidence Act 1984

PCA 2017
Policing and Crime Act 2017

PCC
Police and Crime Commissioner

PECS
Prisoner Escort and Custody Services

PNC
Police National Computer

PND
Penalty Notice for Disorder

POM
Prison offender manager

PPE
Pages of Prosecution Evidence

PTPH
Plea and Trial Preparation Hearing

RRTE
Restriction of the Right to Elect

RUI
Release under investigation

SFO
Serious Fraud Office

SI
Statutory Instrument

SJP
Single Justice Procedure

UD
Unrepresented defendant

Annex B: Terms of Reference

Context

The Crown Court caseload has risen substantially over recent years for complex reasons including the COVID pandemic and an increase in the number of cases coming before the courts. The scale of cases entering the courts is now so great that, even with the Crown Court sitting at a historically high level, this would not be enough to make meaningful progress on reducing the outstanding caseload and bring down waiting times. Doing so will require bold thinking on the most appropriate and proportionate ways of dealing with cases before the courts, as well as increases in the efficiency of the criminal courts.

Some of these issues have been considered previously, both in Lord Justice Auld's 2001 review of the criminal courts and Sir Brian Leveson's 2015 report Efficiency in Criminal Proceedings. Most recommendations from the latter were implemented by 2016, but in light of increasing caseloads and the changed context since the pandemic, it is right that these issues are examined afresh.

The Lord Chancellor has therefore commissioned an independent review of the criminal courts which will consider the merits of longer-term reform and, with the agreement of the Lady Chief Justice, review the efficiency and timeliness of processes (including those of partner agencies) in cases through charge to conviction/acquittal.

Purpose

The purpose of this review is to produce options and recommendations for: a) how the criminal courts could be reformed to ensure cases are dealt with proportionately, in light of the current pressures on the Crown Court; and b) how they could operate as efficiently as possible. This should include consideration of the processes of partner agencies where they impact the criminal courts. The review should lead to a more efficient criminal court system and improved timeliness for victims, witnesses and defendants, without jeopardising the requirement for a fair trial for all involved.

Scope

The review should consider:

a. Longer-term options for criminal court reform, with the aim of reducing demand on the Crown Court by retaining more cases in the lower courts. These could include:
   i. The reclassification of offences from triable either way to summary only.
   ii. Consideration of magistrates' sentencing powers.
   iii. The introduction of an Intermediate Court.
   iv. Any other structural changes to the courts or changes to mode of trial that will ensure the most proportionate use of resources.

In relation to these reform options the review should consider:

   i. The impacts any changes could have on how demand flows through the criminal courts.
   ii. The potential impacts of any structural changes on the fairness of proceedings, particularly the impact on court users such as witnesses and defendants, and how these could be mitigated where necessary.
   iii. The necessary enabling processes to ensure the most effective implementation of the options, for example the allocations process.
   iv. The implications for appeal routes of the various options.
   v. Necessary changes to thresholds and mode of trial within relevant offence types.
   vi. The sequencing of any changes – for example, whether they should be brought in via a phased approach.

b. The efficiency and timeliness of processes through charge to conviction/acquittal. These should include:
   i. Consideration of how processes through charge to conviction/acquittal could be improved to maximise efficiency. This includes looking at the processes of the courts but also those of partner agencies in the criminal justice system which affect the efficiency of the criminal courts.
   ii. Consideration of how effectively previous recommendations – including those contained within the 2015 review Efficiency in

Criminal Proceedings – have been implemented and if more could be done for these successfully to increase efficiency within the criminal courts.

iii. Consideration of previous recommendations within the current context of challenges facing the criminal courts, and how these might be updated or built upon.

iv. Consideration of how new technologies, including Artificial Intelligence, could be used to improve the criminal courts.

In addition to the above, the Review should make any other recommendations to tackle the outstanding caseload that emerge as a result of reviewing the options and evidence. The review should consider what can be learned from best practice in other jurisdictions and international comparators.

The review should not consider wider cross-system efficiencies where they do not relate to the efficiency of the courts. Although, as outlined above, the review will consider processes of partner agencies which affect the efficiency of the criminal courts.

It is important that this review complements other work that is currently ongoing which aims to improve the criminal courts. For example, the work of the Criminal Courts Improvement Group will continue, focusing on short-term, operational improvements that can continue to be made whilst the independent review is underway.

As part of the review, relevant partners across the criminal justice system will be consulted and engaged to ensure any subsequent recommendations are both operationally viable and consider other ongoing or planned work to improve efficiency.

The review will respect the different roles and responsibilities of the executive and the independent judiciary in relation to the criminal courts.

The options and recommendations provided should take account of the likely operational and financial context at the time that they may be considered and implemented.

Annex C: Acknowledgements

I would like to thank the following people, in each case listed in alphabetical order, for their meaningful contributions over the course of this Review, for their written submissions and for their time meeting with me and my team.

Ministers:

- Rt Hon. Yvette Cooper MP, Secretary of State for the Home Office
- Rt Hon. Lord Hermer KC, Attorney General
- Rt Hon. David Lammy MP, Secretary of State for Foreign, Commonwealth and Development Office
- Rt Hon. Shabana Mahmood MP, Lord Chancellor and Secretary of State for Justice
- Lord Ponsonby of Shulbrede, Parliamentary Under Secretary of State for Justice
- Rt Hon. Lucy Rigby KC MP, Solicitor General
- Sarah Sackman KC MP, Minister of State for Courts and Legal Services
- Rt Hon. Sir Keir Starmer KCB KC MP, Prime Minister of the United Kingdom
- Rt Hon. Lord Timpson OBE, Minister of State for Prisons, Probation and Reducing Reoffending

Individuals:

- Professor Aliverti, University of Warwick
- Professor Raymond Arthur, Northumbria University
- Catherine Atkinson MP
- Richard Atkinson, President, The Law Society of England and Wales
- Josh Babarinde MP
- Dr Miranda Bevan, King's College London
- Rt Hon. Lord David Blunkett
- Mary Bosworth, University of Oxford

- Rt Hon. Sir Robert Buckland KBE KC
- Rt Hon. Lord Ian Burnett of Maldon
- Dr Bernadette Butler, Royal College of Physicians of London
- Lorna Cameron, University of Lincoln
- Dr Steven Cammiss, University of Birmingham
- Rt Hon. Lord Carlile of Berriew CBE, KC
- Rt Hon. Alex Chalk KC
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- Professor Brian Doherty, Keele University
- Dr Samantha Fairclough, University of Birmingham
- Professor Martina Feilzer, Bangor University
- Jonathan Fisher KC, Chair, Independent Review of Disclosure and Fraud Offences
- Dr Simon Flacks, University of Sussex
- Tom Franklin, Chair, Magistrates' Association
- Keith Fraser, Chair, Youth Justice Board
- Dr Elaine Freer, University of Cambridge
- Rt Hon. David Gauke, Chair, Independent Sentencing Review
- Dr Joanna Gilmore, University of York
- Nick Goodwin, Chief Executive, His Majesty's Courts and Tribunals Service
- Jane Harbottle, Chief Executive, Legal Aid Agency
- Dr Simon Harding, National Centre for Gang Research Ltd
- Sacha Hatchett, Criminal Justice Lead, National Police Chiefs' Council
- Dr Graeme Hayes, Aston University
- Professor Rebecca Helm, University of Exeter
- Professor Jacqueline Hodgson, University of Warwick

