THE CRIMINAL BAR ASSOCIATION OF ENGLAND & WALES

C-21
A Report into day-to-day Issues Experienced by Criminal Barristers in the Crown Court in England & Wales in 2021

by the CBA C-21 Working Group
chaired by Ed Vickers QC

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1. Introduction

1.1 I have been asked by the Chair of the Criminal Bar Association[1], to provide a report which identifies day to day issues facing criminal practitioners working in the Crown Courts in England and Wales. I agreed to do so on the understanding that the focus of the report would not be on the related issues of fees and funding, recruitment and retention, because, although these issues are of fundamental and urgent importance to practitioners, they are the subject of other reports and ongoing discussion with Government. However, in light of the promised but as yet unestablished Royal Commission on the Criminal Justice System (CJS)[2], I was keen that the report should inform that Royal Commission of real and pressing issues experienced by criminal barristers in the Crown Court, in the firm hope that all involved (practitioners and other court users, the Judiciary, HM Courts and Tribunal Service (HMCTS), together with Government) can strive to ensure that the CJS, at least in the Crown Court, is fit for purpose in the 21st Century.

1.2 A working group was assembled, with members drawn from the Criminal Bar across the country, and as representative as possible of members of the profession. It was essential to obtain as clear and national a picture of the issues faced by practitioners. I am grateful to the Circuit Leaders for their support in achieving this. I have enormous respect for and am especially grateful to the members of the working group who have given a great deal of their time to attend meetings, liaise with local courts and practitioners, assist with the long process of gathering evidence and the writing of the report. Their commitment to the profession and the CJS is commendable.

1.3 The working group included, importantly, academics from Oxford and Cambridge Universities, who advised on the method of evidence gathering and analysis of the data. This was to ensure that the report was based on rigorous and independent methodology and data; and was transparent for all to view. I am indebted to the academics, led by Professor Julian Roberts of Oxford University, for their time and expertise, and for their patience with us non-academics.

1.4 The original intention of the working group was to gather evidence in two ways: first, a lengthy survey to be sent to members of the Criminal Bar Association; and, secondly, to go into the 72 Crown Courts across England and Wales, with a more general

[1] James Mulholland QC, succeeded by Jo Sidhu QC in September 2021.

[2] See Queen's Speech 19th December 2019; confirmed by Govt Whip Baroness Scott in Parliament on 09.22.20, and again by Justice Minister Lord Wolfson in Parliament on 07.07.21.

questionnaire, to speak with court users and stakeholders, and court staff, preferably by attending court users' meetings at court centres, to gather evidence across a wider spectrum.

1.5 The survey went out to the Bar in the Spring and there was an impressive return from practitioners, with almost 1100 responses. However, the second stage did not go ahead: it became apparent that, except for a handful of Resident Judges, there was a reluctance to assist us in the process. I regret that I was unable to persuade the senior Judiciary to consent to this stage taking place.

1.6 In addition, although there were potential conflicts for employees of HMCTS, it had been hoped that court staff could engage in the process – they are, after all, colleagues with whom we practitioners work closely – but, ultimately, despite initial positive signals of cooperation from HMCTS, that too proved impossible.

1.7 That we were unable to undertake this additional stage of evidence gathering is a great disappointment. It underscores the need for the Royal Commission to be established with the teeth to obtain evidence from all stakeholders and participants in the CJS.

1.8 I hope that this report provides a valuable and accurate snapshot of the issues facing practitioners daily in the Crown Court. It deliberately does not focus on more existential issues such as recruitment and retention, nor the very low morale of criminal barristers who are committed to doing publicly funded work, although these issues were repeatedly raised by respondents in the open responses and cannot be ignored.

1.9 It is, however, evident that these practitioners endeavour to keep a creaking system going, and do their best daily to ensure that defendants are properly prosecuted and defended. But it is the case that practitioners are exasperated, and many are leaving the Criminal Bar (or 'diversifying' into other work) in worrying numbers, because working conditions are so poor and remuneration too often insufficient.

1.10 That so many responded to the survey is evidence of practitioners' genuine concern about problems faced daily in the Crown Courts, and their commitment to fix them. The Covid-19 pandemic has of course made matters far more complicated, but it should not be used as an excuse to mask the very real problems that existed before, and in respect of some of the issues long before.

1.11 When I sat down to write this introduction, my trial at Inner London Crown Court (a building which celebrates its centenary this year) had been forced to halt for two days as the Court closed due to the ancient heating system packing in. When the boiler was eventually fixed, the trial was further disrupted - and the jury again sent home - due to an unfixable broken window, which meant that the rain that came with Storm Arwen fell into the courtroom and onto the jury during the Judge's summing up. Clearing the backlog of cases will take even longer if courts can only sit when the weather permits. The case for establishing a Royal Commission into the Criminal Justice System gets stronger and more urgent with every passing cloud.

Ed Vickers QC
Red Lion Chambers
December 2021

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3. Executive Summary

3.1 A large number of practitioners responded to the questionnaire (almost exactly one third of CBA members). There is widespread concern about a range of issues. Many of those problems have been raised in successive Reports and Reviews over the past 30 years, and many (but not all) are evidently a result of insufficient resourcing over that period.

3.2 Seven themes emerge from the response to the survey (including the additional open answers):

1. The urgent need for more court sitting time to clear the backlog of cases (a backlog that existed before the pandemic).
2. The problem of delay in listing cases and the need to reform listing practices, including the use of objective criteria.
3. The continued use of CVP video links, with a national protocol, to allow continuity of counsel representation and reduced travelling and waiting times.
4. Increased investment in the Crown Court estate: from very basic maintenance to major renovation of dilapidated buildings, and the construction of purpose-built court centres capable of dealing with modern, multi-handed and complex trials.
5. An increase in funding of the under-resourced Crown Prosecution Service.
6. An appropriate increase in remuneration for advocates, to reflect work properly done; and, ultimately, to prevent an exodus from publicly funded work and criminal law in general.
7. The remarkably low morale (and wellbeing) of practitioners working in the CJS.

3.3 Other issues identified in the survey include:

- Problems with the disclosure scheme.
- The plea-based sentence reduction scheme, and the lack of judicial discretion in determining credit for guilty pleas.
- The lack of adequate facilities at court, particularly conference facilities.
- Court technology that does not work adequately.

4. Historical context

4.1 Over the last 30 years, there have been a large number of reviews of the Criminal Justice System. Whilst most have explored particular areas or aspects of the system, three have been of a more comprehensive nature:

a. The Report of the Royal Commission on Criminal Justice ('the Runciman Report') July 1993[3]
b. Review of the Criminal Courts of England and Wales, by The Rt Hon Lord Justice Auld ('the Auld Review') September 2001[4]
c. Review of Efficiency in Criminal Proceedings, by The Rt Hon Sir Brian Leveson ('the Leveson Report') January 2015.[5]

4.2 The above reviews are too substantial even to summarise; links to the reports are given below. They are noted here for two reasons: first, they are a useful reference point against which to chart progress on a particular issue; secondly, they deal with some issues that remain relevant to the content of this Report, some of which are identified and summarised below.

The Runciman Report (1991-1993)

4.3 The Commission was set up in 1991 against a background of miscarriages of justice which threatened to undermine public confidence in the Criminal Justice System. Its mandate was "to examine the effectiveness of the Criminal Justice System… in securing the conviction of those guilty of criminal offences and acquittal of those who are innocent, having regard to the efficient use of resources". The Commission examined law and practice in relation to police, prosecution, defendants, pre-trial conduct, trial matters, sentence and appeal. The Commission published its report in 1993, which set out 352 recommendations to address deficiencies in these areas.

Resources

4.4 The Commission reported concerns over inadequate funding of the Criminal Justice System: the CPS was under-resourced, and its workload meant not all cases were thoroughly prepared. The legal aid rates were a matter of concern, as was the knock-on effect of legal aid on the ability of the Criminal Justice System to attract and retain legal professionals, and maintain standards:

[3] https://www.gov.uk/government/publications/report-of-the-royal-commission-on-criminal-justice
[4] https://webarchive.nationalarchives.gov.uk/+/http://www.criminal-courts-review.org.uk/ccr-00.htm
[5] https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf

- *"we have, during our examination of the system, become aware that in many areas there is a lack of adequate resources…[W]e think it worth noting that criminal work appears to be less highly valued than civil work by those responsible for setting fees."*[6]

The Court Estate

4.5 The Commission described "unsatisfactory conditions" and the need for "better refreshment facilities" for jurors. The Report observed that older courts were not fit for purpose:

- "*the proper treatment and encouragement of victims and other witnesses is much assisted by adequate court facilities. This should include separate waiting facilities, toilets for the disabled, and adequate parking space… tailored to the available resources, designed to improve facilities at existing courts to complement the progress that is being made when new courts are built.*"[7]

Defendants and Witnesses

4.6 The Commission reported that the treatment of victims and other witnesses required attention. There was a need for witnesses to be better informed of progress and outcomes of cases, to do "everything to ensure that waiting and other facilities are adequate", and to give witnesses support and encouragement.[8]

The Auld Review (2001)

4.7 The Auld Review inquired into the practices and procedures of the criminal court. Its aim was to provide criminal courts which were:

- *"modern and in touch with the communities they serve; efficient; fair and responsive to the needs of all their users; co-operative in their relations with other criminal justice agencies; and with modern and effective case management to remove unnecessary delays from the system.*"[9]

4.8 The outcome of the Auld Review was 328 recommendations, organised according to the various participants in criminal proceedings as well as the

[6] Runciman Report (1993) Introduction, para. 17; see also Chapter 8 para 36.
[7] Runciman Report (1993) Chapter 8, para 107.
[8] Runciman Report (1993) Chapter 8, paras 36, 40.
[9] Auld Review 2001, Foreword.

various stages of the trial process. Whilst many recommendations have been implemented, some familiar issues remain.

