CBA Response to Courts and Tribunal Bill Impact Assessment

1. The Government released an 'Impact Assessment' of the provisions in the Courts and Tribunals Bill on 24th February 2026.

2. The Government's stated belief is: 'The measures in the Courts and Tribunals Bill will promote efficiency by ensuring a more proportionate allocation of criminal court resources, in line with the severity and complexity of the offending. They will promote fairness by ensuring cases can be heard more quickly, reducing delays and the associated cost to victims' (p. 6)

3. The Government's position is: 'Only through a combination of reform and efficiencies, plus investment, can the Government meet demand and begin to address the rising Crown Court case load' (p.1).

Reform: an ideology or a necessity?

4. Sir Brian Leveson published two reports following his review of the Criminal Justice System. The first (published in July 2025) considered the merits of

structural reform. The second (published in February 2026) considered how the system may run more efficiently. The fact that reform came first, before the conclusions of any review on efficiency had been reached or scrutinised (less so published) suggests that 'reform' was the Government's principal objective; an objective they were desirous of regardless of the impact.

5. Considering reform before efficiencies is, as the Secret Barrister suggested in a recent CBA podcast, 'akin to having a freezing cold house, the windows and doors wide open, the radiators leaking and the boiler on the blink and your first port of call being to summon a bulldozer and only then, standing amidst the wreckage of your home, to ring for a plumber'.

A Limited 'Assessment'

6. The 'Impact Assessment' begins by positing two options for assessment: 'Option 0: Do nothing' and 'Option 1: Implement the Criminal Court reform measures in the Courts and Tribunals Bill'. There is no 'Option 2: making the system run efficiently (fixing the boiler)'. This is a nakedly tendentious approach (our way or the highway).

Flawed Premises

7. The Impact Assessment begins with a summary of the 'Problem under consideration' and sets-out its justification next to twelve bullet points. The CBA's position on each is included below in bold:

- The last time the criminal courts saw meaningful reform was in the 1970s, when the Crown Court was first established. Over fifty years later, we have seen significant changes in the criminal justice landscape which impacts how our criminal courts operate.

This may be true (depending on the meaning of the words used) but things have not changed so much since the 1970s or in a way that justifies the removal of juries.

- The demand entering the system rose between 2019 and 2025 (and continues to rise), the number of arrests has risen by 10%, and the number of cases arriving at the Crown Court is up 18%.

This is a capacity issue. An obvious answer lies in allowing all courts to sit at full capacity, reopening closed courts and/or building more courts. The policy of this and the last Government was to restrict capacity (for budgetary reasons)

at a time when capacity demand was growing. Putting a stranglehold on the courts could be fixed by releasing the grip. The Government has now announced the removal of the artificial cap on sitting days, but this important change is yet to take effect.

- The Crown Court is dealing with more complex and serious offences, which take longer to hear. As the Review said, "putting lengthy fraud and terrorism to one side, violence and sexual offences represent a higher proportion of the caseload. In the year ending September 2019, sexual offences and violence against the person offences accounted for 33% of all open cases. By September 2025 (Q3 2025), this proportion increased to 49%. The growing complexity of criminal law and procedure, alongside new forms of evidence (such as material extracted from mobile phones, computers or DNA analysis) has increased the time that trials take. Defendants are also entering guilty pleas later in the process, exacerbated by the lengthy wait for trial currently. In Q3 2025, 58% of defendants who pleaded guilty before trial required more than one hearing, up from 44% in Q3 2019. The proportion of pre-trial guilty pleas requiring 6 or more hearings more than trebled from 3% in 2019 to 10% in Q3 2025.

Assaults, robberies and rapes were no more complicated in 1970 than in 2026. The argument that 'new forms of evidence (such as material extracted from mobile phones, computers or DNA analysis)' extend the length of trials betrays an obvious lack of understanding of criminal trials. The availability of evidence such as CCTV, DNA, and cell site, makes it much more likely that the trial issues will be narrowed rather than enlarged. It is true that the volume of evidence to be gathered and analysed is greater now than it was in 1970 but, that material is (or should be) distilled by the parties *before* the trial and only the evidentially relevant parts of it are (or should be) presented at trial. It will be no quicker to present the evidentially relevant parts of the material to a Judge than to a jury. The suggestion that DNA analysis contributes to longer trials has no foundation in truth. How often are experts called to court to argue out their analysis of DNA rather than their findings being thrashed out and settled into agreed facts before the trial? Even if they are needed at Court, it is not going to be quicker for a judge to hear the arguments than a jury.