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- Rt Hon. Robert Jenrick MP, Shadow Secretary of State for Justice
- Martin Jones, His Majesty's Chief Inspector of Probation
- Dr Rory Kelly, University of Galway
- Dr Vicky Kemp, University of Nottingham
- Dr Kate Leader, Criminal Justice Centre, Queen Mary, University of London
- Rt Hon. Baroness Alison Levitt KC
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- Professor Stefan Machura, Bangor University
- Professor Richard Macrory CBE, KC University College London
- Michelle McDermott, University of Portsmouth
- Barbara Mills KC, Chair, The General Council of the Bar
- Professor Richard Moorhead, University of Exeter
- Kieran Mullan MP, Shadow Justice Minister
- Baroness Helen Newlove, Victims' Commissioner
- Rob Nixon QPM, Former Criminal Justice Lead, National Police Chiefs' Council
- Professor Richard Nobles, Queen Mary, University of London
- Dame Lynne Owens DCB KPM, Deputy Commissioner, Metropolitan Police Service
- Dame Anne Owers, Chair, Independent Prison Capacity Review
- Professor Nicola Padfield, University of Cambridge
- Stephen Parkinson, Director of Public Prosecutions
- Professor Jill Peay, London School of Economics and Political Science

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- Professor Jose Pina Sánchez, University of Leeds
- Mary Prior KC, Chair, Criminal Bar Association
- Dr Joe Purshouse, University of Sheffield
- Professor Eithne Quinn, University of Manchester
- Amy Rees CB, Permanent Secretary, Ministry of Justice
- Howard Riddle
- Dr Jonathan Rogers, University of Cambridge
- Dame Antonia Romeo DCB, Permanent Secretary, Home Office
- Sir Mark Rowley KPM, Commissioner, Metropolitan Police Service
- Fiona Rutherford, Chief Executive, JUSTICE
- Professor David Schiff, Queen Mary, University of London
- Professor Layla Skinns, University of Sheffield
- Andy Slaughter MP, Chair, Justice Select Committee
- Dr Thomas Smith, University of the West of England
- Dr Laurène Soubise, University of Leeds
- Professor John Spencer, University of Cambridge
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- Professor Richard Susskind CBE, KC
- Rachel Sylvester, Chair, Times Crime and Justice Commission
- Charlie Taylor, His Majesty's Chief Inspector of Prisons
- Her Honour Deborah Taylor, Chair, Criminal Legal Aid Advisory Board
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- Duncan Webster JP, Former National Leadership Magistrate
- Dr Lucy Welsh, University of Sussex

- Professor Rebecca Williams, University Oxford
- Professor Michael Zander, London School of Economics and Political Science

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- Accenture
- Advance Charity
- Alliance for Youth Justice
- All-Party Parliamentary Group for Legal and Constitutional Affairs
- All Party Parliamentary Group Westminster Commission on Forensic Science
- APPEAL
- Association for Police and Crime Commissioners
- Axon Enterprise
- Centre for Justice Innovation
- Chartered Institute for Legal Executives
- Collective Voice
- Commons Law Community Interest Company
- Cranstoun
- Crest Advisory
- Criminal Appeal Lawyers Association
- Criminal Bar Association
- Members of the Criminal Courts Improvement Group
- Members of the Criminal Justice Board
- Criminal Law Solicitors' Association
- Crown Office and Procurator Fiscal Service
- Crown Prosecution Service
- Department of Justice Australia
- Department of Justice Canada

- Economic and Social Research Council Vulnerability & Policing Futures
- End Violence Against Women Coalition
- General Council of the Bar
- His Majesty's Courts and Tribunals Service
- His Majesty's Prisons and Probation Service
- Home Office
- Howard League for Penal Reform
- Independent Office for Police Conduct
- Independent Prison Capacity Review
- Independent Review of Disclosure and Fraud Offences
- Independent Sentencing Review
- Institute for Crime and Justice Policy Research, Birkbeck, University of London
- Institute for Government
- Judicial Office
- Members of the Judicial Response Group
- JUSTICE
- Law Commission
- Law Society of England and Wales
- Legal Aid Agency
- London Criminal Courts Solicitors' Association
- Make Time Count
- Marie Collins Foundation
- Mayor's Office for Policing and Crime
- Metropolitan Police Service
- Ministry of Justice
- National Crime Agency
- National Police Chiefs' Council

- National Society for the Prevention of Cruelty to Children
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- Office of the Parliamentary Counsel
- One Small Thing
- Palantir Technologies
- Prison Reform Trust
- Rape Crisis
- Restorative Justice Council
- Sentencing Council for England and Wales
- Serious Fraud Office
- South Yorkshire Mayoral Combined Authority Executive
- Standing Together Against Domestic Abuse
- StopSO UK
- Times Crime and Justice Commission
- Transform Justice
- Victim Support
- Westminster Legal Policy Forum

Members of the Public:

In addition, I have received submissions from Judges, Justices of the Peace and members of the public whom I do not list individually but acknowledge and also thank for their interest in the work of the Review and their contribution.

Annex D: Independent Review Team

I would like to thank each member of the Review team who have assisted me from first to last and whose effort has extended far above and beyond the call of duty.