Resources

4.9 The Auld Review observed that the key to better preparation for, and efficient and effective disposal of, criminal cases was early identification of the issues. This in turn was dependent upon there being strong and independent prosecutors, supported by "considerably more resources…"[10] and "efficient and properly paid defence lawyers, "properly resourced…if they are to make a proper contribution consistent with their duty to their clients and court."[11] The author stated:

- *"The basis and levels of their pay are not directly within my terms of reference. But I cannot ignore some of the effects of poor payment in publicly funded cases on the working of the criminal justice process…".*[12]

The Court Estate

4.10 The Auld Review identified ways in which the facilities and procedures of the courts should be modernised. These included better use of technology, such as electronic bulletin boards at court; websites with information on case listings, progress, estimated times etc.; diagrams of court layout; suitable sound amplification systems in all courtrooms; as a minimum, a reception desk in each court centre, after any security arrangements, where those attending can obtain information.[13]

CJS Professionals

4.11 The Auld Review considered the extension of court sitting times, but rejected this idea. It observed that:

- *"The hours either end of the sitting day are needed, and well-used, by lawyers. Any general and significant extension of court working hours would be very costly and would demand a massive increase in resources if the courts and all who serve them were to be adequately equipped to make good use of the extra time*".[14]

[10] Auld Review 2001, Chapter 10 para 12
[11] Auld Review 2001, Chapter 10 para 13
[12] Auld Review 2001, Chapter 10 para 13
[13] Auld Review 2001, Chapter 11 para 165
[14] Auld Review (2001), Chapter 11, para 176.

Delay and Listing

4.12 The Auld Review observed that listing was the responsibility of judges, together with the listing office, and that it was not possible to envisage a "better system". Listing was largely unaddressed, save for the recognition of the need for "fixed trial" dates:

- *"There is inevitably a tension between, on the one hand, the certainty, efficiency and convenience to all of a fixed system of listing in appropriate cases and, on the other, the need for flexibility to make optimum use of courts and judges. But the tension is not so evident if in providing greater certainty as to trial dates, it results in greater consideration to all involved in the criminal justice process, not just the courts and the judges."*[15]

The Leveson Report (2015)

4.13 The Leveson Report was written at the request of the Lord Chief Justice against the background of decreased public funding available to the HMCTS, the police, CPS, National Offender Management Service (NOMS) and legal aid. Its aim was to demonstrate ways in which, consistent with the interests of justice, it might be possible to streamline the disposal of criminal cases thereby reducing the cost of criminal proceedings for all public bodies.

4.14 The terms of reference included a review of (i) current practice and procedures from charge to conviction or acquittal, with a particular focus on pre-trial hearings and ways in which such procedures could be further reduced or streamlined; and improved with the use of technology (ii) the Criminal Procedure Rules, to ensure they are operating with maximum efficiency. It made around 80 key recommendations to that effect.

Resources

4.15 As with all reviews on the Criminal Justice System, the issue of insufficient resources was identified as an underlying problem. In the introductory remarks, the author states:

- *"There must, of course, be an irreducible minimum of funding – for the police, the CPS, defence lawyers, the courts and NOMS – below which the Criminal Justice System cannot operate….remuneration for those engaged in the system must be*

[15] Auld Review (2001), Chapter 10, para 237.

commensurate with the skill and expertise which has to be deployed, otherwise the highest calibre individuals will not be prepared to work in the field and standards will inevitably drop."[16]

CJS Professionals

4.16 The Leveson Report recommended that remote hearings be expanded, such that they should become the "default" for hearings in criminal proceedings other than trials. Other obvious areas which would benefit from improved audio-visual links were identified as prisons and police stations. It acknowledged the obvious efficiency and cost savings of such hearings and increased flexibility for all those involved in the Criminal Justice System, including advocates.[17]

4.17 In relation to court sitting hours and flexible court arrangements, the Leveson Report recommended case management or other hearings be conducted either by joint conference telephone or by video conferencing outside court sitting hours so that instructed advocates can take part without disrupting trials which they are then undertaking.[18]

Delay and Listing

4.18 The Leveson Report recognised the "acute problem"[19] caused by allocation of sitting days and recommended further funding to increase the cap on court sitting days. The knock-on effects of insufficient sitting days were described as follows:

- *"[Delays in listing are] doubtless causing a considerable increase in the stress placed on victims and witnesses. In addition, such necessary practices increase the likelihood of defendants pleading not guilty, knowing that their trials will not come up for a considerable period by which time even if victims and witnesses have not lost interest or moved away (so that the case collapses), memories will be affected and the direct evidence less persuasive. Even if that does not happen and a guilty plea is entered, the mitigation of having the case hanging over the defendant's head may well carry weight with the sentencing court. This creates a downward spiral in which the guilty plea which is ultimately entered and which was inevitable from the initial papers is not entered expeditiously. The consequence is further cost incurred in unnecessary case preparation and further delay which only further increases the pressure on lists."*[20]

[16] The Leveson Report (2015) para 22.
[17] The Leveson Report (2015) paras 40 to 44.
[18] The Leveson Report 2015 para 217
[19] The Leveson Report 2015 para 318
[20] The Leveson Report 2015 para 318

4.19 Further, the Leveson Report highlighted that the warned list system is a particularly problematic feature of listing, being "wasteful and inefficient"[21]: witnesses have no certainty of when they are required, and advocates will often have less time to prepare the case, or will have to prepare the same case on multiple occasions. It recommended the use of warned lists cases be reduced.[22]

4.20 Set within this historical context, it will be seen that many of the issues that face practitioners that have been raised in this C-21 report show that most are not new, and that the concerns of the profession are not only valid but have long been identified as requiring urgent attention by successive independent reports.

Findings from the 2021 CBA Survey

4.21 At this point we turn to the findings from the survey of CBA members in 2021. The analysis begins with the court estate and then proceeds through important aspects of the Crown Court. We note the key trends in each area, and the report concludes by addressing variation in responses relating to demographic issues such as gender and ethnicity. Appendix 1 provides a summary of key respondent characteristics. The survey instrument is located in Appendix 2, and a summary of the frequency of survey responses can be found in Appendix 3.

[21] The Leveson Report 2015 para 318
[22] The Leveson Report 2015 para 132

5. The Court Estate

5.1 Respondents were invited to comment on matters that they considered inadequate within court centres they were familiar with. No court stood out as a consistent model of good practice although positive comments were received for some courts. Overall, the responses were characterised by frustration and despondency with the general dilapidation of the Crown Court estate and the widespread lack of facilities.

Conference Rooms

5.2 The most repeated complaint was the lack of conferencing facilities at court and how this impacted on the quality of professional advice and professional preparedness. Clients are habitually having to consult with counsel in stairwells as most conference rooms are locked – an existing problem worsened by the pandemic. Counsel and clients are constantly trying to steal places for a conference that is supposed to be confidential.

- *"For clients on bail there simply aren't enough conference rooms in the building - many are reserved for lengthy trials and therefore locked. I have frequently had to conduct conferences quietly in hallways - pausing if people pass!"*

5.3 Often remanded clients are produced very late, as the prison service have insufficient staff to enable a good flow of conferences in the cells. Judges wanting to progress their list sometimes impatiently demand that cases are called in when instructions and advice have barely been given. Conference rooms are often in a poor state.

- *"Extremely difficult to find a private conference room for client on bail. Those that are available are in terrible disrepair - graffiti walls / ripped seating / poor lighting or broken lighting / unclean."*

- *"Cell conference facilities are cramped and take a long time to get in and out of which isn't always factored into time allowed."*

Canteen Facilities

5.4 Lost during the austerity cuts over a decade ago, the demise of the court canteen is frequently commented on in these responses. The comments evidence that

its absence continually impacts on the Bar's working day especially as the criminal bar tends to have to work over lunch time and other break times. It affects wellbeing. Respondents show that the availability of adequate refreshment and sustenance on site aids the administration of justice.

- *"There are no canteen facilities. Vending machines selling crisps and chocolate and fizzy drinks are available. There is one sandwich shop within 5 minutes' walk (currently shut due to Covid-19), the rest are 10 minutes' walk away. There is rarely enough time in a trial to get out to buy lunch, so chocolates and crisps and Coke are the norm."*

Disrepair and Dilapidation

5.5 Several respondents spoke of areas of the court building being unfit for purpose and not being user-friendly. This sometimes meant that those with disabilities were disadvantaged and denied access to the buildings or areas of the building because there were no lifts or none that worked. Seating in court was said to be uncomfortable. Tripping hazards caused by frayed /lifting carpets were common. Leaking roofs, collapsing roofs, plaster falling from walls, stagnant water sitting in court buildings were all part of a general pattern.

5.6 There were frequent complaints about poor lighting both in court and robing rooms. Poor ventilation. Unhygienic and unsafe toilets. The general feeling is that the Bar is working in a neglected court estate that is propped up by inadequate, temporary repairs. It undermines public confidence in the criminal justice, strips away professional pride and contributes to feelings of despair amongst the Bar and other court users.

- *"The cleanliness/toilet facilities and general robing room facilities are inadequate at most court facilities. Most courts appear not to have been properly cleaned/updated in years. Most toilets only have one facility as the rest are out of order, with tiles coming off the walls and wires hanging from the ceiling."*

- *"The general lack of daylight anywhere in the building."*

- *"The seating in court is appalling and crippling to the back. The benches and seats were not designed for laptop working. Half the seats are broken and tilt too far forward. The bench seats need to be removed and replaced with desk type chairs."*

- *"Court building is generally dilapidated. Lavatories in robing room are woefully inadequate and invariably broken/out of use. The area above the Exhibit keyboard has a permanent leak [and no ceiling] and has been in that state for at least 3 years."*

- *"The Resident Judge is very good indeed and does her level best to help everyone and keep the show on the road, she was seen with a mop cleaning the entrance during Covid-19, but she is let down by the MoJ."*

Robing Room Facilities

5.7 Respondents reported a general lack of adequate robing room space. There is little, if anything, by way of secure lockers. Lighting and ventilation is poor, as is the availability of seating. They are generally dirty. Accessible electrical sockets are rare.

