JURY TRIALS

CBA Briefing Note

1. The Government is proposing to restrict the right to trial by jury. Trial by jury is a cornerstone of our Criminal Justice System. It has protected British subjects against the improper deprivation of their liberty since the Magna Carta was sealed on the banks of the River Thames at Runnymede in 1215. It has been praised by eminent jurists across the centuries as one that gets us as close as it is possible to get to a perfect system. We are implacably opposed to the restriction, removal or reduction of the right to trial by jury.

The Backlog

2. There are currently around 80,000 cases awaiting trial in the Crown Court. The queue to the Crown Court is now so long that some trials are being fixed for 2030. If there is any truth in the adage: 'justice delayed is justice denied', justice is being routinely denied in the criminal courts of England and Wales. This is unacceptable and we agree that something must be done. The answer, however, is not to remove the right to trial by jury because trial by jury did not cause the problem and removing it will not fix the problem. The current state of the Criminal Justice System is a consequence of successive governments failing to invest appropriately in the system.

Sitting Days

3. One judge sitting in one courtroom for one day is known as a 'sitting day'. The Old Bailey has 18 courts. That Court, therefore, has the capacity for 18 sitting days per day, 90 sitting days per week and 4,500 sitting days in a 50-week year. For the last 15 years, restrictions have been placed on the number of sitting days in Crown Court centres around the country. Resident Judges (the principal judges at each Crown Court centre) have been told that funding will only be provided for a limited number of sitting days. Restrictions between 9% and 25% have been imposed.

4. There has always been a queue to the Crown Court. This is inevitable as cases cannot be tried immediately. Up until the start of 2019 the queue was managed without any undue delay. The backlog had come down from around 56,000 in 2014 to around 33,000 cases by the start of 2019, all of which were tried within a reasonable time (6 months if the defendant was in custody and 8-12 if the defendant was on bail) and all were tried by jury. Any suggestion that we need to abolish jury trials because cases now take longer or are more complicated has no basis in truth. Cases were tried within a reasonable time in 2019, and things have not moved on so monumentally since then that we need to consider abolishing a cardinal right.

5. The backlog of cases rose from around 33,000 at the start of 2019 to 71,000 by the summer of 2024. It has risen over another 10% since to around 80,000 in 2025. This is a direct consequence of the restrictions placed on sitting days. This problem was exacerbated by the closure of some courts such as Blackfriars in Central London. That was a custom-made modern Crown Court building with eight courtrooms. It, therefore, had the capacity for 2,000 sitting days in a 50-week year. That Court was closed and sold in 2019. It has remained empty and unused ever since save for the filming of a court room drama. Over those six years, 12,000 potential sitting days have been lost. There are around 4,000 rape cases in the backlog. A rape case with one defendant and one complainant will often take five days. Some cases will be quicker and some longer. The 12,000 lost sitting days following the closure of the eight courtrooms at Blackfriars could have been used to try 2,400 five-day rape cases. The budgetary decision to close one court led to an inability to try half of all rape cases in the backlog. Similar examples exist all over the country, where individual courtrooms sit empty within Crown Court buildings, meaning that the Court is open but operating below its potential capacity.

6. The Crown Court estate has a maximum capacity of around 130,000 sitting days. It is currently permitted 113,000 sitting days. The Government claims this is a 'record high'. It is only 'high' relative to the low numbers of the previous 15 years. Whether it is relatively high or not, the fact remains that 17,000 sitting days a year are lost and courtrooms sit in the dark as victims and defendants endure the agonising wait for a trial. Restricting sitting days to 113,000 is the equivalent of keeping around four courts the same size as the Old Bailey closed every day, all year.

7. The restriction on sitting days is a budgetary policy; it is about money. Justice is being denied by budgetary decisions not by jury trials.

Efficiency

8. The inefficiencies in our system are legion. They have been caused by the failure to invest appropriately in the Criminal Justice System not by jury trials. If the inefficiencies were addressed, the backlog would come down, and the system would return to trying cases in a reasonable time. The CBA made a host of suggestions to Sir Brian Leveson on how the system might be made to run efficiently. If they only fixed the single issue of prisoner transport, the Government would go a long way to restoring the system back to health.