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Georgia Stainforth	Thomas Stevens
James Templeman	Clare Toogood
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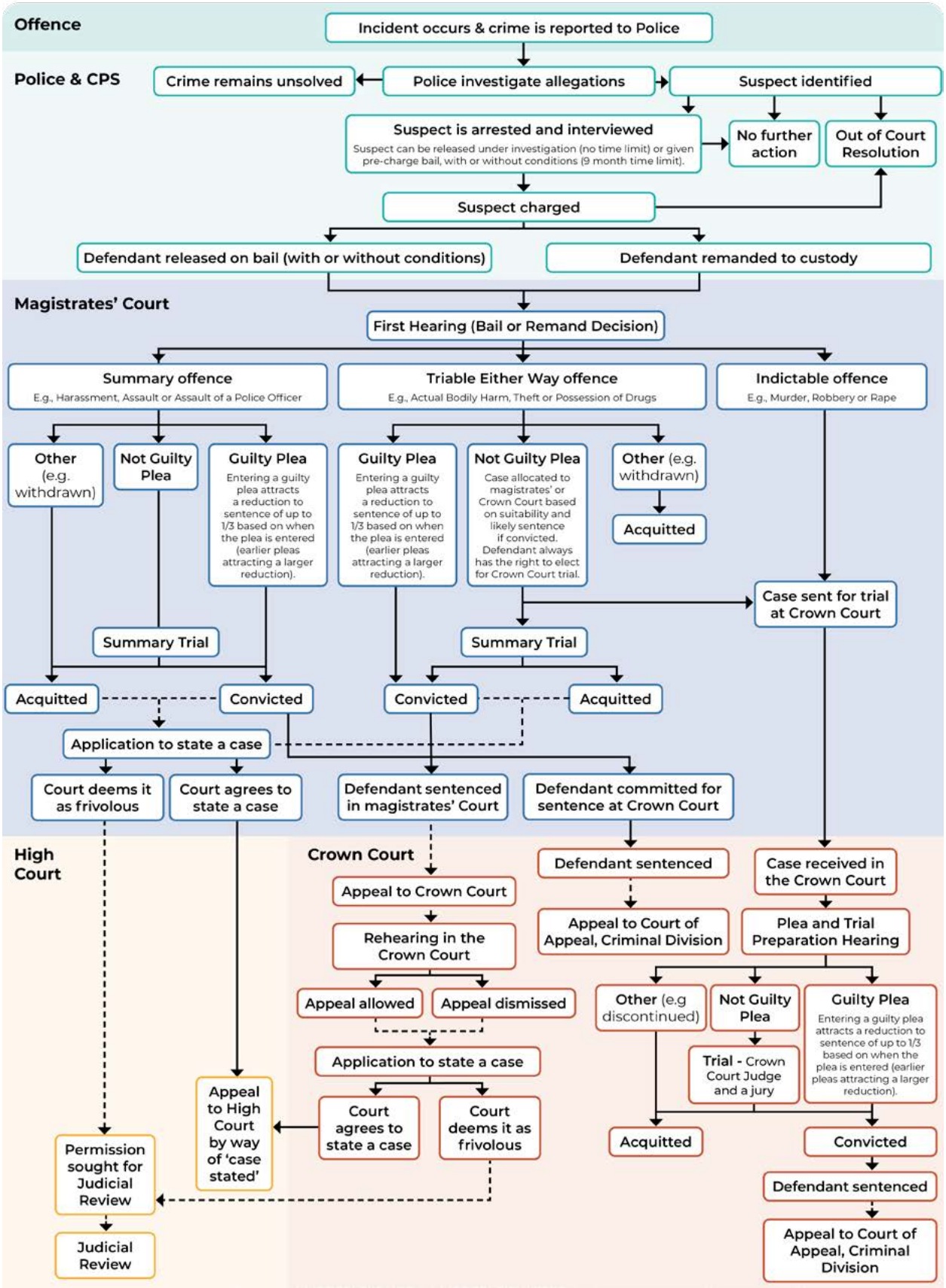
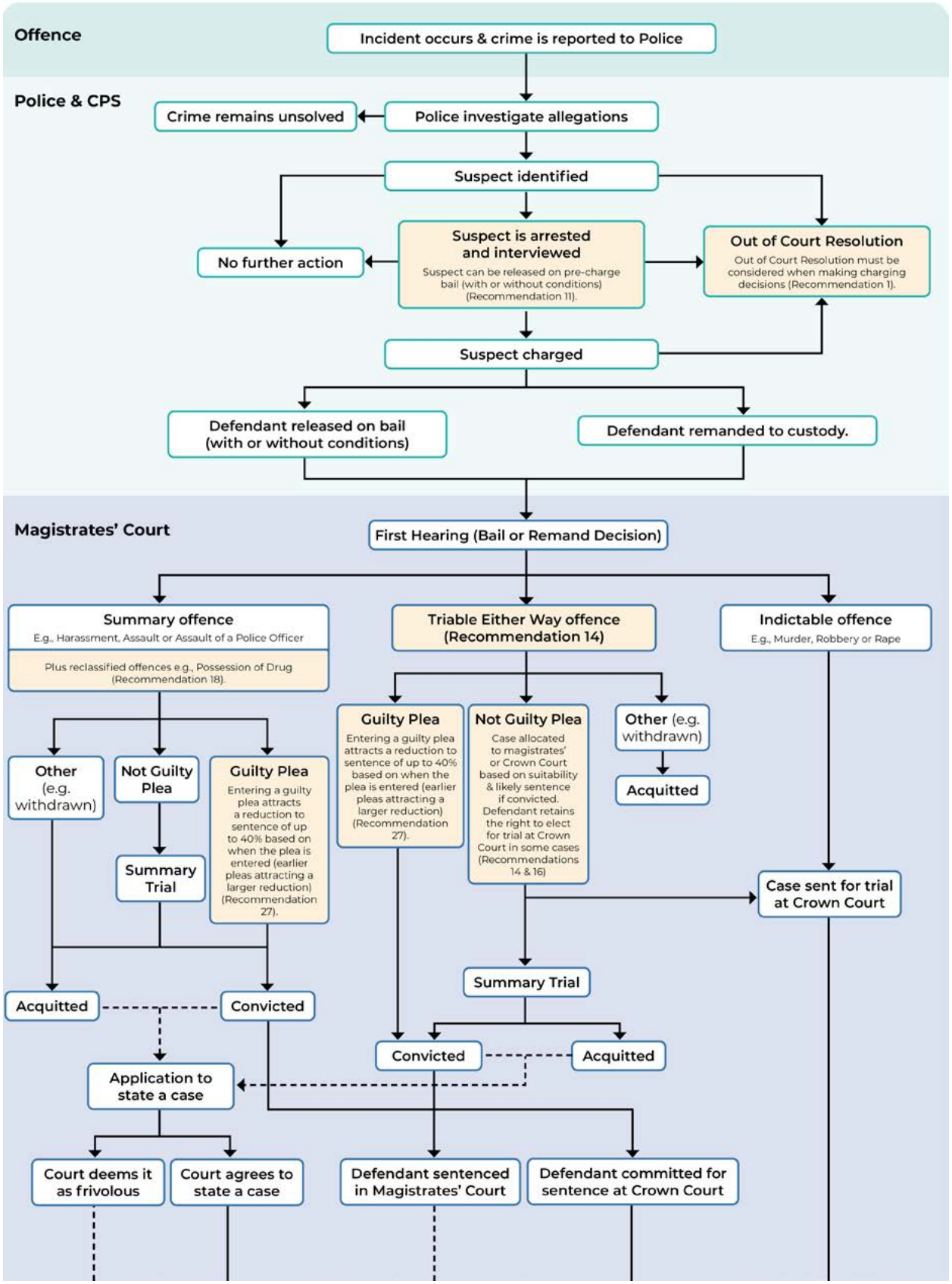
Annex E: Courts Process Flowcharts

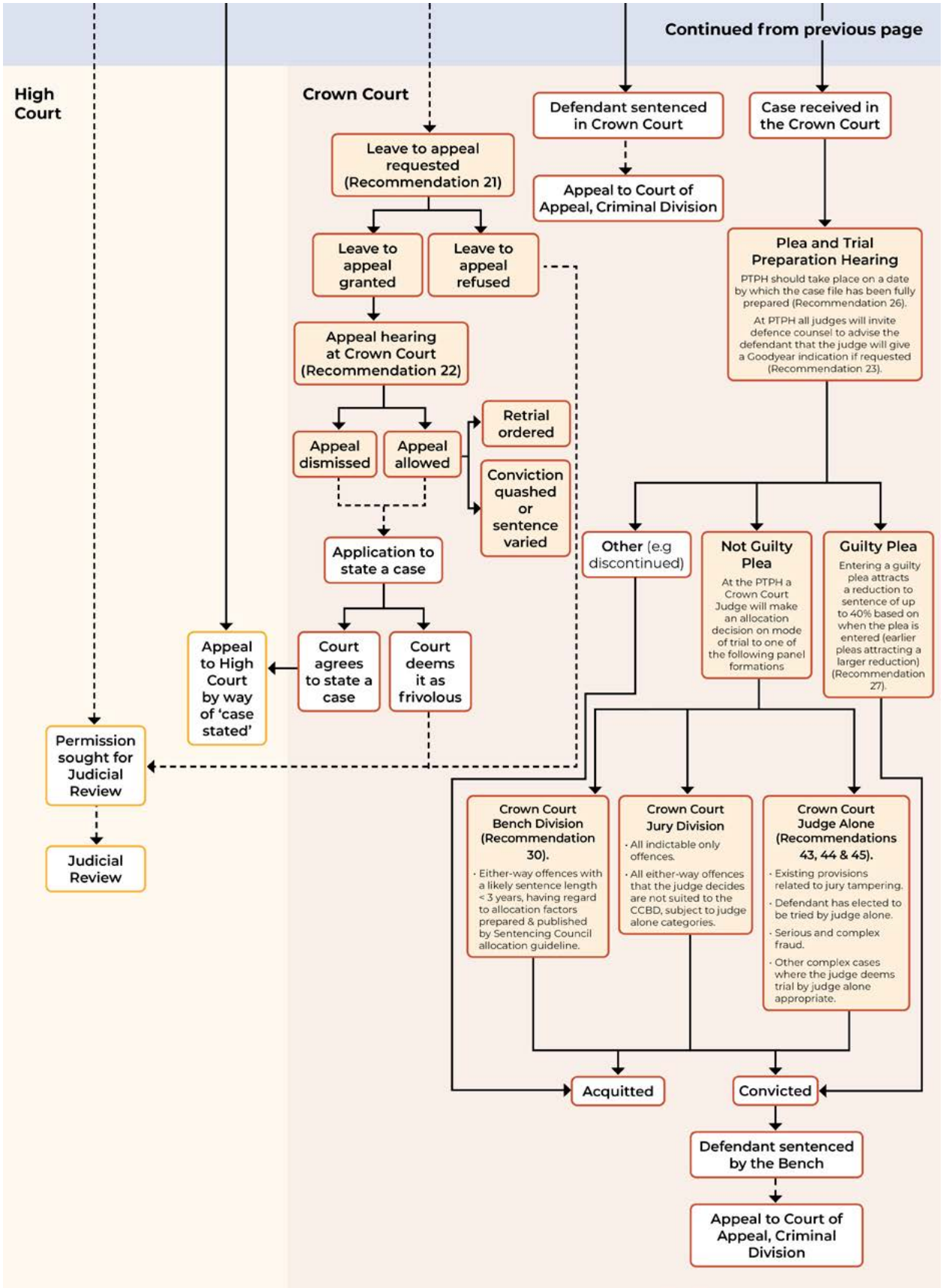
Large format versions of both flowcharts are available on the Review's GOV.uk web page.