- *"Robing room lights remained out for quite some time. Robing room urinals/locks on loos inadequate."*

- *"The most significant issue is the robing room: it has no ventilation, all windows are locked, and it becomes a furnace in the warmer months."*

- *"The furniture for advocates is often broken in robing room, the hanging space for outside clothes - just basics"*

General Responses

5.8 The survey revealed no contentment with the condition of the court estate. It spoke of a Bar that suffers with a long list of inadequacies – some of which are serious. These combine with other deficiencies and problems in the system. The following quotes encapsulate widespread feeling:

- *"The place is a disgrace. The general hygiene of the premises is appalling. This owes more to the general dilapidation of the premises. Roasting hot in the summer, freezing cold in winter. Juries having to be sent home simply because the temperature is so unbearable in Courtrooms during the height of summer. The whole place needs a full-on restoration from top to toe."*

- *"The fabric of the building, as with all Crown Courts in my experience, is poor. Toilet facilities are pretty useless. Conference facilities are limited. The carpets are threadbare. The list goes on. The place is kept afloat by the good humour and goodwill of the court staff, local lawyers and Judges."*

- *"The entire centre is decrepit and needs an extensive overhaul and update. Paint peeling, carpet worn out and coming away from the floor, broken seats in court, broken lighting, broken ceiling tiles, furniture held together by tape… the list is truly endless. There are leaks and damage to the structure of the building that have gone unrepaired for years. There are inadequate facilities for counsel to work (e.g. insufficient plugs in the bar mess), but it is one of the few centres where the bar mess is of a good size. The courtrooms themselves are old, lack natural light (the awful artificial lighting is headache inducing), and slowly but surely becoming unusable in spite of efforts to halt the decline. The annex should be torn down and rebuilt as the facilities there are non-existent. These complaints are true of virtually every court centre I have been to. At least there isn't a hastily attached collection tank next to the Exhibit computer to collect leaking sewage as there is in [X Crown Court]."*

6. Defendants and Witnesses

6.1 Respondents were invited to answer a series of questions on the topic of how criminal courts treat defendants and witnesses, and to identify whether there are adequate facilities to allow defendants to receive advice and be treated fairly.

Defendants in Custody

6.2 One of the main issues considered on this topic was whether there was sufficient time and facilities provided by the courts for defendants to have conferences whilst at court, whether they be on bail or in custody.

6.3 In response to the question of whether sufficient time is allocated for conferences at court during trials, 53% of the respondents disagreed or strongly disagreed that sufficient time was given for conferences.

- *"It is very rare to be able to have a meaningful conference with a client at court. If in custody, conferences are very much time limited. If on bail, there are very few conferences rooms which are available. Almost all of the rooms are locked and unavailable as they have been reserved by those in long trials."*

6.4 A repeated complaint received from respondents was that insufficient time is given to conference with defendants in custody whilst at court. Respondents often complained that there would be time limits applied to conference by the security staff in the cells. In summary these complaints included the following observations:

- There are not enough rooms within the cells to allow for conference, resulting in long waits and curtailed conferences due to either pressure to attend the hearing on time and/or to allow waiting colleagues the opportunity to have conferences with their respective clients.
- Limits of, in some cases, 15 minutes for custody conferences due to the lack of available conference rooms in custody.
- Clients being produced late, resulting in significantly reduced prehearing conference times. Also, clients being taken back to prison shortly after the end of the court day results in little time for post hearing conferences.
- Cells being closed over lunch, meaning that there is little or no time for conferences during the break.

6.5 Respondents stressed that the inevitable result of the above shortcomings was not only unfairness to the defendant and counsel, but also the lengthening of trials or the failure to resolve cases which might otherwise resolve, leading to further cost and wasted time or hearings. Many reported trials running significantly longer as a result of the inability to have proper conferences with clients in custody during their trial.

6.6 In addition, a frequent complaint from the respondents was that a 15-minute pre-hearing slot allocated for CVP conference when the defendant appeared via a video link was entirely inadequate in some cases, and longer slots ought to be available. This, of course, would lead to fuller conferences and a reduction in wasted hearings.

Defendants on Bail

6.7 The primary and repeated complaint from respondents to the issue of the treatment of defendants on bail was the absence of available conference rooms within the court building. Many complained that those conference rooms that do exist are mostly locked, and therefore unusable.

6.8 Another common complaint was that the conference rooms were inadequately furnished with things like tables and chairs. The impact of this is that advocate and client struggled to consider documents, take notes, or have documents created and considered in private.

- *"Conference rooms are filthy, lack security and are too small and too close to the courtrooms so it is virtually impossible to have a private conference that cannot be overheard by members of the public and other advocates. Very few of them have tables, meaning advocates are required to work from our laps."*

- *"Never given time with defendants during trial. Expected to fit everything in in the 20 mins before court sits, 30 mins at lunchtime and 15 mins at the end of the day. Which means counsel never gets a break all day."*

6.9 Many reported having to have conferences in corridors or hallways which were not private and do not allow conferences to go into the sort of detail that might be required.

- *"Being restricted for conferences at lunchtime and so having to apply to the judge for time. Unable to get into the cells at the start of the day and the end of the day."*

- *"There are insufficient conference facilities in the cells, which do not open until 09:30 which means advocates only have a maximum of 25 minutes with our clients before trials start at 10:00. The cells are then locked for half of lunch, again meaning we have insufficient time before we resume at 14:00."*

6.10 During the Covid-19 pandemic, respondents reported that the lack of suitably sized conference rooms made conferences with more than two people very difficult. As a result, solicitors, interpreters or intermediaries were often not able to be in the conference room with counsel and defendant and so conferences had to be held elsewhere in less private areas of the court.

Treatment of Witnesses

6.11 The majority of respondents indicated that they neither agreed nor disagreed that their most regularly visited Crown Court both communicated well with witnesses (59% of respondents) and provided adequate time for witnesses to be spoken to prior to giving evidence (42% of respondents).

6.12 A repeated complaint referred to the lack of facilities or support for defence witnesses, noting that usually the witnesses for the defence will simply sit in the corridor outside court without any facilities or support afforded to them.

6.13 There were also some responses pointing out the negative effects of decisions taken by listings on witnesses (see also section 10 in this report on delay). Over listing trials, vacating trial dates and general delay in hearing trials, all have the obvious effect of disenfranchising witnesses with the Criminal Justice System and must be one of the most significant factors in their mistreatment by, and frustration with, the court system.

- *"As far as I am aware there are no facilities for defendant witnesses: they simply have to wait outside the courtroom."*

7. Professionals in the Crown Court

7.1 When asked whether their local Crown Court communicated well with professionals, overall, 42% of respondents agreed. This was closely followed by 26% of participants neither agreeing nor disagreeing, that group encompassing a higher percentage of participants with both a prosecution and defence practice. In contrast, the group of participants who disagreed (23%) encompassed a higher percentage of defence only barristers.

7.2 44% of the responses received neither agreed nor disagreed with the proposition that the judiciary made allowances for professionals' caring and /or childcare responsibilities, with only 17% agreeing compared to 39% disagreeing. A higher percentage of barristers whose year of call was prior to 2000, strongly disagreed that judges made adequate allowances.

7.3 In relation to listing practices only 10% of the responses agreed that allowances were made for caring and/or childcare responsibilities.

7.4 Even though, generally speaking, a significant proportion of responses were neutral as to whether consideration is given to professionals' caring and/or childcare responsibilities, many concerns were raised in relation to caregiving responsibilities within the open question. Several responses reflected a common theme that:

- "T*here is absolutely no interest in whether advocates have childcare or caring responsibilities and no recognition of how difficult it is for advocates to raise these matters."*

7.5 There was an acknowledgment that practices and attitudes varied between judges and court centres, and different listing offices, but also a recognition that the issues were of more general application:

- "*The creep of the court working day to earlier sitting times and later finishing times has, in my view, a deleterious effect on all practitioners."*

7.6 Some expressed concern that too many judges continued to be inconsiderate in their general approach:

- *"Judges should be polite and not belittling or bullying toward counsel. The behaviour of many Judges would not be tolerated in other working environments."*

7.7 Many expressed concern there was little or no acknowledgment or understanding of work and commitments advocates had outside of the immediate case with which the court was concerned. For example:

- *"There is no account given of Counsel's responsibilities outside an on-going trial. Counsel are not given time to explain matters to defendants, or their family, or to respond to last minute disclosure. Counsel are not given proper time to respond to legal matters that arise and are expected to draft legal documents overnight and on weekends in order to keep to an unrelenting timetable. The courts should be aware that the extra work being demanded of Counsel has never been consulted on, is unpaid, is interfering with my family life as well as my mental well-being and is unsustainable."*

7.8 A number noted that insufficient breaks were facilitated during the day, with counsel often left needing to work during the lunch period.

7.9 The effect of a longer working day raised additional concerns for the Bar, in circumstances where such additional and anti-social work attracts no additional or separate remuneration outside of the standard case fee:

- "T*here is still an expectation that the Bar will work late into the evening/night responding to emails and drafting documents for the next day… expecting us to deal with work outside a reasonable span of working hours*,"

7.10 There was significant and consistent opposition to the use of 'warned lists':

- *"Listing matters in a warned list means that childcare must either be in place permanently or able to be arranged at very short notice. Neither of these is feasible on a commercial basis on criminal fees."*

7.11 Other respondents perceived an increased tendency to direct case summaries, agreed facts, and other documentation, often unnecessarily, sometimes months in advance of any trial listing at which it may be needed, and in circumstances

where the instructed advocate had no means of knowing whether they would be able to conduct the trial (and therefore receive a remuneration for the directed pre-trial paperwork) given the vagaries of listing.

- *"The amount of wasted prep for cases that I will never do (because of the reluctance/difficulties in fixing for counsel's availability) is probably of a financial equivalent to the work I do actually get paid for."*

7.12 There was general support for the use of the CVP and specified times for individual hearings, and a degree of dismay that gains made in those regards during the earlier stages of the COVID-19 response had been lost, with an often unnecessary and inflexible return to in-person hearings; there was concern at inconsistent approaches to the use of the CVP.

- *"Currently one can have a costly several hour round trip for a short hearing which could easily have been conducted remotely." "The use of CVP has slightly increased the viability of criminal practice. [It] is massively beneficial for counsel as it saves time and money. Also, in 2021, the reduction in reliance upon travel and the protection of the environment ought to be a consideration given weight."*

7.13 There remained a common concern that consideration of advocates was at the end of any list of priorities (if given any regard at all).