Prisoner Transport

9. The Crown Court will allocate court time according to how long it believes a case will take. It will list a case to start between 10am and 1030am. A defendant has a right to attend their trial. Both the court and a defendant in custody are wholly reliant on prison vans getting people to court on time. Prison vans frequently arrive late; sometime hours late and sometimes not at all. Hours of court time are wasted waiting for the vans to arrive. In one recent case at the Old Bailey, a case that was estimated to last 3 months, lasted 5 months largely because of the failure to get defendants to court on time. Around 40 sitting days were lost waiting for the van in one court. 8 five-day rape cases could have been tried in that time.

10. We have not been shown the contract for the provision of prisoner transport. We understand, however, that it stipulates that prisoners in prisons local to a court must be produced at court on the day a case is listed. There is no obligation to deliver a prisoner to court if they are not in a local prison. If they are in a local prison, there is no obligation to get them to court on time; the only contractual duty is to deliver them to court at some point in the day. There is no penalty for failing to deliver a prisoner to court who is not in a local prison and no penalty for delivering a prisoner who is in a local court at 1430. This has led to defendants routinely arriving at court hours after their case was listed to start and hours of court time being wasted.

11. We assume a contract with such limited demands on the supplier was much cheaper than it would have been had it obliged the supplier to provide a service that is fit for

purpose. The time wasted waiting for the prison van has significantly contributed to the courts inability to process cases and a consequent growth of the backlog. The same is true of contracts for the provision of other necessary services *eg* interpreters. The inadequate contractual terms have led to late or non-attendance of interpreters with consequent lost court time.

12. The Secret Barrister listed some of the many other inefficiencies and suggested ways to fix them at the end of their latest blog.

13. There are many ways in which things could be made more efficient. Here are a few suggestions that would cost nothing, significantly improve the system and reduce the backlog:

    i. robustly triage the backlog;
    ii. encourage greater and more searching dialogue between the Crown, Defence and Judiciary to reach appropriate disposals/ resolutions faster;
    iii. make better and more frequent use of *Goodyear* indications;
    iv. improve the existing technology and embrace new technology;
    v. design the system to ensure effective and meaningful business is conducted at every hearing;
    vi. redesign the system to ensure proper, appropriate and firm advice is (and is able to be) given to defendants at an early stage such that guilty pleas are entered as soon as possible.
    vii. ensure that evidence is served at the beginning of a case *and* examined rigorously, involve judges in the scrutiny of trial issues and encourage their intervention;
    viii. consider rearranging the system of credit;
    ix. remove all financial incentives to take a case to trial;
    x. apply the recommendations of the Gauke review and adjust the focus of sentencing to rehabilitation and divert cases away from the system where that is appropriate and most beneficial to society.

The Court Estate

14. The court estate has not been maintained with the result that courts have been forced to close or abort hearings. Examples abound. The temperatures in courtrooms are not

controlled from within the buildings and when, as they often do, temperatures drop to or rise above tolerable levels nothing can be done by those in the building. Adjustments have been made (like inviting jurors to wear coats) but it is often insufficient and hearings are abandoned. In one farcical instance at Croydon, the heating system caused the courtroom to overheat and industrial coolers were hired and wheeled into court to compete with the heat being pumped into the court, but the noise of the industrial coolers was so loud that nobody could hear what anyone was saying. On another occasion, the cells were so cold that prisoners could not be kept in them and all courts hearing cases with defendants in custody could not proceed until the heating system was fixed. On another occasion, the alarm system in the cells was not working and defendants could not be brought into court. Heating and alarm systems do break but the regularity with which something does not work as it should in the Crown Court has established broken as the norm.