Current Process



New Process (should all recommendations be accepted)




Continued from previous page
High Court
Crown Court
Defendant sentenced in Crown Court
Case received in the Crown Court
Leave to appeal requested (Recommendation 21)
Appeal to Court of Appeal, Criminal Division
Leave to appeal granted
Leave to appeal refused
Plea and Trial Preparation Hearing
PTPH should take place on a date by which the case file has been fully prepared (Recommendation 26).
At PTPH all judges will invite defence counsel to advise the defendant that the judge will give a Goodyear indication if requested (Recommendation 23).
Appeal hearing at Crown Court (Recommendation 22)
Retrial ordered
Appeal dismissed
Appeal allowed
Conviction quashed or sentence varied
Application to state a case
Other (e.g discontinued)
Not Guilty Plea
At the PTPH a Crown Court Judge will make an allocation decision on mode of trial to one of the following panel formations
Guilty Plea
Entering a guilty plea attracts a reduction to sentence of up to 40% based on when the plea is entered (earlier pleas attracting a larger reduction) (Recommendation 27).
Appeal to High Court by way of 'case stated'
Court agrees to state a case
Court deems it as frivolous
Permission sought for Judicial Review
Judicial Review
Crown Court Bench Division (Recommendation 30).
· Either-way offences with a likely sentence length < 3 years, having regard to allocation factors prepared & published by Sentencing Council allocation guideline.
Crown Court Jury Division
· All indictable only offences.
· All either-way offences that the judge decides are not suited to the CCBD, subject to judge alone categories.
Crown Court Judge Alone (Recommendations 43, 44 & 45).
· Existing provisions related to jury tampering.
· Defendant has elected to be tried by judge alone.
· Serious and complex fraud.
· Other complex cases where the judge deems trial by judge alone appropriate.
Acquitted
Convicted
Defendant sentenced by the Bench
Appeal to Court of Appeal, Criminal Division

Annex F: Technical Annex

1. This annex sets out the technical details of the modelling completed for the Policy Review. The modelling outputs are intended to provide an indicative and high-level assessment of potential impacts of the recommendations. However, the Ministry of Justice will, of course, want and need to carry out more detailed modelling on the operational and financial impact of the recommendations, not least to inform impact assessments of any recommendations taken forward.

Problem Diagnosis: Adjusted Disposal Rate

Methodology

2. Disposal rate (usually defined number of disposals within a given period divided by the number of sitting days in the same period) is often used as a measure of Crown Court throughput but may be misleading because it does not account for differences in case complexity. The Adjusted Disposal Rate attempts to control for these differences, allowing for more accurate comparisons between courts. In the context of the Review it allows for comparisons between courts in different years, to track changes across time. The data underpinning the Adjusted Disposal Rate is court-level data, and is not publicly available.

3. Positive scores indicate that a court is performing better than expected given its proportion of NGP disposals; scores around zero indicate performance in line with expectations; and negative scores indicate that a court is performing worse than expected.

Assumptions

Analytical assumptions

4. The main analytical assumption is that the court-level proportion of not-guilty-plea disposals represents the best single predictor of the court-level disposal rate, and that no other court-level predictor is a consistently significant addition to this basic model. No such readily available predictor could be identified, but this does not preclude its existence.

Policy assumptions

5. The primary policy assumption is that differences in Adjusted Disposal Rate scores indicate differences in court performance (see caveat below).

Caveats

6. There are multiple ways in which case disposal could be systematically affected, and only some of these are intrinsic to court performance. Extrinsic factors, such as police, defence and prosecution behaviours, could also play an important role.

7. Adjusted Disposal Rate exclusively focuses on disposal rate as the primary underlying metric of court throughput, but this measure may give disproportionate weight to factors which incur sitting time costs specifically.

8. Note that an alternate measure of disposal rate was considered, using sitting hours as opposed to sitting days as the denominator, but this did not materially affect the results

Problem Diagnosis: Average Time from PTPH to Future Trial Listing Date

9. The chart and analysis presented in Chapter 2 (Problem Diagnosis) explains the waiting time between a PTPH and a listed trial. The chart and analysis are drawn from Management Information (MI) held by HMCTS; MI gives an insight into this particular waiting time and how this changed between April 2022 and March 2025, but the data are subject to data quality limitations. HMCTS are updating the methodology used internally for this measure, and the analysis included in this Review does not include those updated changes.

10. The limitations associated with this analysis are:

    - The underlying data for this analysis are drawn from management information which reflects what is recorded on relevant case management systems on the date of extraction. The case management systems are continually updated and so the information presented will differ from any previously published information.

- The data presented in this table are from snapshots of HMCTS Management Information taken in each month listed in the table. The data are not corrected at a later point in time.
- The methodology in these reports includes some undercounts where not all cases listed for trial were identified. Manual review of omitted trials suggests that this primarily impacts trials found to be listed at earlier points compared with those listed many years into the future. This means care should be taken when drawing conclusions using this data because these exclusions will cause the data to be skewed: where there was a disposal on the case (i.e. where one offence had been dealt with) but another was for trial, which go on to trial.
- Warned List trials not being picked up.
- A growing number of cases that had had a PTPH but with no future trial date listed.

11. These exclusions mean there is a known undercount of cases that should have been included, so this analysis must be interpreted with caution.

12. The analysis also includes some case types which are known to be included in error, although it is not clear if these overcounts are causing skew or the average days calculation to be affected. The cases included in error include:

- cases where the future listing is not a trial listing;
- additionally, cases may be temporarily listed on Christmas Day/bank holidays and weekends – cases with these temporary dates have been included;
- cases where the trial was vacated and re-listed, but the case was not shown as vacated on Common Platform;
- there are also some trial listings for closed cases (this affects around 2,000 to 4,000 cases).

Impact Modelling: Sitting-Day Impacts

Overview of Modelling Approach

13. The sitting-day model is used to estimate the number of sitting days which would be diverted away from the Crown Court each year post-introduction under the modelled recommendations, and the corresponding number of sitting days added to other jurisdictions via these diversions, for example the increase to the expected number of sitting days to the CCBD or the magistrates' court. Note that impacts of other recommendations in the review such as jury waiver and judge-only trials have not been modelled.

