CBA Position on the

Independent Review of the Criminal Courts Part 1

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The first part of Sir Brian Leveson's Independent Review of the Criminal Courts was published on 9th July 2025. It contains many proposals for a radical overhaul of our Criminal Justice System. The CBA sought the opinions of practising Barristers on the most important aspects of the Review in a survey. The survey opened on 16th July 2023 and closed on 23rd July 2025. The survey was compiled by Professor Katrin Hohl of City St George's, University of London. The reliability and integrity of the survey were of the utmost importance to the CBA. Professor Hohl's background in criminal justice and quantitative research made her an obvious choice for the commission.

2029 practicing members of the criminal Bar responded to the survey in the eight days it was open. In Professor Hohl's opinion, the number of responses in both absolute and relative terms was conspicuously high and, as a consequence, we have no reason to doubt that the collective voice of the criminal Bar was accurately recorded by the survey.

In the weeks since the Review was published, the CBA has met with a wide range of interested parties including Sir Brian Leveson and his team, the Secretary of State for Justice and Lord Chancellor, the Minister for Courts and Legal Services, the Bar Council, the CPS, former chairs of the CBA, the heads of criminal chambers around the jurisdiction and barristers of all levels of

seniority. This period of consultation and receipt of the survey results has enabled the CBA to settle its position on the strongest possible empirical foundation.

The survey did not seek opinions on every proposal made by Sir Brian. The report fills 388 pages and makes 45 recommendations. The survey focussed on the proposals we believed would be of most interest to our membership.

The Crown Court (Bench Division)

88.5% of respondents oppose the creation of the Crown Court (Bench Division).

This may be founded on diverse reasoning but the principal bases expressed to the CBA suffice to explain this overwhelming opposition

The Value of Juries

Trial by jury is fundamental to the British way of life. It is the way allegations of serious criminal offending have been dealt with for centuries. There is a rich heritage of commentary on the value of juries. There is no need to repeat it here save to say that, if trial by jury is '*more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives'*[1] we would rather the lamp stay lit.

A more recent affirmation of the high regard amongst the population for jury trials came in the form of a survey conducted by the Rowntree Foundation. This survey found that the two most treasured rights were the right to free medical care and the right to trial by jury.

[1] 'Trial by Jury' Lord Devlin, Chapter 6

One of the principal strengths of the jury system is that it dilutes the prejudices of its human actors to the point of eliminating their improper influence. According to the Lammy Review, the only aspect of our Criminal Justice System that was considered to be consistently colour-blind was trial by jury. The obverse and uglier side of this coin is that all other aspects are, to varying degrees, racist. We may extrapolate that, if juries are capable of successfully eliminating racism, they are capable of eliminating every other prejudice that plays-out in human affairs. In contrast, the lack of diversity amongst the magistracy and judiciary would lead to the concentration, fostering and reinforcement of prejudices of all kinds in the CC(BD). This concern was expressed by 58.8% of respondents who are 'extremely concerned' about the potential lack of diversity on the CC(BD) bench. This problem would be exacerbated by the inexorable and unavoidable cynicism that will set-in as arbiters of fact become case-hardened; something that does not happen with juries.

The Form and Substance of the CC(BD)

The proposed new court is in form a Crown Court but in substance a Magistrates' Court. The thinly-veiled disguise offered by a sitting Circuit Judge or Recorder does not make it part of the Crown Court. The single, definitive aspect of the Crown Court is that the arbiters of fact are jurors; take away the jury and it is a fundamentally different thing. Nor is the proposed CC(BD) akin to a court in an inquisitorial system. It is a court of summary justice with all power vested in too few hands. The CC(BD) would not offer a fair system of justice.

A Scapegoat

Trial by jury did not cause the problems in the Criminal Justice System and removing it will not fix the problems. The backlog was created by the restriction on 'sitting days'. An ever-available

solution lies in lifting the restrictions on 'sitting days'. Around 130,000 'sitting days' are available to us yet, in the throes of a capacity crisis, 'sitting days' are restricted by (currently) 20,000 a year. The backlog was allowed to grow over successive years of underfunding creating manifold problems each compounding another. The pandemic added to the problem but the management of the system through that unique time made the problem worse than it needed to be. Nightingale courts were opened too late and not closed quickly enough; we are still paying for them as actual courtrooms remain closed.