15. The CBA receives weekly messages reporting the decrepit state of our court estate and how it is left to rot and decay: mature buddleias growing in mortar cracks, overflowing, uncleaned and revolting loos, broken roofs with missing tiles; colostomy-style bags collecting water leaking through courtroom ceilings, leaking water swilling around electrical points, ceilings collapsing; rotten windows falling into greater disrepair; loose electrical cables, ripped carpets taped down; half-removed remnants of the coronavirus; every type of handle or lock falling apart or not working; peeling paint reminiscent of demolition sites; leaking drains; defunct robing rooms and abandoned café spaces.

16. When courts are forced to close because of their decrepit state, public money is wasted and the backlog grows. When they do manage to stay open, they are a source of national shame and should cause us all to grimace with embarrassment.

<u>Speed</u>

17. There is no evidence for the suggestion that judge-alone trials will be quicker than jury trials; there are perfectly good arguments that the reverse is true. Even if they are quicker and cheaper, we should not be reorganising our system just to make it quick and cheap. Justice is neither quick nor cheap and we should not aspire to make it so.

18. The single basis upon which the Government advances the argument that judge-alone trials will be quicker is the estimate by Sir Brian Leveson in his report that they will be 20% quicker. This estimate is without any empirical foundation. It comes with (at p. 358 of Sir Brian's report) the following caveat: 'An indicative estimate of 20% has been used as the median percentage decrease in hearing time in the Crown Court for a not-guilty-plea case when heard without a jury (by a judge and two magistrates) compared to a trial by jury. Note: this estimates the net impact of percentage time saved, is associated with very high levels of uncertainty and is expected to vary by offence type.' The meaningless verbiage and lack of punctuation may be designed to bore the reader into not digesting the passage but, when distilled, this Orwellian collection of nothingness means – 20% is a perfectly unreliable and tendentious guess. One of our most cherished Circuit Judges, Peter Collier KC, former Resident Judge in Leeds recently described the guess as being reached on 'a finger in the wind'.

19. It takes about 20-30 minutes to swear-in a jury. The evidence is then presented to the jury. The time it takes to present evidence will be no different if it is presented to a judge alone rather than a jury. When the case finishes, a jury will retire and deliberate in private. They may deliberate for five minutes; they may deliberate for three weeks. Whilst they are deliberating, a judge is free to conduct other work. A judge would not be free to conduct other work if they were required to deliberate on the verdict, write a judgment and then deliver it. The 20-30 minutes it takes to swear-in a jury saved by abolishing jury trials will be lost many times over in the time it takes a judge to deliberate and deliver a verdict.

Prejudice

20. The Lord Chancellor and Deputy Prime Minister, David Lammy MP, wrote the eponymous Lammy Review in 2017. It was: 'An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System'. The review includes observations on the jury system. At p.31:

'Our justice system is built on the principle that the law will be applied impartially. In the cases that involve the greatest harm to victims and the longest sentences for offenders, juries are the guardians of this principle. Our jury system may be centuries old, but it is still fit for purpose today. Successive studies have shown that, on average,

jury verdicts are not affected by ethnicity. A detailed study of verdicts across England and Wales, published in 2010, found that BAME and White defendants were convicted at very similar rates, including in cases with all-white juries. It concluded that 'one stage in the criminal justice system where B[A]ME groups do not face persistent disproportionality is when a jury reaches a verdict.'

21. He explained why juries reach fair verdicts on p.6 of his report:

'Firstly, there must be robust systems in place to ensure fair treatment in every part of the CJS. The key lesson is that bringing decision-making out into the open and exposing it to scrutiny is the best way of delivering fair treatment. For example, juries deliberate as a group through open discussion. This both deters and exposes prejudice or unintended bias: judgments must be justified to others. Successive studies have shown that juries deliver equitable results, regardless of the ethnic make-up of the jury, or of the defendant in question.'

22. In 2020, the now Deputy Prime Minister, Secretary of State for Justice and Lord Chancellor said this about juries:

'Jury trials are a fundamental part of our democratic settlement. Criminal trials without juries are a bad idea…. The Government need to pull their finger out and acquire empty buildings across the country to make sure these [trials] can happen in a way that is safe... you don't fix the backlog with trials that are widely perceived as unfair.'