14. To calculate the savings, the caseload for a baseline (current state 'do nothing' scenario) is compared to the reduced caseload due to reclassification, RRTE or CCBD. These caseload changes (as percentages of baseline caseload) are then applied to expected incoming court demand from MoJ projections, to provide sitting-day (workload) estimates of savings each year.

15. The sitting-day savings model is based on latest available data from published sources such as Criminal Justice Statistics Quarterly and Criminal Courts Statistics Quarterly. The model also uses list of offences in scope (Annex G) to define which offences to divert to each jurisdiction.

Assumptions and Uncertainties

16. Modelling assumptions were agreed through consultation with Sir Brian Leveson, expert advisers, Review policy colleagues, and operational experts at the MoJ, HMCTS and the CPS. The assumptions are based on analysis (where reliable data is available), and on expert judgement from Criminal Justice Partners. To note, the below focuses very much on the assumptions underpinning modelling, for a description of policy rationale, see individual chapters.

Key Policy Assumptions

17. Behavioural changes: the model assumes no behavioural changes because of the reforms. Specifically, there are no modelled assumptions for changes in a defendant's plea behaviour, proportion of defendants who use their right to elect, up tariffing (CPS changes in charging decisions) or changes to the hours per sitting day in the Crown Court due to any efficiency savings. In practice, there are likely to be changes to the behavioural assumptions listed above as a result of the reforms being implemented.

18. CCBD and reclassification eligibility: offences in scope reclassification, RRTE and CCBD were modelled based on the policy principles set out in the body of this Review and the 'List of Offences in Scope for Recommendations' in Annex G.

19. Interactions of reforms: modelling ensures that cases which are in scope for both the reclassification and RRTE model and CCBD are not double-counted towards impacts, with the priority being keeping offences in the magistrates' court, then restricting their right to elect, or directed to the CCBD where eligible.

20. Retrospectivity: Although it is recommended that legislative amendments are made for cases in the outstanding caseload to be allocated to the CCBD, for modelling purposes it is assumed that only new (eligible) cases into the system are allocated to the CCBD. This could mean impacts of the CCBD are higher initially whilst cases in the backlog are re-allocated to a more timely court route.

Key Analytical Assumptions

Hearing Times and Sitting Days

21. Hearing time and sitting day assumptions are in line with MoJ Crown Court projections. We assume the CCBD will have the same amount of hearing time (hours heard by a judge in a court per sitting day) as the Crown Court. Magistrates sitting days are calculated using a conversion of the number of receipts and an assumption of six disposals per sitting day for cases that were previously committed for trial, with no additional sentencing time needed for cases that were previously committed for sentence. It could be argued that this rate would be lower for those offences being reclassified.

Diversion of Cases

22. Diversion of cases: the modelling implicitly assumes that all cases that are expected to be diverted to different jurisdictions (based on the assumptions set out) are actually diverted in practice. This assumption may not hold in reality. For example, where modelling assumes a judge has perfect accuracy when estimating expected sentence length in order to direct a case to the CCBD, in reality, the judge's behaviour could be cautious and retain cases in the Crown Court they believe close to the 36-month threshold. Conversely, the judge's behaviour could see cases being sent to the CCBD at a higher rate than expected given no sentencing restrictions in the CCBD. Given uncertainties in both directions, no adjustment has been applied for this in the modelling.

23. If it were to be assumed that this is optimistic (i.e. less cases would be diverted in reality), an 'optimism bias' of 20% could be applied to account for this.

Table 1: Impact of applying a diversion adjustment on overall impact on modelled recommendation

Diversion adjustment applied (all other assumptions held constant)	Gross Crown Court Sitting Days Saved	Additional CCBD Sitting Days needed	Net Sitting-Day Impact
No diversion adjustment	39,000	30,000	9,000
20% Diversion adjustment	31,000	24,000	7,000

Juryless Hearing Time-Saving

24. An indicative estimate of 20% has been used as the median percentage decrease in hearing time in the Crown Court for a not-guilty-plea case when heard without a jury (by a judge and two magistrates) compared to a trial by jury. Note: this estimates the net impact of percentage time saved, is associated with very high levels of uncertainty and is expected to vary by offence type. See Chapter 8 (Crown Court Structure) for sensitivity analysis around the potential impact of greater time-savings by the CCBD.

25. There is a lack of existing evidence in this area. Whilst there is some international evidence that time is saved by a judge-only trial in other jurisdictions,[465] this is limited and, owing to notable differences in process, points of law and day-to-day running of their criminal courts, it does not necessarily align with how a CCBD would work in practice. To bolster the evidence base, three streams of work were undertaken:

- a set of quantitative analyses were carried out;
- a structured elicitation workshop was held with operational staff from HMCTS to gather expert views to draw out a quantitative estimate of impact; and
- a light-touch engagement session was held with judges to understand their personal expectations of potential time-savings.

26. The outputs from these have been used to inform the assumptions for this Review. However, each come with their own limitations.

Impact Modelling

Impact Modelling: Impact on Workload

27. The modelling in Chapter 8 (Crown Court Structure) provides an indicative estimate of the impact of the combined modelled reforms – CCBD, reclassification and RRTE – on the Crown Court open workload. This uses the outputs of the Impact Modelling: Sitting Day Impacts (see paragraph 15-18 of this annex for further information). All figures are calculated on an annual financial year basis and rounded to the nearest thousand.

465 E.g. the effect of judge-alone trails on criminal justice outcomes (NSW Bureau of Crime and Statistics and Research, 2024).

28. Workload has been modelled as any caseload estimates would be highly sensitive to assumptions about how the court prioritises work (which MoJ will want to take a decision on when implementing policies). Workload looks simply at the inflowing "work" (i.e. sitting days) without needing to make any assessment of how different cases are prioritised in the system. Open workload is therefore an estimate of how many sitting days' worth of work would be required to clear the open caseload. To note, the open workload does not need to be zero as there is always some level of open workload in the system due to incoming demand and this is desirable for the courts to be running efficiently.

29. The impact of the modelled reforms on the open workload is calculated by:

- subtracting the estimated impact on demand of the Review's reforms from the projected Crown Court demand (from MoJ demand projections) to get an amended estimate of incoming workload;
- subtracting the assumed number of Crown Court sitting days from the amended estimate of incoming workload;
- adding the amended estimate of incoming workload to the open workload from the previous year.

30. This assumes the net impact of reforms considered is 9,000 sitting days each year and that incoming Crown Court demand is in line with MoJ projections (MoJ Crown Court demand projections run to the end of financial year 2030/31, after this demand has been assumed to continue to be stable). In reality, this may not be the case.

31. This modelling is uncertain and should be viewed as indicative. There are some important elements missing from this analysis which means the reader should see this very much as a minimalist assessment of impact of the recommendations throughout this Review:

- Due to time and/or evidence constraints, there is no assessment of judge-only trials, jury waiver or wider recommendations throughout this Review. Some of these are extremely challenging to model (particularly in short timeframes). As discussed and evidenced throughout this Review, these are thought to have a considerable impact on the open caseload/workload.

- This makes no assessment of potential behaviour changes in the system as a result of the reforms (including changes in early guilty pleas).
- This does not include any assessment of the impact of the recommendations that will be, in the autumn, set out in the Efficiency Report.