- *"The Courts' concern now appears to be almost entirely directed to the listing of cases to suit the administration…rather than availability of counsel or the wishes of the defendants. Of course, there has to be a balance between conflicting interests but more frequently it appears the Court is now only concerned with its backlog and not the interest of the parties."*

- *"It is often difficult to know for sure what might have been achieved in a case where counsel was able to have sufficient conferencing and preparation time. We no longer have this in any case. I strongly feel it is creating a climate that is a breeding ground for injustice. Counsel work under too much pressure, at too great a pace, too much of the time".*

8. Criminal Procedure

Presentation of Materials to Jurors

8.1 Asked if jurors would benefit from greater use of non-oral material (e.g., PowerPoint) in the presentation of evidence, 19% either disagreed or strongly disagreed with the question. 30%% of responses were neutral; however, 52% agreed or strongly agreed.

8.2 When asked if jurors would benefit from more non-oral material (e.g., PowerPoint) in advocates' speeches, it might have been assumed, bearing in mind the answer above, that this question would have a similar response. In fact the figures were different. 35% agreed or strongly agreed with this as a proposal. 31% were neutral. 34% either disagree or strong disagreed. The profession is effectively split into thirds on this topic.

Disclosure

8.3 It should be noted that the new AG's Disclosure Guidelines (Dec 2020) may not have had a chance to bed down by the time of the survey. Four questions were asked on this topic

8.4 Asked if over the past 2 years the disclosure system had worked well most of the time: a majority of the profession (57%) disagreed with this as a proposition, with a fifth strongly disagreeing (21%), 17% were neutral, 26% agreed and only 1% strongly agreed.

8.5 Respondents were asked whether the overall disclosure scheme created by the CPIA was fit for purpose: 48% did not agree; 23% neither agreed or disagreed. It should perhaps be remembered that this is a very broad question. Additional questions about specific types of offences might have provided additional material about where the problems lay: there was a broad understanding that there were problems with digital evidence from (e.g. mobile phones). Fewer than a third agreed that the system was fit for purpose.

8.6 The next two questions attempted to find out what might have been causing the problem.

8.7 Respondents were then asked whether difficulties with disclosure were created by the investigators: 65% of those survey agreed or strongly agreed with this proposition. 25% neither agreed nor disagreed. Only 10% disagreed with the question.

8.8 When asked whether difficulties with disclosure were created by the Crown Prosecution Service or other prosecuting bodies: a similar number agreed with this proposition to the question above: two thirds agreed or strongly agreed, 23% of participants neither agreed nor disagreed, and again only 10% either disagreed or strongly disagreed.

- "*I defended in a case involving serious allegations of both sexual and physical child abuse, which took several years to come to trial. The trial was aborted after three weeks because of serious disclosure failings by the Crown. When the material in question was eventually reviewed and disclosed, it cast serious doubt on the defendant's guilt, to the extent that the Crown offered no evidence. In the meantime, however, all of my client's other children (i.e. not those who had made the allegations) had been taken into the care of the local authority and had eventually been put up for adoption. I question whether the decision to put up the children for adoption… would have been made had the criminal proceedings not dragged on for so many years and had the material which cast serious doubt as to my client's guilt been made available earlier.*"

9. Pleas/Sentence

9.1 As is well known, defendants who enter a guilty plea are entitled to a sentence reduction. The level of reduction appropriate is specified in the (revised) Sentencing Guideline which became effective in 2017.[23] One purpose of the guideline was to clarify the levels of reduction for defendants and their legal advisors. There has long been concern about the regime of plea-based sentence reductions.[24] For example, commentators have suggested that some defendants who have a legal defence may nevertheless enter a guilty plea simply in order to secure a reduction in sentence. Vulnerable defendants or defendants with caring responsibilities may be particularly tempted to enter a guilty plea. The former may not fully appreciate the consequences of pleading guilty whilst the latter may seek to avoid an immediate prison sentence by entering an early guilty plea. In recent years, there has been little research on defendants or their legal advisors.

9.2 For this reason, the CBA survey included several questions on practitioners' perceptions of the current regime. For each question we note the trend for the sample as a whole as well as any findings involving subsamples (e.g., male vs female barristers) *where these differences were statistically significant*. There was little variation in responses to this question, and no significant differences across court locations. Respondents were also invited to contribute free response comments, and two of the plea questions attracted a great deal of commentary. Examples of these are provided in italics.

9.3 Four plea-related questions were posed, two exploring the potential problems of defendants pleading guilty, and two addressing the current guideline. For two issues ('defendants who plead guilty without having legal advice' and 'defendants who plead guilty simply to secure release on bail'), respondents were asked whether this definitely or probably was a problem or whether it definitely was not a problem. Overall, 21% stated that pleading without advice was 'definitely a problem'; 49% 'probably a problem', and 29% 'definitely not a problem'. Barristers whose year of call was prior to 2000 were more likely to

[23] Sentencing Council, *Reduction in Sentence for a Guilty Plea. Definitive Guideline.* (Sentencing Council: London, 2017).
[24] Eg R. Helm, (2019) 'Conviction by Consent? Vulnerability, Autonomy and Conviction by Guilty Plea' *The Journal of Criminal Law* 83(2): 161-172.

see this issue as a problem, as were barristers whose practice was exclusively defence.

9.4 Free Responses regarding issues relating to legal advice and plea:

- *"Full credit should be available at the PTPH, and later in complex cases. It is unfair to expect comprehensive advice on plea to be given in the mags' court. "He knows if he's guilty " is trite and often inaccurate."*

- *"It can be unfair for a defendant to be under pressure to enter a G plea in the magistrates' court in complex cases, where he has not seen all of the evidence just to obtain the full credit. Allowance must be made for those complex cases and full credit should be given at PTPH where appropriate."*

- *"It is difficult to advise a lay client properly as to plea given the regular failure of the CPS to provide the evidence in a timely manner - CCTV is an especial problem, often not even provided in accessible format, if at all, prior to a PTPH although frequently central to the case.*

- *"The full 33% needs to be available at PTPH. The material that is provided at the first appearance is laughable. Defendants cannot be expected to plead - and counsel cannot be expected to give advice without any material at all. We cannot rely simply on a summarised MG5 case summary for serious offences."*

- *"The problem is not the plea regime; the problem is lack of proper evidence being served by PTPH. Despite there being little evidence, the court often puts considerable pressure on the defendant to plead by refusing to preserve credit until the next hearing. The view seems to be that 'the defendant knows if they have done it', which is unethical and against the rule against self-incrimination. The fact that the clock is ticking on credit creates very unfair pressure."*

9.5 With respect to defendants pleading simply to secure release on bail, 19% responded this was definitely a problem, 44% probably a problem, and 37% definitely not a problem. Perceptions were also related to professional experience on this question too, albeit in the other direction. More experienced barristers were less likely to see this as a problem, as were female barristers. Defence-only barristers were *more* likely to respond that defendants pleading guilty just to get released was a problem.

9.6 Regarding the Sentencing Council's guideline, respondents asked whether the guideline had made it easier for legal advisors to advise their clients. In response, 31% stated that it had made advising clients easier, 51% responded it had made no difference, whilst almost one-fifth (19%) responded that advising clients had become harder as a result of the new guideline. The more experienced barristers were more likely to believe that the guideline had made no difference.

9.7 Finally, we asked about the current levels of reduction specified by the Council's guideline. Over half the sample (58%) thought the reductions were about right, 39% thought they were too modest and only 2% felt they were too generous. Members of the Bar with more experience were more likely to express the view that the reductions prescribed by the guideline were too small. Significantly more barristers in defence practice only were more likely to believe that the current levels of reduction were too modest: half of the defence-only respondents but only one quarter of the defence/prosecution group held this view.

9.8 Open responses regarding appropriate levels of reduction for guilty plea:

- *"The discount for guilty pleas is invaluable and should be more generous in order to accommodate the problems encountered in getting disclosure from the Crown at an early stage in proceedings."*

- *"Increase max sentencing discount to 40-45%."*

- *"Greater discounts for early plea needed."*

- *"10% is probably too little a discount at trial - if a Defendant at that stage is considering changing plea the discount is unlikely to have much effect unless there is an indication that it would make a difference to whether or not there would be an immediate custodial sentence or makes a difference to the categorisation of a case within the guidelines."*

- *"I consider that a far more substantial reduction should be given for a guilty plea, especially at the first hearing in the Crown Court. There should be a clear recognition to the Defendant of the fact that he/she has pleaded guilty, accepted the truth about what has happened and not put witnesses / families through the ordeal of a trial."*

9.9 Many open responses urged greater discretion for Judges re sentencing:

- *"The reduction in plea is applied too rigidly by the judiciary who have often expressed they feel bound by the guidelines. The guidelines do not properly reflect the difficulties defence experience in advising defendants on the law and legal ramifications of plea. Defendants are often being unfairly denied full credit because the 1st Appearance in the Magistrates' Court is rarely the first "reasonable" opportunity the defendant has to plead guilty, but because of the guidelines the Judiciary treat these hearings as such."*

- *"More flexibility for Judges in deciding whether more credit for a guilty plea can be given e.g., at a late stage but where it means vulnerable witnesses will not have to give evidence. I suspect some defendants could be persuaded to plead guilty at a late stage if defence counsel were still able to tell them that the Judge could give them some discount on their sentence. I know the 'powers that be' want defendants to plead guilty at an early stage, but many do not - the people who make these rules seem to forget that we are dealing with [people who] don't always do the sensible thing…"*

- *"More discretion to judges - it is becoming a tick-box mathematical exercise which is a hindrance in the more complex, multi-handed cases."*

- *"The system is too inflexible. Full credit is only available when the material provided is (often incorrect) summaries prepared by the police. 10% a trial (when the full case is often served) is too little, it represents only 6 months served (where 50% of sentence served) on a 10-year sentence (3 months on a 5-year sentence), defendants will often ask, what is the point in pleading."*

9.10 The issue of the fee structure also attracted many comments, and there may be in some cases financial considerations to leave a plea until a later stage. There is a theme that defendants ought to be given time for appropriate advice to be given, without the penalty of reduced credit, and a case for the restructuring of fees:

- *"The current payment system [encourages] defendants to go to Crown Court without indicating guilty plea. I have represented a number of defendants where they should have indicated guilty pleas at the Mags and had a third credit."*

- *"The solicitor gets a tiny fee for a committal [but] they get much more if the case proceeds to PTPH and plea is entered at PTPH. Same with counsel, once in the crown court. Covering a committal for sentence pays a pittance, even where there is substantial work that needs to be done. But you get paid (at least) twice as much for a plea at the PTPH on the same case. Consider a charge of indecent images. Committal for sentence: £152. Plea at PTPH: £760 (and for solicitors it is more)."*

10. Delays and Listing

10.1 Respondents were asked to focus on the position pre-COVID-19.

The Need for Objective Listing Criteria

10.2 92% agreed that listing for trial of each case should be done by reference to agreed objective criteria, such as vulnerable witnesses or defendants, seriousness of offence, instructed counsel availability etc.