The minimum recommendations of the Bellamy Review had to be induced by the midwife of industrial action. The action taken by criminal defence barristers was an entirely justified but avoidable event and had a very limited impact on the backlog. In March 2022 (before the action began), the backlog was around 59,000 cases; by the end of the action (in October 2022) it was just under 63,000. In the six months between October 2024 to March 2025, the backlog grew by about the same amount that it did during the months of the action as a consequence of restrictions on 'sitting days'. The action was not the cause of the backlog and any suggestion it was is ill-founded and misleading.

Over the last two decades, the system has been underfunded to the point of systemic failure as acknowledged by Sir Brian but the current crisis was caused by budgetary restrictions not the method of trial.

Efficiencies

The most grotesque inefficiencies exist and are allowed to endure in our system. Unless these are eliminated, the problems will continue to increase whatever mode of trial is used. The false-economies of budgetary restrictions are largely responsible. Examples abound but, *eg* a 'sitting day' could include 5.5 hours of a trial but not if the prison van arrives at 12 noon. If there is no

consequence for producing a defendant two hours after the trial was listed to start, commercial providers of transport will not concern themselves with listing times and the savings on a cheap contract are lost many times over in Court. Trials that should take days are smeared across weeks. This is transposed into the crude statistics that suggest trials are now taking longer; in courts days, that may be true, in court hours it is a perfectly false picture.

The number of remand prisoners awaiting trial or sentence doubled from around 8,800 in 2018 to 17,700 in 2025. It costs around 55k to keep someone in prison for a year. We needlessly spent an additional £489.5m on a secure queue to the Crown Court in the single year leading-up to 2025.

The proposed CC(BD) may also introduce a false economy of its own. Our appeal system is partly founded on the primacy of the jury. Without juries, will the Court of Appeal see an increase in its workload?

Empiricism

It is not clear to the CBA what data / evidence was used to reach the conclusions and justify the recommendations in the Review. Many of them are necessarily projections without available data and incapable of proper scrutiny. What time would actually be saved in the CC(BD)? There would be a saving in the time it takes to empanel and swear-in a jury but that saving would be lost in the time the judge and the magistrates spend deliberating, agreeing, writing and pronouncing their judgment (time that a Circuit Judge would otherwise spend in court dealing with other cases). The Review suggests that (at a conservative estimate) trial in the CC(BD) would be 20% quicker which would be the equivalent of 9,000 'sitting days'. This is not based on any data or empirical evidence.

If it is correct or near correct, rather than recasting our entire system, the projected saving of 9,000 'sitting days' could be found in simply opening more court rooms.

The proposed removal of trial by jury is not based on principle. It is driven by a misperceived expediency. Fundamental principles should not yield to expediency and certainly not to misperceived ones. Appropriate management, investment and a drive towards efficiency could bring the system back to health and we would support any initiative contributing towards better management before any change to the mode of trial and the abrogation of a cardinal right.

Fraud Trials

78.2% of respondents oppose the removal of juries from fraud trials and 75.7% expressed their opposition to a proposal that serious and complex fraud trials be tried by a judge and two expert lay assessors. We do not see any justification for removing juries in complex fraud trials. There are currently fewer than 2,000 fraud cases in the backlog. Jonathan Fisher KC is an expert in fraud and disclosure and he recently provided a report on these cases. He did not recommend the removal of the right to jury trial. The global conviction rate for fraud cases is 85%. Juries can and do understand evidence.

The Procedure of the CC(BD)

The survey uncovered even greater opposition to some of the proposed procedure and jurisdiction of the CC(BD). 87.8% of respondents were opposed to a Judge making the final decision on allocation after a defendant had elected mode of trial. 93.7% of respondents opposed there being no

right of appeal against a Judge's decision at PTPH to allocate a case to the CC(BD) rather than the Crown Court.

94.6% supported the retention of jury trial for either way offences. 91.9% were opposed to the CC(BD) having jurisdiction over cases involving sexual offences against children. 90.8% were opposed to the CC(BD) having jurisdiction over cases involving sexual offences against adults.

The message from our membership is clear; the right to elect trial by jury should remain and serious cases should be tried by juries.