Impact Modelling: Cost Modelling

Model description

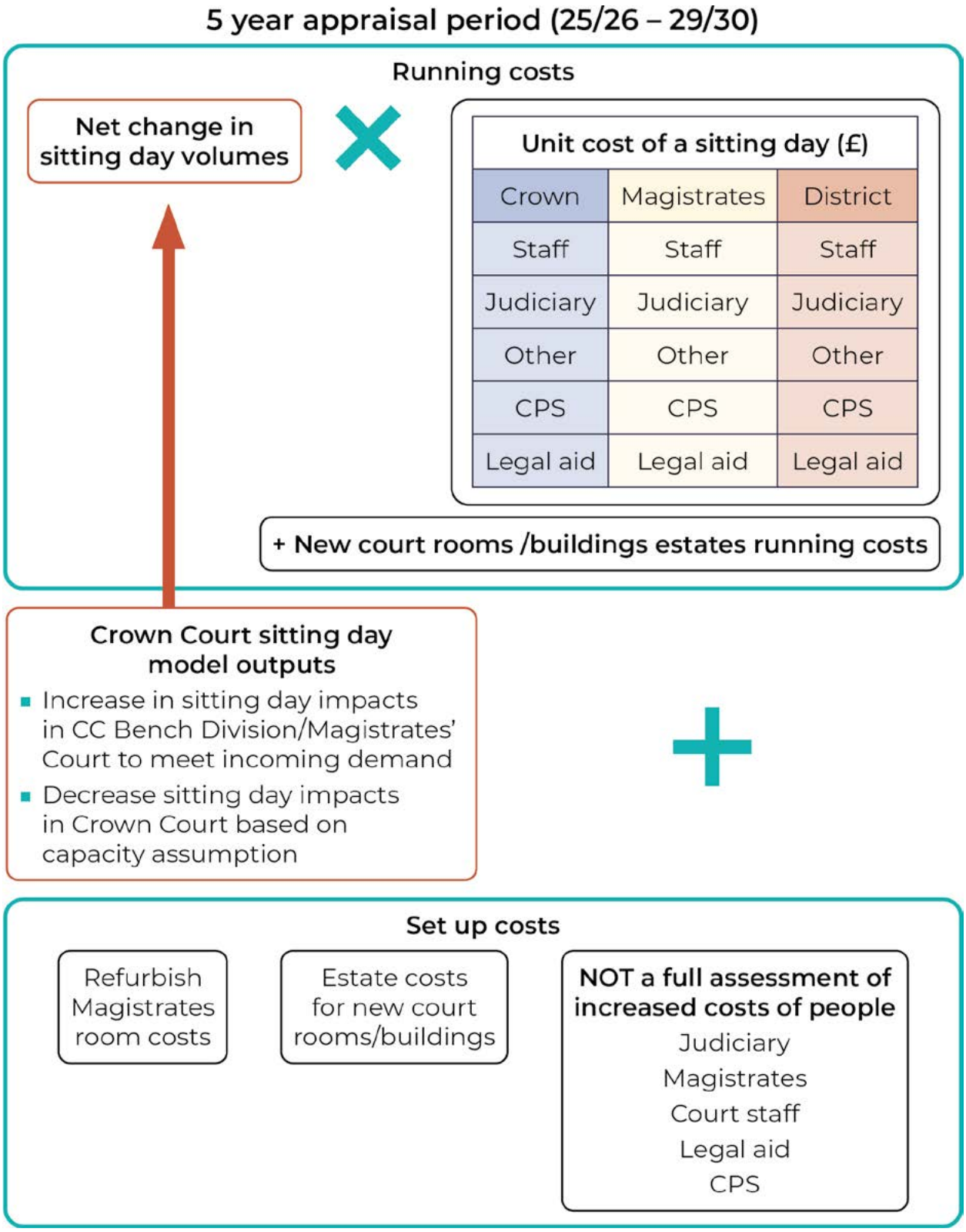
32. The costs model explores the total costs/cost-savings of the following three reform scenarios:

- CCBD;
- reclassification and RRTE;
- ALL (Reclassification, RRTE and CCBD).

33. The costs in scope of this modelling are HMCTS (staff, judiciary, magistrates and estates), CPS and legal aid. Prisons and PECS costs are out of scope of this modelling.

34. The modelling method explores two main overarching costs:

- Running costs – The running costs are calculated by multiplying the sitting-day volumes that are produced by the static sitting-day model by unit costs of a Crown Court with jury, magistrates and CCBD. Note that there may be further estates maintenance costs which have not been modelled.
- Set-up costs – the modelling has only been carried out for the estate component and some judicial and staff onboarding costs at this stage (provided by HMCTS). This does not include a comprehensive assessment of the judiciary, magistrates, CPS and legal aid recruitment, training and onboarding costs. The MoJ would need to explore these costs further before implementing these reforms.


5 year appraisal period (25/26 – 29/30)
Running costs
Net change in sitting day volumes
Unit cost of a sitting day (£)
Crown
Magistrates
District
Staff
Staff
Staff
Judiciary
Judiciary
Judiciary
Other
Other
Other
CPS
CPS
CPS
Legal aid
Legal aid
Legal aid
+ New court rooms /buildings estates running costs
Crown Court sitting day model outputs
Increase in sitting day impacts in CC Bench Division/Magistrates' Court to meet incoming demand
Decrease sitting day impacts in Crown Court based on capacity assumption
Set up costs
Refurbish Magistrates room costs
Estate costs for new court rooms/buildings
NOT a full assessment of increased costs of people
Judiciary
Magistrates
Court staff
Legal aid
CPS

Data

35. The following key data sources have been used:

- Sitting-day volumes from the static sitting-day model (see above).
- Crown and magistrates legal aid and CPS unit costs from the MoJ and CPS respectively.
- Crown and magistrates staff, judiciary and 'other'[466] unit costs from HMCTS.
- HMCTS estate costs, staff and judicial onboarding costs from HMCTS.

Assumptions

Analytical assumptions

36. Scope and capacity: for the combined and CCBD reforms, the financial modelling explores the range of costs for 115,000 to 130,000 sitting days which will be split between the Crown Court and the CCBD. For the reclassification and RRTE reform, it is assumed that the Crown Court remains at 110,000 sitting days. The model assumes that the baseline is the 2025/26 allocation of sitting days in the Crown Court (110,000 days) and magistrates' court (114,000 days), therefore the financial modelling explores the costs that are additional to this. It is assumed that the CCBD and magistrates' court can see all the cases that are moved across from the Crown Court to ensure maximum impact on caseload reduction.

37. CCBD unit costs: the unit cost is comprised of the following five categories: HMCTS staff, HMCTS judiciary, HMCTS other (which mainly includes jury and magistrates expenses), CPS and legal aid. It is assumed that the CCBD will cost the same as the Crown Court for all categories besides the 'HMCTS other' category. For this portion, the magistrates' court cost has been apportioned for two magistrates expenses.

466 This includes jury and magistrates expenses.

38. Set-up costs: HMCTS have provided running and set-up costs for new estate, implementation costs for the creation of a new CCBD, and some onboarding costs for staff and judiciary. Note that the onboarding costs for staff and judiciary is only a small component of the total set-up costs required and the MoJ should work with the Judicial Office to understand the full costs involved.

39. Estate costs: it is assumed that any spare capacity in the Crown and magistrates estates can be used for the additional CCBD days. Where this has not provided sufficient capacity in some regions, it is assumed that new court buildings or courtrooms will be needed (including temporary provision of court space).

40. Optimism bias: this has been applied at 20% to account for any uncertainty around costs (40% has been applied to construction costs only). This accounts for recruitment, onboarding and training costs of judicial staff and magistrates which has not been modelled comprehensively. There may also be upward pressure on day-to-day staff costs in the CCBD who are now processing more cases per day due to there being no jury, as well as upward pressure on estate set-up costs post Spending Review settlement if a higher level of sitting days is agreed.

41. Inflation: CPI has been applied to all non-wage related costs and wage related costs have been uplifted to reflect average earnings growth. No inflation has been applied to legal aid costs.