Delay and Causes of Delay

10.3 82% considered cases were not listed in an acceptable timeframe. This was so in both custody and bail cases, but particularly in bail cases.

10.4 As to causes of delay:

- 88% agreed that limits on the number of sitting days (i.e. availability of judges, recorders and court rooms) were a significant cause of delay
- 60% agreed that prosecution or defence preparation was a moderate cause of delay
- 59% agreed that obtaining expert evidence was a moderate cause of delay.

Open Answers: Delay and Injustice

10.5 Respondents were asked to provide an example from their own cases in which delay resulted in injustice. The question elicited the highest number of open responses, indicating the extent to which practitioners are concerned about the impact of delay on the justice system.

10.6 The response that the injustices were "*too many to mention*", "*the box [for this answer] is not big enough*" and "*Too many to quote.. The delay in the system is inbuilt, has got worse in recent years*" articulate well the flavour of the responses. That said, there were also many detailed answers from which a number of themes can be identified, as set out below.

Listing as Underlying Cause of Delay and Injustice

10.7 Listing issues (lack of court or judge) were the most frequently reported cause of delay (around one third of those who gave an answer cited a listing-related matter as the cause of the delay). The example below summarises the wide-reaching impact of listing problems on those involved in the Criminal Justice System:

- *"Case listed for trial, on bail, 5 days, warned list. Given a date within warned list a few weeks in advance. Notified the night before trial date that case would be listed for mention to re-fix because of lack of court time. Counsel attendance required. Case re-listed 9 months later. Same thing happened. Eventually, trial took place after 4th trial listing, 2.5 years since NG plea entered".*

10.8 Many other responses criticised the list office, highlighting a disregard for those who work or find themselves in the Criminal Justice System. The approach of the list office was described variously from "inadequate", "a total and absolute shambles", which had "no respect" for those affected by listing. The responses below articulate this more fully:

- *"The List Office is by far the most inadequate "facility". It operates to its own rules with barely a thought for the convenience of counsel, solicitors, defendants and witnesses (for both sides)…."*

- *"No time is given to consider the availability of the parties. Listings operates without care or concern of the nuances or needs of a particular defendant. Matters are often pulled from the preliminary list issued at 1pm and then put back in last minute causing much stress and chaos when counsel has taken other work. It does not allow for consistency of counsel."*

- *"Fraud trial listed for 2nd time 6 months+ after PTPH (previously pulled at the last minute), this trial listing comes before a Judge who is only sitting for 3 days when it is a 6+ day case (which we only learn of when it comes on before him). The case is still outstanding now and may be tried 3 years after the PTPH. The injustice to the losers as well as the Defendant (who is on bail) is massive and is solely due to court capacity."*

- *"There are too many examples but one particular example is 17 y/o (15 at time of alleged offence) on firearms count. Listed as fixture twice at [X] Crown Court. Both times removed suddenly without warning the day before due to lack of court time. Two or three court rooms were sat empty during this time."*

Delays Resulting in Abandoned Prosecutions

10.9 One of the most frequently cited examples of injustice arising from delay was that of abandoned prosecutions. Typically, respondents indicated that their trials could not be accommodated in a reasonable time and/or had to be re-listed on multiple occasions. This ultimately caused witnesses to disengage with the court process, so that the prosecution had to be abandoned.

- *"Trial adjourned twice due to lack of court time. The witnesses refused to attend and support the prosecution on the 3rd listing, several months after the 2nd listing and a significant time after the offence. The prosecution had to offer no evidence."*

- *"Due to the substantial delay before the trial date a complainant in a rape trial withdrew support for the prosecution as she wanted to get on with her life and could not live with the continued stress caused by the prospect of a trial many months in the future."*

- *Trial in Northampton, delay between 1st appearance and trial in a Section 20 [GBH] case was 4 years. Witnesses had given up. Solely the fault of the court. Listed 3 times for trial, all removed the night before. In the meantime, the victim had got her degree and emigrated."*

- *"A rape case removed from the list so many times - delayed 4 years. The victim gave up. She withdrew her support for the case and it was dropped."*

Delays Resulting in Guilty Pleas and Sentencing Anomalies

10.10 Many provided examples of defendants who had pleaded guilty because the date of trial was so far off that they would have served their sentence in any event if convicted after trial. In addition, there were examples of (i) defendants who had been in custody pending trial and had served in excess of their eventual sentence; and (ii) defendants who had been on bail, and received overly lenient sentences because of the time that elapsed between the offence and the eventual

sentence (although this was also cited as a way in which the system ameliorated the injustice).

- *"I am representing a young defendant who was acquitted of Manslaughter in August 2020, having spent some months in custody and is awaiting a re-trial for Violent Disorder which cannot be heard until August 2021, by which time he will have served the equivalent of double the likely sentence."*

- *"I had a mentally unwell defendant in custody for an attempted phone grab street robbery. Issues were raised re fitness [to plead], HMP failed on numerous occasions to provide mental health reports… There were further delays obtaining fitness to plead reports from the hospital. There were lengthy delays during Covid-19 since the hospital (in Manchester) could not use Skype. Finally the case was heard in summer 2020 and [the defendant was] found NG. He had served far longer on remand than he would have received as a sentence in any event."*

- *"Sentences for serious offending have resulted in far more lenient sentences because they are now 3 years old. [Section] 18 wounding stabbing down to a s20. Several convictions for knife crime and assault [given a] suspended sentence."*

Delays: Negative Impact on Witnesses and Defendants

10.11 Respondents regularly identified the impact of delay on the ability of both witnesses and defendants to present their case effectively. The most obvious impact was memory loss because of the delay, and the mental pressure and disruption to life pending trial. A couple of examples demonstrate this:

- *"A retrial in an historical rape case where defendant and complainant had intermediaries listed twice and both times taken out of the list as there was no courtroom or judge to hear it. Injustice as further delay affected memories but caused considerable suffering to vulnerable defendant &complainant. I have more examples."*

- *"I have a client in her early 20s with no pre-cons, charged with relatively minor offences… and one offence [of] child neglect. Prosecution … have offered to drop the [child neglect] if she pleads to the others, but she feels strongly that she is not guilty. In the meantime, social services removed her child pending the outcome of this particular charge. She has already waited 2.5yrs for her trial to be heard: now*

expected to be listed in 2022. Irrespective of the outcome of proceedings, the damage to mother and child will be permanent."

- *"There are so many examples. Cases where witnesses have changed their minds because of delay. ID cases where witnesses memories have faded and they've not come up to proof. Defendants have served more than their sentence by the time of trial. Defendants that have poor mental health that has deteriorated to a point of being unfit for trial by virtue of being in custody for so long. It is the rule, not the exception. We need more courts. Closing Blackfriars was total insanity."*

- *"A single case example would not make this point properly - I have lost count of the number of cases where the following has occurred, but it is a major problem. Cases are being dropped because witnesses are tired of waiting for trial; and/or because their mental health is suffering due to the wait. In addition, the [prosecution] are accepting outrageously low bases of plea in order to resolve matters. This often means that cases are 'under-sold' and therefore lighter sentences result. The other side of that coin is that defendants who are adamant that they are innocent end up pleading to lower charges just so it is not hanging over their head. They often can't afford the legal aid payments, and their lives are also on hold whilst they wait for a resolution. They can lose touch with their own defence witnesses as well, making it harder to present a defence. In short, cases are cracking on inappropriate bases, or being dropped altogether, simply because the trial dates are so far off and both defendants and witnesses cannot continue enduring the mental pressure and disruption to their own lines."*

Delays in Charging Decisions

10.12 There were numerous examples of where significant delay has been caused by the length of time it took the prosecution authority to reach a charging decision:

- *"[In a] very substantial £25m mortgage fraud. Case took 7 yrs to investigate and a further 3 yrs from charge to trial in Crown Ct. After initial post-arrest phase activity dwindled to nothing, with OIC [the officer in charge of the investigation] quite literally investigating a 25-handed mortgage fraud in his spare time evening and weekends, having been reassigned to other duties. Jury faced with 10 yr delay just not interested in financial fraud on a major bank with no real loser. My client acquitted. The delay clearly resulted in injustice to all sides: who on earth could be expected to recall what had happened 10 yrs before?"*

- *"D [efendant] was 42 [when he] had sex with an 18-year old …. [in] October 2016, immediate complaint, witnessed by others, and D interviewed the same day. Charged March 2020. No DNA until October 2020 (after service of defence statement). Trial March 2021 - acquitted."*

Delays in Disclosure

10.13 Problems in disclosure have long been in the news and are well known by practitioners. Not all problems end in significant delay but respondents gave a number of examples where there had been a significant delay due to the prosecution authority dealing with disclosure:

- *"A delay of four years between allegation / ABE interview and charge in a case with a vulnerable complainant in psychiatric unit… [D]elayed because, despite the 4 intervening years, disclosure had not been completed."*

- *"I have been involved in numerous cases where trials have been delayed because of failures in Prosecution service of evidence or late disclosure of unused material. The CPS is underfunded [&] understaffed …. The CPS has an enormous problem with disclosure. CPS workers routinely ignore or fail in the proper application of the CPIA because they are too busy … to comply with their duties."*

- *"A 5/6-month trial for which the fixture was twice broken resulting in a 2 year delay to the hearing of the delay due to the Crown not completing disclosure in time."*

Delays in Obtaining Expert Reports

10.14 In many cases there is a need for experts to prepare reports (for example, medical, psychiatric, forensic scientific, cell site or phone interrogation, forensic accountancy). If the issues are not identified at a very early stage (which is not possible in all cases), experts identified and legal aid granted, the delay caused in obtaining a report – and the other party responding to a report - can have a significant impact on the listing of a trial, often with a defendant in custody and victims and witnesses having longer to wait.