Magistrates' Court

There exists a starkly contrasting position on the right of appeal from the Magistrates' Court to the Crown Court. 84.3% of respondents are opposed to the removal of the automatic right to appeal a conviction in the Magistrates' Court to the Crown Court. In contrast, 89.3% of respondents support the proposal to remove the automatic right to appeal a sentence imposed in the Magistrates' Court to the Crown Court. The support for removing the automatic right to appeal a sentence may be founded on the fact that the Sentencing Guidelines have introduced much greater uniformity, consistency and predictability to sentencing such that errors may be more easily identified allowing meritless appeals to be filtered-out without the risk of denying an avenue of appeal to those with legitimate grounds.

The proposal to introduce recordings in the Magistrates' Courts divided respondents more equally with 59.8% opposing the introduction of a recording system. The introduction of recording equipment would undoubtedly touch on the case for maintaining or removing the automatic right to appeal a conviction and/or sentence. If the automatic right to appeal was removed and recording

equipment was not introduced, what would be the basis upon which leave to appeal was granted/ refused? Would the magistrates be required to state a case? Would they be required to provide written rulings of law, fact and findings of guilt?

81.7% of respondents opposed a temporary increase of the power of the Magistrates' Court to impose a sentence of up to 12 months' imprisonment but only 57.8% opposed the same change permanently.

Unintended Consequences

We invite searching scrutiny as far as possible beyond the basic propositions and into the ramifications of the ramifications *eg* introducing a requirement of leave to appeal a decision of the Magistrates' Court to the Crown Court will necessitate the drafting of grounds, a single judge assessing the merits and the administration involved in processing the application. It may necessitate the production of a transcript from the lower court which is a facility that is not currently available. We support the proposal to introduce recording systems into Magistrates' Courts but what is the cost? And will it be implemented? Will the Government be tempted to accept the recommendation to impose a requirement of leave (which may be thought to save money) and not accept the recommendation to introduce DARTs into the Magistrates' Court (which would cost a lot of money)? Without a recording system, fairness demands an appeal hearing de novo in the Crown Court. Will we get the worst of both worlds? What is the cost of producing transcripts to permit grounds for leave to appeal to be considered? What advocate would accept Magistrates' Court work if it came with the additional burden of drafting grounds of appeal? The value of the fee would fall below its already risible level. Will the advice desert become a salinated plain beyond any hope of recovery?

Aspects of the Leveson Review the CBA Supports

The Review adopts many of the recommendations advanced by the CBA in its submission to Sir Brian. This submission was the work of a committee comprising around 30 Barristers from across the jurisdiction chaired by Francis FitzGibbon KC and Jeremy Dein KC. The submission made wide-ranging and practical suggestions for reviving the Criminal Justice System without the need for fundamental changes or the removal of the right to trial by jury. The submission is available on the CBA's website.

We support the proposal that the Government adopts a matched pupillage scheme to fund the next generation of pupils at the criminal Bar. The fact that there is a need for state funding may reflect the fact that something is amiss but we welcome the vote of confidence in our profession.

We support increasing out-of-court resolutions, removing the system of 'release under investigation' and greater investment in rehabilitative programmes.

We are pleased that standards of advocacy will be protected by maintaining rights of audience only for advocates with appropriate training and qualifications.

78.4% of respondents support the proposals for a delayed PTPH to facilitate meaningful business being conducted at that hearing. We support the proposed greater use of *Goodyear* indications but we foresee a huge additional burden being placed on judges in providing the indications and wonder whether they will be given time to conduct the additional work and, if so, how many sitting hours will be lost as a consequence?

We invite a reconsideration of the system of credit but rather than discounting sentences into meaninglessly short sentences, we encourage an ambitious overhaul of our approach to sentences generally with greater emphasis on the ultimate release of rehabilitated offenders and the reduction of recidivism. One example may illustrate the need for careful consideration of any changes to the credit scheme. A category 3B rape has a starting point of 5 years' imprisonment (60 months). A 40% reduction for a plea in the Magistrates' Court would bring it down to 3 years' imprisonment (36 months). If the defendant served 50%, they would serve 18 months' imprisonment for the offence of rape. This may not meet public expectations of how such an offence is marked.

We support the removal of incentives to prolong a case to trial and a rearrangement of the fee schemes that encourages early engagement and guilty pleas where appropriate.

CBA
8th August 2025