Policy assumptions

42. CCBD unit cost: the staff and judicial costs of the CCBD will be the same as the Crown Court.

43. Given this modelling uses the static sitting-day modelling as an input, the same assumptions as noted above apply.

Caveats

44. These results do not consider capacity constraints in the system for criminal justice system partners including the LAA, the CPS and the judiciary and sitting at 130,000 days would require a change to current recruitment processes.

45. The legal aid and CPS unit cost for the CCBD is the same as the Crown Court. As the CCBD will see more cases per day, this can create upward pressure on the unit cost. However, as these cases will be less complex than the cases seen in the Crown Court, this will create downward pressure on the costs. If a lower district court unit cost were to be created based on the case mix of offences, over a longer time period it will net-off with the higher Crown Court unit cost and remain cost-neutral due to the caseload remaining the same over a longer time period. It is assumed that the Crown Court and CCBD will have the same staff costs per sitting day. As more cases will be seen in the CCBD per sitting day as a result of there being no jury, it is assumed that staff will be more productive and process more cases in the CCBD at the same cost. In reality, there may be an upward pressure on costs. It is recommended that the MoJ work with operational colleagues to understand these impacts further before implementation.

46. There may be upward pressure on CPS and legal aid reclassification costs as the costs are unlikely to fall to the extent that has been modelled for the group of cases that are moving across from the Crown Court.

Annex G: List of Offences in Scope for Recommendations

The offences listed below are presented for the purposes of this Review using an internal framework set by the MOJ for grouping criminal offences, identified by their offence code. The offences for reclassification were identified using the published 'Outcomes by Offence' data tool, filtering for either way offences. The threshold for reclassification was set to offences with an average custodial sentence length of 12 months or less, and further narrowed down as outlined in Chapter 5 (The Magistrates' Court Process). Offences in scope for RRTE are all offences with a maximum custodial sentence length of two years or less (which are not already reclassified), plus an additional selection of offences. All either way offences are eligible for the CCBD and will be allocated to the CCBD at PTPH by judicial decision primarily based on an expected sentence length of less than years as outlined in Chapter 8 (Crown Court Structure).

These recommendations of offences in scope have been replicated for the purposes of modelling the outcomes for reclassification and restricting the right to elect. For the CCBD modelling purposes, all offences with a maximum custodial sentence length of 3 years will almost inevitably be allocated to the CCBD . The list also includes those fraud and other offences appropriate for judge-only trials, however, it has not been possible to model this recommendation. The lists and the chapters they relate to are:

- Offences to be reclassified (Chapter 5: The Magistrates' Court Process).
- Offences which will have the right to elect restricted (Chapter 5: The Magistrates' Court Process).
- Offences that will go into the CCBD (Chapter 8: Crown Court Structure).
- Offences in scope of judge-only trials for fraud, either all or as a proportion (Chapter 9: Trial by Judge Alone).

List of Offences

Offences to be Reclassified

92D.03 Possession of a controlled drug - Class C (excluding cannabis)
92D.02 Possession of a controlled drug - Class B (excluding cannabis)
92E.01 Possession of a controlled drug - Class B (cannabis)
8.12 Racially or religiously aggravated causing intentional harassment, alarm or distress
53.1 Making off without payment
44 Theft of pedal cycle
809A Vehicle insurance offences - triable either way (MOT)
8.13 Racially or religiously aggravated causing intentional harassment, alarm or distress - words or writing
8.16 Racially or religiously aggravated stalking without violence
92D.01 Possession of a controlled drug - Class A
8.08 Breach of the conditions of an injunction against harassment
45 Theft from vehicle
66.5 Racially or religiously aggravated fear or provocation of violence
66.7 Breach of a Criminal Behaviour Order
8.07 Racially or religiously aggravated common assault or beating
8.20 Sending letters etc. with intent to cause distress or anxiety
814 Fraud, forgery etc. associated with vehicle or driver records (MOT)
88E Exposure and voyeurism
8.10 Breach of a restraining order
8.11 Breach of an Anti-Social Behaviour Order

66.4 Breach of a non-molestation order
61A.2 Possession of false documents -triable either way
8.19 Disclose private sexual photographs and films with intent to cause distress
55.2 Bankruptcy offence - triable either way
53B.2 Computer Misuse Act 1990, s. 1(3) - unauthorised access to computer material
8.03 Owner or person in charge allowing dog to enter a non-public place and injure any person
92E.02 Possession of a controlled drug - Class C (cannabis)
53B.5 Computer Misuse Act 1990, s. 3A - making, supplying or obtaining articles for use in offence under s. 1 or 3
92C.03 Permitting premises to be used for unlawful purposes - Class C
75 Cheating (or aiding cheating) at gambling and offences related to the National Lottery
807A Driving licence-related offences (excluding fraud and forgery) - triable either way (MOT)
87 Protection from Eviction Act 1977

Offences Which Will Have the Right to Elect Restricted

8.22 Assault of an emergency worker
43 Abstracting electricity
5.3 Other endangering life - triable either way
6.2 Endangering railway passenger - triable either way
59.4 Threat etc., to commit criminal damage - triable either way
94B Air Navigation Order 2016
8.Q Stalking (breach of stalking order/interim stalking order)
86.3 Possessing prohibited images of children
86.4 Other possession of obscene material etc.
4.9a Causing death by driving unlicensed or uninsured drivers (MOT)
37.2 Causing injury or damage by aggravated vehicle taking (MOT)
53.3 Benefit fraud offences - triable either way
91.1 Offences related to fly-tipping - triable either way
85 Health and Safety at Work etc. Act 1974
84 Trade Descriptions Act and similar offences
5.11 Causing danger by causing anything to be on a road or interfering with a vehicle or traffic equipment (MOT)
86.2 Possession of indecent photograph of a child
53B.3 Computer Misuse Act 1990, s. 2 - unauthorised access with intent to commit further offences etc.
12 Abandoning child aged under two years
71.3 Possess a paedophile manual - triable either way
89 Adulteration of food

94A Offences under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990

Indicative List of Offences to be allocated to the CCBD

92D.02 Possession of a controlled drug - Class B (excluding cannabis)
92E.01 Possession of a controlled drug - Class B (cannabis)
53.1 Making off without payment
809A Vehicle insurance offences - triable either way (MOT)
8.16 Racially or religiously aggravated stalking without violence
8.22 Assault of an emergency worker
92D.01 Possession of a controlled drug - Class A
33 Going equipped for stealing etc.
45 Theft from vehicle
80a Remaining unlawfully at large after recall to prison
8.20 Sending letters etc. with intent to cause distress or anxiety
88E Exposure and voyeurism
94B Air Navigation Order 2016
8.19 Disclose private sexual photographs and films with intent to cause distress
86.4 Other possession of obscene material etc.
85 Health and Safety at Work etc. Act 1974
83.2 Failing to surrender to bail
92D.03 Possession of a controlled drug - Class C (excluding cannabis)

8.12 Racially or religiously aggravated causing intentional harassment, alarm or distress
46 Theft from shops
44 Theft of pedal cycle
8.13 Racially or religiously aggravated causing intentional harassment, alarm or distress - words or writing
8.08 Breach of the conditions of an injunction against harassment
66.5 Racially or religiously aggravated fear or provocation of violence
66.7 Breach of a Criminal Behaviour Order
8.07 Racially or religiously aggravated common assault or beating
43 Abstracting electricity
92C Other offences under the Misuse of Drugs Act 1971
814 Fraud, forgery etc. associated with vehicle or driver records (MOT)
6.2 Endangering railway passenger - triable either way
59.4 Threat etc., to commit criminal damage - triable either way
8.10 Breach of a restraining order
8.11 Breach of an Anti-Social Behaviour Order
66.4 Breach of a non-molestation order
61A.2 Possession of false documents - triable either way
58D Other criminal damage
8.Q Stalking (breach of stalking order/interim stalking order)
49 Other theft or unauthorised taking
67.2 Perjury - triable either way