- *"Firearms case when [the prosecution] instructed late forensic save for CPS dragged heels in instructing her to expand SFR/1[streamlined forensic report] and respond to*

[the defence] report. This ultimately made the [prosecution] DNA evidence neutral. Trial was delayed for this and, had this been done earlier, I wonder whether matter would have been reviewed. NG verdicts [followed] for a young man who had served the equivalent of a 14 month sentence."

- *"Straightforward rape case that took 3 years to come to court because of prosecution failures in review and failure to secure timely expert reports."*

- *"I am prosecuting an arson case at [X] CC in which the defendant has mental health problems. After a long delay in getting a psychiatric report he was found to be fit and pleaded guilty. There was then a further delay in getting the report required to enable the court to make an interim hospital order. As a result, he spent many months in prison where he could not be properly treated in a case where someone without mental health problems would be unlikely to receive an immediate custodial sentence."*

Other Reasons for Delay

10.15 There were other reasons cited for delay, such as a defendant waiting for a decision from the National Referral Mechanism ("NRM"), a framework for identifying and referring potential victims of modern slavery and ensuring they receive appropriate support:

- *"Defendant held in custody for a significant period of time while awaiting his trial, ultimately being found not guilty. This was a youth [...] awaiting an NRM decision that took far longer than it should have."*

11. Changes brought about by Covid-19

11.1 While approximately half the respondents agreed that Covid-enforced changes had been effective, one quarter disagreed.

11.2 Respondents were asked more generally what other innovations in practice or procedure, whether technological or otherwise, should be considered? A majority were in support of the continued, and extended, use of CVP video links. There was a lot of support for a national protocol on the topic.

11.3 The four points that were stressed were: the use of CVP links enabled continuity of counsel; ensured members of the Bar could do preparation in other cases (for which they were often not paid); did away with that long journeys for short administrative hearings; and meant that practitioners were able to use the time for childcare and other work/responsibilities.

11.4 A very small number of participants wished to reduce the use of CVP: the argument being that there is a danger that it de-humanised the process for defendants. A very small number wanted to increase the use to appeals against conviction, or short jury trials of less than a week.

11.5 Practical suggestions were also made:

- Having a designated CVP office would free up a court room.
- Having a designated link per court was widely praised.
- A relatively small investment in better quality microphones would improve the hearings greatly, and from a cost/benefit perspective it would be a wise investment.

11.6 Many responses concerned the use of CVP links with prisons. Suggestions included that each prison should have a widely published contact point for CVP hearings to ensure that defendants were brought onto the link; more extensive use of CVP with the prison system would make a substantial difference to the smooth running of the system: it was described as 'one of the most efficient developments in the last year'. There was a very widespread, linked, problem, access to digital papers by defendants, especially those in custody. The system in many prisons to apply for access to materials on prison laptops is cumbersome.

12. Profile Breakdown (gender/age/ethnicity)

The Overall Picture

12.1 According to the BSB 2020 report on 'Diversity at the Bar'

- 38.2% of the Bar are women compared with the 50.2% of the UK working age population
- 14.1% of the Bar are from Minority Ethnic Groups compared to 13.3% of the UK working age population

12.2 That report also noted a large reduction in the numbers taking up pupillage.

12.3 The Bar Council 2021 Working Lives Survey suggested that the Criminal Bar accounted for 28.1% of the Bar, making it the largest single practice area by a large margin. Its figures seemed to suggest that whilst women are well represented in the younger/more junior end of the of the profession, numbers declined as time in practice went on. This trend is also supported by the data contained within the Summary Information on Publicly Funded Criminal Legal Services ("CLAR" data).

12.4 Analysis of the Bar Mutual data shows that in 2019, of all barristers declaring that they practised in criminal law, 33% were women and 67% were men. This is close to the breakdown of respondents to our survey: 35% women, 63% men, whilst 2% preferred not to say. Interestingly, the CLAR data seems to show that in the 0-2 years call bracket, women are marginally in the majority (52% women).

12.5 Our survey produced the startling figure that 6% of our respondents were aged 20-30. If this is representative of the proportion of members of the Criminal Bar that are that age (as opposed to the proportion of that age of those who chose to answer the survey) this casts doubt on the long-term viability of the Criminal Bar. (The CLAR data suggests that those in the 0-2 bracket account for less than 10% of those in full time Criminal practice, compared to 8% in 2019/20).

12.6 Nearly 88% of our respondents identified as white and 2% preferred not to say, making around 10% of respondents from Minority ethnicities. This is similar to the data that was produced by CLAR: 81% white and 12% from BAME and 7% preferred not to say.

12.7 Disability in our survey came from a small proportion (5%) of respondents, (93% stating that they had no disability and 2% preferring not to say). This may be due to issues of confidentiality and/or personal choice in self-identification. It may also be a corollary of a job in which it is challenging to make even reasonable adjustments.

Gender – Significant Differences

12.8 Significantly more women than men found the court facilities (relating to heating/ air conditioning, lighting and provision for people with physical or mental health issues) to be inadequate.

By Age – Significant Differences

12.9 A higher percentage of 20–49-year-olds than those over 50 found court provisions to be inadequate (relating to heating/ air conditioning, lighting and provision for people with physical or mental health issues, conference provision for prosecution team and general hygiene).

12.10 While most disagreed that listing practices made adequate allowance for caring responsibilities, this was most strongly felt by those aged 20-49 years old, perhaps because they were most likely to have caring responsibilities in respect of younger children.

12.11 Those over 50 were more likely to agree that the disclosure system had worked well for most of the time over the last two years. Conversely this older age group were more likely to strongly disagree that the CPIA disclosure process was fit for purpose.

12.12 Those over 50 were more likely than those younger to think the following factors led to delays in the CJS:

- Sitting days
- Preparation by the Crown
- Preparation by the Defence
- Availability of expert reports
- Counsel's diary commitments

12.13 This may be reflected in the fact that those older barristers remember a time when the CJS was more efficient. In respect of counsel's diary commitments, this may

reflect the fact that older barristers are more likely to be appearing in better remunerated/serious trials in which counsel's availability for trial is more likely to be a factor that is taken into account in listing, than for short trials. Similarly, this age group may be more likely to conduct cases in which experts feature.

By Call – Significant Differences

12.14 Those post-2000 call were more likely to find the prosecution conference facilities and also canteen facilities to be inadequate. The same call group were more likely to disagree that sufficient time is allocated for conferences during trial.

12.15 Those pre-2000 call were more likely:

- to strongly disagree that judges make adequate allowance for professionals' caring responsibilities;
- to agree disclosure had worked well over the last two years;
- to disagree that CPIA disclosure was fit for purpose;
- to think that sitting days were a significant cause of delays.

12.16 There was an interesting divergence around the Sentencing Guidelines between those who were called post-2000, and those called pre-2000, especially around the issue of credit for guilty pleas being seen as too modest by the pre-2000 bracket. This may be because many in that bracket viewed judicial discretion as being overly circumscribed, and they may have had professional experience of credit regimes before SGC guidelines existed.

By Ethnicity – Significant Differences

12.17 Whilst respondents were asked to identify their ethnicity, there was an insufficiently large sample size to compare answers given by ethnicity. As the survey was focused on the day-to-day experience of professionals, rather than an exploration of the differences in experience by ethnicity, this might be a fruitful subject to explore further in another study.

By Disability – Significant Differences

12.18 Unsurprisingly, a higher percentage of those who had a disability thought that the disabled facilities were inadequate than those without a disability or those who preferred not to say. It may be obvious that those who are disabled are more likely to use the disabled facilities at court and therefore be aware of the availability and limitations of such facilities.

13. Regional Comparisons

13.1 In order to ascertain whether there was any significant regional variation in the survey responses, a specific analysis was undertaken in relation to the responses from three major court centres across the country: Snaresbrook Crown Court (London), Birmingham Crown Court and Liverpool Crown Court. That analysis was also compared against the general sample.

13.2 Across the overwhelming majority of issues addressed by the survey (treatment of defendants, treatment of witnesses, treatment of criminal justice professionals, criminal procedure and practice, delay and listing) there was no significant regional variation, either between the three courts, or when comparing the three courts with the General Sample.

13.3 In relation to court facilities there was widespread criticism across the general sample – including Snaresbrook, Birmingham and Liverpool. The specifics of the issues varied from court to court. It was notable, however, that the facilities at Snaresbrook Crown Court attracted particularly widespread and extensive criticism, over and above that referenced by barristers in the General Sample.

13.4 It can properly be concluded that the issues adversely affecting the Criminal Justice System, as identified in the survey, are both general and widespread in application; they are not limited to particular individual court centres.

14. Conclusion

14.1 The Criminal Justice System is a complex, multi-faceted system incorporating many organisations involved in the apprehension, investigation, prosecution, defence, punishment, and rehabilitation of those members of the public who are suspected of committing criminal offences. This report is focussed on the work of criminal barristers working in the Crown Court. As the most serious crimes are tried in Crown Courts up and down the country, and the liberty of the individual and the protection of the public are at stake, there is an overwhelming public interest in this part of system working effectively and efficiently.