23. The Lord Chancellor now proposes to remove the protection offered by juries. Part of his rationale is that judge-alone trials will be quicker and cheaper. In doing so he betrays his willingness to act on political expediency rather than principle. We agreed with the David Lammy of 2017 and 2020; we wholly disagree with the David Lammy of 2025.

24. Judge-alone trials would be tainted by the prejudices of judges. Acknowledging that judges have prejudices is to say no more than they are human. All humans have prejudices; both ones they are aware of and ones they are not. The Lord Chancellor explained (above) how juries dilute the prejudices of individuals to the point of

eliminating their improper influence. He now proposes to usher in a system that will lead to the concentration, fostering and reinforcement of prejudices of all kinds; a system that will fail those minority groups that he spent much of his career protecting (before he was in power).

25. We have a cadre of excellent Circuit Judges who are dedicated, hard-working, committed, intelligent and skilled umpires of criminal trials. Forcing them to become arbiters of fact will require them to perform a very different role. The additional weight of responsibility will be significant. Many of them will not welcome this change.

26. There is growing concern within the Judiciary that moving to judge-alone trials will expose judges to increased public and political pressure. Jury verdicts diffuse responsibility across 12 citizens. Placing the entire burden of decision-making on a single-judge risks making them a direct target for criticism, lobbying or intimidation. Senior judges have already warned of rising threats and the need for enhanced security, underscoring the danger of further politicising the role.

Flawed Comparisons

27. The Government have pointed to other criminal justice systems around the World that have judge-alone trials. They point to discreet aspects of other systems to support their case whilst ignoring important and more holistic considerations.

28. Many systems have judge-alone trials, but all systems worthy of comparison have built-in protections that are absent from the Lord Chancellor's reforms. Some systems have a panel of judges which act (in the way juries do) to dilute the prejudices of individuals. Systems with judges sitting alone invariably have different processes for appeals. The primacy we place on a jury's verdict means that appeals on factual findings (unless they are demonstrably perverse) are not permitted. A ruling from a judge alone with reasons for factual findings should (if the system is to be fair) be open to scrutiny and impeachment. If appeals on facts are allowed, the work of our appeal courts will burgeon exponentially and cases will drag-on even longer.

A Transparent Distraction Technique

29. The proposed reform is being offered-up to the public as a drive to improve the experience of victims in the Criminal Justice System. There is nothing in these reforms for victims of crime. The superficially attractive arguments advanced by the Lord Chancellor are pure sophistry and betray an unprincipled approach.

30. To speak of 'victims' rather than 'complainants', is to presume guilt. Our system is based on the presumption of innocence. A state that presumes guilt in anyone accused of crime is a dangerous one. It is no disrespect for the State to describe a person who alleges an offence as a 'complainant' and the person against whom the allegation is made to be a 'defendant'. The presumption of innocence commands the State to view individuals as either 'complainant' or 'defendant' until a court reaches a finding of either guilt or innocence. Following a conviction, the presumption of innocence is rebutted and the State may legitimately describe the wronged as a 'victim' and the convicted as a 'convict' but not before.

31. To speak of victims only is to ignore the rights of defendants. The rights of defendants are just as important as the rights of complainants. The rights of defendants is a less attractive subject in the political arena. Selling the reforms based on what is superficially attractive but irrelevant is an act of dangerous populism that degrades the offices of Deputy Prime Minister and Lord Chancellor.

32. In 2020, Lord Falconer said on X (formerly Twitter): 'Huge mistake to have judge alone crown court trials during crisis. Second class justice would leave victim or defendant cheated depending on verdict. System should get on with organising safe jury trials this month'. We agree with the Lord Falconer of 2020. We will see if he votes for or against a system of 'second class justice'.

33. We would applaud and encourage any effort to improve the experience of complainants and defendants in the Criminal Justice System but abolishing juries will not ameliorate the experience of either. Making a fair system unfair will not help anyone; no victim would want the wrong person convicted; there is no evidence that abolishing juries will make the process quicker and/or reduce the currently agonising wait for trial.

34. 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.

CBA

8th December 2025

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