92C.02 Permitting premises to be used for unlawful purposes - Class B
10D Possession of article with blade or point
40 Theft in dwelling not automatic machine or meter
10C.2 Possession of other weapons - triable either way
66.9 Other offence against the state or public order - triable either way
54 Handling stolen goods
42 Theft or unauthorised taking from mail
47 Theft from automatic machine or meter
86.3 Possessing prohibited images of children
95 Disclosure, obstruction, false or misleading statements
91.2 Other public health offences
4.9a Causing death by driving unlicensed or uninsured drivers (MOT)
37.2 Causing injury or damage by aggravated vehicle taking (MOT)
91.1 Offences related to fly-tipping - triable either way
802 Dangerous driving (MOT)
55.2 Bankruptcy offence - triable either way
8.18 Care provider ill-treat/wilfully neglect an individual or breach duty of care
79.2 Perverting the course of justice - triable either way
97 Animal cruelty
53B.2 Computer Misuse Act 1990, s. 1(3) - unauthorised access to computer material
66.1 Affray

53B.1 Preserved other fraud and repealed fraud offences (pre-Fraud Act 2006)
5.11 Causing danger by causing anything to be on a road or interfering with a vehicle or traffic equipment (MOT)
23.7 Familial sexual offences (incest) with a relative aged 18 or over
88D Unnatural sexual offences
86.2 Possession of indecent photograph of a child
53B.3 Computer Misuse Act 1990, s. 2 - unauthorised access with intent to commit further offences etc.
8.09 Other harassment - putting people in fear of violence
48 Theft of a motor vehicle (excl. aggravated vehicle taking) - triable either way (MOT)
92C.01 Permitting premises to be used for unlawful purposes - Class A
61.2 Other forgery - triable either way
8.01 Assault occasioning actual bodily harm
4.8 Causing death by careless or inconsiderate driving (MOT)
8.17 Racially or religiously aggravated stalking with fear of violence
8.02 Owner or person in charge allowing dog to be dangerously out of control in a public place injuring any person
41 Theft by an employee
66.2 Breach of Sexual Offences Prevention Order (SOPO) and Interim SOPO, Sexual Harm Prevention Order, Sex Offender Order and Interim Sex Offender Order
53C Fraud by false representation: cheque, plastic card and online bank accounts
99.9 Other triable either way (non motoring)

10B.2 Possession of firearms offences - triable either way
92A.11 Production, supply and possession with intent to supply a controlled drug - Class C
8.06 Racially or religiously aggravated assault occasioning actual bodily harm
92C Other drug offences
20A.2 Sexual assault on a female
92A.10 Production, supply and possession with intent to supply a controlled drug - Class B
88A Sexual grooming
56B Arson not endangering life
73 Abuse of trust- sexual offences
4.14 Cause serious injury by driving whilst disqualified (MOT)
8.Q Stalking
17A.2 Sexual assault on a male
86.1 Taking, permitting to be taken or making, distributing or publishing indecent photographs or pseudo-photographs of children
8.23 Intentional strangulation or suffocation
53.6 Other fraud
13 Child abduction
78.2 Other assisting entry of illegal immigrant
65 Violent disorder
8F Wound/inflict grievous bodily harm without intent
24 Exploitation of prostitution

3B Threats to kill
8.21 Engage in controlling/coercive behaviour in an intimate/family relationship
92A.02 Unlawful importation - Class B
21.2 Sexual activity with a child under 13 - offender aged under 18 - triable either way
92A.03 Unlawful importation - Class C
22A.2 Causing sexual activity without consent - no penetration
4.12 Causing serious injury by dangerous driving (MOT)
28.2 Burglary in a dwelling - triable either way
38 Money laundering
8H Racially or religiously aggravated wounding or inflicting grievous bodily harm without intent
53D Fraud by false representation: other frauds
11 Cruelty to or neglect of children
70.2 Sexual activity etc. with a person with a mental disorder - triable either way
53F Fraud by abuse of position
22.2 Sexual activity involving a child under 16 - offender aged under 18 - triable either way
37.1 Causing death by aggravated vehicle taking (MOT)
22.3 Sexual activity involving a child under 16 - offender aged 18 or over - triable either way
82 Revenue law offence
98.2 Encouraging or assisting in the commission of an either way offence

12 Abandoning child aged under two years
17C Indecent assault on male (historic offence)
20C Indecent assault on female (historic offence)
8.03 Owner or person in charge allowing dog to enter a non-public place and injure any person
8.14 Racially or religiously aggravated offence of harassment
8.24 Racially or religiously aggravated strangulation or suffocation
85.1 Explosives Regulations 2014
92A Other drug trafficking offences
92A.04 Unlawful importation - unknown class
92A.14 Incite another to supply a controlled drug - Class B
92E.02 Possession of a controlled drug - Class C (cannabis)
53B.5 Computer Misuse Act 1990, s. 3A - making, supplying or obtaining articles for use in offence under s. 1 or 3
71.3 Possess a paedophile manual - triable either way
92C.03 Permitting premises to be used for unlawful purposes - Class C
75 Cheating (or aiding cheating) at gambling and offences related to the National Lottery
92C.04 Permitting premises to be used for unlawful purposes - unknown class
60 Forgery etc. of drug prescription
92A.06 Unlawful exportation - Class B
23.2 Familial sexual offences (incest) with a child family member aged under 13 - offender aged under 18 - triable either way

90 Knives Act 1997 and other related offensive weapons acts/regulations not dealt with elsewhere
807A Driving licence related offences (excluding fraud and forgery) - triable either way (MOT)
85.1 Explosives Regulations
89 Adulteration of food
87 Protection from Eviction Act 1977
23.5 Familial sexual offences (incest) with a child family member aged 13 to 17 - offender aged under 18 - triable either way
7.2 Endangering life at sea - triable either way
94A Offences under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990
106 Modern slavery
17B.2 Sexual assault of a male child under 13
20B.2 Sexual assault of a female child under 13
21.3 Sexual activity with a child under 13 - offender aged 18 or over or age of offender unspecified - triable either way
23.3 Familial sexual offences (incest) with a child family member aged under 13 - offender aged 18 or over - triable either way
23.6 Familial sexual offences (incest) with a child family member aged 13 to 17 - offender aged 18 or over - triable either way
51 Fraud by company director etc.
52 False accounting
57 Criminal damage endangering life
71.2 Abuse of children through prostitution and pornography - triable either way

72 Human trafficking for sexual exploitation
74 Gross indecency with children
8.15 Racially or religiously aggravated putting people in fear of violence
81.1 Firearms offences - Anti-social Behaviour, Crime and Policing Act 2014 - prohibited weapons/ammunition
81.3 Other firearms offences
88C Other miscellaneous sexual offences
92A.01 Unlawful importation - Class A
92A.05 Unlawful exportation - Class A
92A.07 Unlawful exportation - Class C
92A.08 Unlawful exportation - unknown class
92A.09 Production, supply and possession with intent to supply a controlled drug - Class A
53.5 Acting with intent to defraud and to the prejudice of His Majesty the King and the Public Revenue

Indicative list of Offences in Scope of Judge-Only Trials for Fraud, etc.

38 Money laundering
53F Fraud
51 Fraud by company director etc.
53.5 Acting with intent to defraud and to the prejudice of His Majesty the King and the Public Revenue
53.4 Conspiracy to defraud
53.1 Insider Trading
Bribery