14.2 This report has set out the main day to day issues that affect practitioners, many of which need to be resolved urgently. There is a depressingly similar theme of a court estate that is clearly costly to maintain but is fast-ageing, and the deterioration of facilities is all too evident. Some of the older courts, designed to deal with trials in the Victorian or Edwardian eras are now unable to cope with the volume, length or complexity of cases that they receive, and the court users whom they try to accommodate. The same applies to some of the more modern courts, designed in an era when there were fewer cases, defendants, victims, witnesses (including vulnerable witnesses requiring special facilities) advocates, court staff and other court users. It is perhaps an unmissable irony that the one old court that seems to buck the trend is the Central Criminal Court ('the Old Bailey'), which receives the bulk of its funding from the Corporation of London.

14.3 There are procedural issues identified which if addressed would in part ease the problems of listing and the multiple causes of delay. If the maxim 'Justice delayed is Justice denied' (a concept adumbrated in Magna Carta more than 800 years ago) means anything, the current backlog of cases - which existed before the pandemic - and the length of time victims and defendants must wait for 'justice', is a public scandal.

14.4 The vast majority of open answers reveal in practitioners a deep-rooted, vocational commitment to working in the Criminal Justice System. Whilst there is appreciation that public funds are limited, the majority are fed up with working long and unsociable hours for often unacceptably low remuneration,

after decades of cuts. Morale is depressingly low and there is increasing pessimism that the problems will ever be fixed. There is the associated twin problem of recruitment and retention (the subject of other work); but an assumption that there will always be a cadre of practitioners with sufficient experience and expertise to prosecute and defend cases in the Crown Courts (and for some to go on to become Judges) is no longer safe. The good will of practitioners is fast wearing out.

- *"The fact is that, eventually, we all make the cases work. The system depends very significantly on our combined goodwill, which is leading us to near-exhaustion."*

- *"[It is essential to] allow work to be done during normal working hours rather than at weekends and in the evenings to the detriment of family life."*

14.5 The C-21 Working Group has had limited resources (and, in terms of funding, only a small grant from the University of Oxford to cover analysis of the data by a doctoral student[25]). The report is therefore restricted in its scope and reach. It has however been compiled in good faith by busy practitioners who have volunteered their time freely. We are confident that it accurately reflects the views of criminal practitioners and identifies some of the most significant issues needing to be addressed.

14.6 What should not go unnoticed is the fact that the issues raised in this report (by practitioners at the front line) have long since been identified as requiring attention or reform, in successive independent reviews over the last 28 years since the Runciman Commission reported in 1993.

14.7 We are therefore fortified in our recommendation that these issues need to be addressed urgently by the promised, but as yet unestablished, Royal Commission. We can see no good reason why the Commission should not be established without further delay. Such a body will have the expertise, teeth and resources required for a thorough and comprehensive review of the Criminal Justice System, and the power to recommend changes and reform. But it should not be used as an excuse to 'kick the can' further down the road: these are serious, endemic problems requiring solutions now.

[25] With grateful thanks to the Faculty of Law, University of Oxford, for its funding of Laura Haas's invaluable work.

14.8 We submit that it is plainly in the public interest for a Royal Commission to review the Criminal Justice System to be established without delay. Solutions need to be found to the real problems that exist, before practitioners, who daily do their best to make the system work, concede defeat. As one respondent put it, answering the question 'What other suggestions do you have to make the Criminal Justice System fit for the 21st Century?':

- *"Where on earth does one start? Perhaps by making it fit for the 20th Century."*

The CBA C-21 Working Group
December 2021

Appendix 1 Survey Sample Characteristics and Methodology

Methodology and Sample Description

1. The CBA distributed the online survey to CBA members via email in May, 2021. After the initial distribution, three reminder emails were sent. In total, 1,087 usable responses were returned (a third of the CBA membership). Table 1 summarises the key demographic characteristics of the sample. A good regional spread of respondents was achieved, although the South Eastern Circuit was clearly over-represented, accounting for 62% of all respondents. This Centre was followed by the Midlands (10%) and then the North Eastern Circuit (8%). Unsurprisingly, the larger court centres contributed higher numbers of responses. For example, 110 responses came from Snaresbrook and 91 from the Central Criminal Court. Most respondents (85%) were junior counsel, 14% Q.C.s, and just under 2% pupils. Significantly, two-thirds both defend and prosecute, whilst 28% defend only and 4% prosecute only.

Table 1 Sample Key Characteristics

		% Sample
Gender	Female	35%
	Male	63%
	Prefer not to say	2%
Age range	20 to 29 years	6%
	30 to 39 years	20%
	40 to 49 years	29%
	50 to 59 years	29%
	60 to 69 years	12%
	70 years plus	3%
Ethnic group	Asian / British – Bangladesh	4%
	Black	2%
	Mixed	3%
	Other ethnic group	1%
	Prefer not to say	2%
	White - British	88%
Disability	No	93%
	Prefer not to say	3%
	Yes	5%

(Percentages rounded)

11.7 In each section of the survey an open dialogue box allowed respondents to give examples of the matters that they were being asked about or to comment generally. With over a thousand responses, it is not practicable to include them all or in an annex, so the report is interspersed with a representative selection of comments, in italics.

11.8 From the academic's viewpoint, the response rate of one third of the subscribing membership is high. Surveys of legal professionals generally attract much lower response rates. In addition, the geographic spread of respondents was wide, and the sample generally conformed to the characteristics of the 'population' (i.e., the CBA membership) from which it was drawn. In short, we are confident that the responses from the survey may reasonably be generalised beyond this sample of respondents.

Appendix 2 CBA Survey Instrument

CBA C-21 Survey

Please answer the following questions using the single Crown Court that you have attended the most in the last two years. That will assist us in trying to identify particular problems in particular places and to see whether the problems identified are shared across the jurisdiction. First, we would like to ask for some background information:

1. Please indicate the Crown Court that you have attended the most in the last 2 years: [list drop down options]

2. What is your self-described gender?

    a. Male
    b. Female
    c. Prefer not to say

3. What is your age range?

    a. 20 to 29 years
    b. 30 to 39 years
    c. 40 to 49 years
    d. 50 to 59 years
    e. 60 to 69 years
    f. > 70 years

4. What is your ethnic group?

    a. White - British
    b. White - Irish
    c. White - Other
    d. Mixed – White and Black Caribbean
    e. Mixed – White and Black African
    f. Mixed – White and Asian
    g. Mixed – White and Chinese
    h. Mixed – Other
    i. Asian / Asian British – Indian
    j. Asian / Asian British – Pakistani
    k. Asian / Asian British – Chinese
    l. Asian / Asian British – Bangladeshi
    m. Asian / Asian British – Other
    n. Black / Black Caribbean – Caribbean
    o. Black / Black Caribbean – African
    p. Black / Black Caribbean – Other
    q. Other

5. Do you have a disability?
    a. Yes
    b. No
    c. Prefer not to say

6. Which circuit do you mostly practise on? [Drop down list of all circuits]

7. Are you a member of the CBA?
    a. Yes
    b. No

8. Year of call?

9. Position in chambers?
    a. 1st six pupil
    b. 2nd six pupil
    c. 3rd six pupil
    d. Junior counsel
    e. Queen's Counsel

10. Re Criminal Law, what is your practice?
    a. Prosecution only
    b. Defence only
    c. Both defence and prosecution

The Court Estate

Do you consider any of the following facilities to be inadequate in the Crown Court centre you are describing? The list is not exhaustive: please tick any that you find inadequate.

1) The witness facilities for Prosecution witnesses.
2) The witness facilities for Defence witnesses.
3) The conference facilities for the Prosecution team.
4) The conference facilities for defendants on bail.
5) The conference facilities for defendants in custody.
6) The support facilities for advocates (eg, photocopying, use of printer, robing room, power sockets, size).
7) The canteen facilities.
8) The facilities for the jury (if known).
9) The lavatories.
10) The general hygiene level (aside from Covid-19 problems).
11) The disabled facilities.
12) The heating/air conditioning.
13) The lighting.
14) The facilities in the Court room (screens, click-share, wi-fi).
15) The tannoy.
16) The lifts.
17) Provisions for people with physical, mental health or learning issues

18) Please list anything else that you consider to be inadequate in the Court centre that you are describing

Treatment of defendants

To what extent do you agree or disagree with the following statements?

19) Sufficient time is allocated for conferences at court at all stages of the trial process (before the trial, before evidence is given, and before sentence).
    a) Strongly agree
    b) Agree
    c) Neither agree nor disagree
    d) Disagree
    e) Strongly disagree

20) Defendants on bail are provided with adequate time and facilities for conferences at court.
    a) Strongly agree
    b) Agree
    c) Neither agree nor disagree
    d) Disagree
    e) Strongly disagree

21) Defendants in custody have adequate time and facilities for conferences at court.
    a) Strongly agree
    b) Agree
    c) Neither agree nor disagree
    d) Disagree
    e) Strongly disagree

22) Please give specific examples where you have encountered particular problems with the treatment of defendants.

Treatment of witnesses

23) The Crown Court I attend most regularly communicates well with witnesses who are due to give evidence.
    a) Strongly agree
    b) Agree
    c) Neither agree nor disagree
    d) Disagree
    e) Strongly disagree

24) The Crown Court I attend provides adequate time for witnesses to be spoken to before giving evidence.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

Treatment of CJS professionals

25) The Crown Court I attend most regularly communicates well with professionals working in the CJS

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

26) Judges make adequate allowance for professionals' caring and/or childcare responsibilities

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

27) Current listing practices make adequate allowance for caring and/or childcare responsibilities

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

28) Are there any other particular issues that the Courts and Judges should take into account? (please indicate what and why).

Aspects of Criminal Procedure and Practice

29) Jurors would benefit from greater use of non-oral material (e.g., powerpoints) in the presentation of evidence.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

30) Jurors would benefit from more non-oral material (e.g., powerpoints) in advocates' speeches.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

31) Over the past 2 years, the disclosure system has worked well most of the time.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

Do you agree or disagree that the following factors are relevant to any difficulties with disclosure?

32) Problems created by the investigators

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

33) Problems created by the Crown Prosecution Service or other prosecuting bodies.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

34) Problems created by the defence

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

35) The overall disclosure scheme created by the CPIA is fit for purpose

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

The next questions relate to possible problems with the plea regime. For each issue, please state the extent to which it is a problem, if at all?

36) Defendants who plead guilty without having the benefit of legal advice.
    a) This is definitely a problem at present
    b) This is probably a problem at present
    c) This is definitely not a problem at present

31) Defendants who plead guilty simply to secure release on bail
    a) This is definitely a problem at present
    b) This is probably a problem at present
    c) This is definitely not a problem at present

32) With respect to the 2017 Sentencing Council Guideline for plea reductions: Has this revised guideline for guilty plea reductions:
    a) Made it easier for legal advisors to advise their clients regarding plea
    b) Made no difference
    c) Made it harder for legal advisors to advise their clients regarding plea

33) In your view, are the sentence reductions for a guilty plea prescribed by the Council's guideline:
    a) Too generous
    b) About right
    c) Too modest

34) What if any changes to the plea regime do you suggest and why?

Delay and listing

35) Listing for trial of each case should be done by reference to agreed objective criteria (such as vulnerable witnesses or defendants, seriousness, counsel's convenience, etc)
    a) Strongly agree
    b) Agree
    c) Neither agree nor disagree
    d) Disagree
    e) Strongly disagree

36) The Parties (Prosecution and Defence) should have a role in drawing listing factors to the attention of the Court:

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

For the next questions we would ask that you consider the position **before** the particular exigencies of the Covid-19 crisis.

37) The listing of all cases within the Criminal Justice System took place within an acceptable timetable.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

38) The listing of custody cases within the Criminal Justice System takes place within an acceptable timetable.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

39) The listing of bail cases within the Criminal Justice System takes place within an acceptable timetable.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

To what extent are the following factors a cause of delay in the CJS

40) Number of Sitting days (court rooms, Judges and Recorders sitting)

a) Significant cause of delay
b) Moderate cause of delay
c) Not a cause of delay

41) Preparation by the Crown

a) Significant cause of delay
b) Moderate cause of delay
c) Not a cause of delay

42) Preparation by the defence

a) Significant cause of delay
b) Moderate cause of delay
c) Not a cause of delay

43) Availability of expert reports

a) Significant cause of delay
b) Moderate cause of delay
c) Not a cause of delay

44) Counsel's convenience (diary)

a) Significant cause of delay
b) Moderate cause of delay
c) Not a cause of delay

45) Please provide an example of a case in which you personally participated in which delay resulted in injustice.

Recent procedural changes as a result of COVID-19

46) Do you agree or disagree with the following statement?

The Covid-19-enforced changes to working practices have been efficient and effective.

a) Strongly agree
b) Agree
c) Neither agree nor disagree
d) Disagree
e) Strongly disagree

47) What in your opinion works particularly well?

48) What other innovations in practice or procedure, whether technological or otherwise should be considered?

We would be very grateful if you would consider the last question and highlight the most important issues. You do not need to limit yourself to the Crown Court that you attend most regularly.

49) What other suggestions do you have to make the Criminal Justice System fit for the 21st Century?

Appendix 3 Frequency Breakdowns of Responses[26]

Table 1 Court Facilities Perceived to be Inadequate[27]

Facility	% Respondents
Support facilities for advocates (e.g., photocopying, use of printer, robing room)	71%
Conference facilities for defendants on bail	67%
Canteen facilities	57%
Witness facilities for Defence witnesses	51%
Heating/air conditioning	49%
Lavatories	41%
Conference facilities for defendants in custody	40%
General hygiene level (aside from Covid)	36%
Conference facilities for the Prosecution team	34%
Facilities in the courtroom (eg screens, wi-fi)	29%
Lifts	29%
Provisions for people with physical, mental health or learning issues	28%
Lighting	28%
Tannoy	22%

Table 2 Treatment of Defendants

		% Sample
Sufficient time is allocated for conferences at court at all stages of the trial process (before the trial, before evidence is given, and before sentence)	Strongly agree	3%
	Agree	24%
	Neither agree nor disagree	20%
	Disagree	35%
	Strongly disagree	18%
Defendants on bail are provided with adequate time and facilities for conferences at court		
	Strongly agree	3%
	Agree	22%
	Neither agree nor disagree	18%
	Disagree	38%
	Strongly disagree	19%
Defendants in custody have adequate time and facilities for conferences at court		
	Strongly agree	2%
	Agree	14%
	Neither agree nor disagree	18%
	Disagree	43%
	Strongly disagree	23%

[26] Total number of respondents: 1,087; totals may not add to 100% as all percentages rounded.

[27] Items attracting at least 20% of respondents. *Q: Do you consider any of the following facilities to be inadequate in the Crown Court centre you are describing? Please tick any you find inadequate.*

Table 3 Treatment of Witnesses

		% Sample
The Crown Court I attend most regularly communicates well with witnesses who are due to give evidence	Strongly agree	4%
	Agree	27%
	Neither agree nor disagree	59%
	Disagree	9%
	Strongly disagree	2%
The Crown Court I attend provides adequate time for witnesses to be spoken to before giving evidence		
	Strongly agree	3%
	Agree	39%
	Neither agree nor disagree	42%
	Disagree	13%
	Strongly disagree	2%

Table 4 Treatment of CJS Professionals

		% Sample
The Crown Court I attend most regularly communicates well with professionals working in the CJS	Strongly agree	7%
	Agree	35%
	Neither agree nor disagree	26%
	Disagree	23%
	Strongly disagree	9%
Judges make adequate allowance for professionals caring and/or childcare responsibilities	Strongly agree	3%
	Agree	14%
	Neither agree nor disagree	44%
	Disagree	27%
	Strongly disagree	12%
Current listing practices make adequate allowance for caring and/or childcare responsibilities	Strongly agree	1%
	Agree	9%
	Neither agree nor disagree	35%
	Disagree	33%
	Strongly disagree	23%

Table 5 Aspects of Criminal Procedure and Practice

		% Sample
Jurors would benefit from greater use of non-oral material (e.g., powerpoints) in the presentation of evidence	Strongly agree	16%
	Agree	36%
	Neither agree nor disagree	30%
	Disagree	16%
	Strongly disagree	3%
Jurors would benefit from greater use of non-oral material (e.g., powerpoints) in advocates' speeches	Strongly agree	10%
	Agree	25%
	Neither agree nor disagree	31%

	Disagree	26%
	Strongly disagree	8%
Over the past 2 years the disclosure system has worked well most of the time	Strongly agree	1%
	Agree	25%
	Neither agree nor disagree	17%
	Disagree	36%
	Strongly disagree	21%
Difficulties with disclosure are created by the investigators	Strongly agree	14%
	Agree	51%
	Neither agree nor disagree	25%
	Disagree	9%
	Strongly disagree	1%
Difficulties with disclosure are created by the Crown Prosecution Service or other prosecuting bodies	Strongly agree	19%
	Agree	48%
	Neither agree nor disagree	23%
	Disagree	9%
	Strongly disagree	1%
The overall disclosure scheme created by the CPIA is fit for purpose	Strongly agree	2%
	Agree	27%
	Neither agree nor disagree	23%
	Disagree	33%
	Strongly disagree	15%

Guilty Plea		
Defendants who plead guilty without having the benefit of legal advice	This is definitely a problem at present	21%
	This is probably a problem at present	49%
	This is definitely not a problem at present	29%
Defendants who plead guilty simply to secure release on bail	This is definitely a problem at present	19%
	This is probably a problem at present	44%
	This is definitely not a problem at present	37%
With respect to the 2017 Sentencing Council Guideline for plea reductions: Has this revised guideline for guilty plea reductions:	Made it easier for legal advisors to advise their clients regarding plea	31%
	Made no difference	51%
	Made it harder for legal advisers to advise their clients regarding plea	19%
In your view, are the sentence reductions for a guilty plea prescribed by the Council's guideline:	Too generous	2%
	About right	58%
	Too modest	39%

Table 6 Delay & Listing

		% Sample
Listing for trial of each case should be done by reference to agreed objective criteria (such as vulnerable witnesses or defendants, seriousness, counsel's convenience, etc.)	Strongly agree	48%
	Agree	44%
	Neither agree nor disagree	6%
	Disagree	2%
	Strongly disagree	0%
The Parties (Prosecution and Defence) should have a role in drawing listing factors to the attention of the Court	Strongly agree	48%
	Agree	49%
	Neither agree nor disagree	2%
	Disagree	1%
	Strongly disagree	1%
The listing of all cases within the Criminal Justice System took place within an acceptable timetable	Strongly agree	2%
	Agree	9%
	Neither agree nor disagree	7%
	Disagree	41%
	Strongly disagree	41%
The listing of custody cases within the Criminal Justice System took place within an acceptable timetable	Strongly agree	2%
	Agree	28%
	Neither agree nor disagree	12%
	Disagree	33%
	Strongly disagree	26%
The listing of bail cases within the Criminal Justice System took place within an acceptable timetable	Strongly agree	1%
	Agree	11%
	Neither agree nor disagree	8%
	Disagree	39%
	Strongly disagree	41%
To what extent are the number of sitting days (Court rooms, Judges and Recorders sitting) a cause of delay in the CJS	Significant cause of delay	88%
	Moderate cause of delay	11%
	Not a cause of delay	1%
To what extent is preparation by the Crown a cause of delay in the CJS	Significant cause of delay	25%
	Moderate cause of delay	60%
	Not a cause of delay	15%
To what extent is preparation by the defence a cause of delay in the CJS	Significant cause of delay	5%
	Moderate cause of delay	60%
	Not a cause of delay	35%
To what extent is the availability of expert reports a cause of delay in the CJS	Significant cause of delay	20%
	Moderate cause of delay	59%
	Not a cause of delay	22%

To what extent is Counsel's convenience (diary) a cause of delay in the CJS	Significant cause of delay	1%
	Moderate cause of delay	21%
	Not a cause of delay	79%

Table 7 Recent procedural changes as a result of COVID-19

The Covid-19-enforced changes to working practices have been efficient and effective		**% Sample**
	Strongly agree	13%
	Agree	42%
	Neither agree nor disagree	20%
	Disagree	17%
	Strongly disagree	8%