If the criminal law is more complicated, it is because successive legislatures made it so; they are sovereign in their power to simplify it. The CBA would welcome the simplification of the law.

- These factors combined mean that cases are taking longer to be heard. The Review has said that jury trials are now taking twice as long as they did in the early 2000s, and cases are now open for 80% longer at the Crown Court compared to 2019 (156 days in Q3 2019 compared to 281 days in Q3 2025). As of Q3 2025, 20,155 cases at the Crown Court, and around a third of all sexual offences, have been open for a year or longer. These delays have real consequences for victims, witnesses, and defendants who can spend years waiting for their trial

The Review's finding that cases are taking longer to be heard is a half-truth. The implied suggestion is that cases are taking twice as long because of evidential complexities. The truth is that cases take twice as long because of the grotesque inefficiencies in the system. In the same CBA podcast noted above, Kate Bex KC spoke of a friend (also a KC) who believed that all her recent trials had doubled in length because the PECSs providers had failed to get defendants to court on time. On 27th February 2026, an officer of the CBA was in Leicester Crown Court for a 09:45 hearing. The estimated time of arrival of one of the co-defendants was 17:00. Fixing this problem alone would make the system infinitely more efficient and save many court sitting days.

- However, while demand, crime types, evidence and criminal proceedings have changed significantly since the 1970s, the structure of our criminal courts has not, causing an imbalance between demand and supply. The system is no longer able to meet the demands of criminal justice in the 21st century. In Q3 2025, the Crown Court open caseload reached 79,619 - around double pre-Covid levels - and without intervention (with structural reform providing the most significant impacts), it is expected to surpass 100,000 by 2028 under a central demand scenario.

  The system cannot meet demands, but this is not because of juries; it is because the system has been run into the ground by successive governments failing to invest appropriately.

- Recent projections, published on 4 December 2025, indicate that the workload implications for the Crown Court are significant – a 7% increase in cases coming into the Crown Court by March 2030, relative to the levels observed in the 12 months to the end of June 2025. That is the equivalent of 138,000 sitting days of work over 2029/30, reaching a steady state equivalent to 139,000 days per annum by the end of that period (145,000 days in the high scenario). If historic trends of growing indictable only trial lengths continue and we see a further 10% rise in

indictable only trial lengths by 2030, then this could rise to 144,000 days per annum at steady state in the central scenario (151,000 days in the high scenario).

The Crown Court currently has a maximum capacity of 133,000 sitting days. If the system was made to run efficiency, there would be ample sitting days.

- This Government has already taken action, including funding a record 111,250 Crown Court sitting days this financial year, and announcing the removal of the cap altogether for the next. But the scale of the challenge cannot be addressed by increasing that sitting day allocation and modernisation alone. The Review said "the scale of the problem means that more money alone cannot remedy the problem quickly enough (if at all) […] Similarly, the scale and deep-rooted nature of the problems also made clear to me that efficiency measures alone […] would not be sufficient to meet the volume of cases now coming into the system, let alone reduce the open caseload. That would lead to a steady accumulation of unresolved cases over time, causing the Crown Court open caseload to increase continuously, leading to the system facing the risk of collapse. To simply stop the Crown Court open caseload from growing, the Crown Court would need to operate at 139,000 sitting days. But there is not sufficient capacity within the system to operate at this level of activity. The Government must consider whole system capacity when

assessing how many sitting days' worth of work can be delivered each year -the availability not just of judges to sit in the Crown Court, but of the lawyers, prosecutors, and defence advocates and solicitors that enable the system to function.

A claim of 'record sitting days' when the previous limits on sitting days were imposed by the record breaker is not a particularly impressive claim.

The Government has made no assessment and provided no data to support their claim that the 'scale of the challenge cannot be addressed by increasing the sitting day allocation and modernisation alone'.

We ask the Government to answer the following question before asserting a conclusion for which there is no foundation:

What would be the impact of introducing Sir Brian's efficiency recommendations alone?

- It was against this background that the Government commissioned Sir Brian Leveson to conduct the Independent Review of the Criminal Courts (the Review),

evaluating the criminal courts in England and Wales and recommending reforms to address rising demand and the Crown Court open caseload.

It is evident that the abolition of juries was the cart that was placed before the horse of Sir Brian.

- The Review addressed long term structural reform of the criminal courts (Part 1) and improving efficiency in the criminal courts (Part 2).

- Sir Brian published Part 1 of the Review on 9 July 2025 and Part 2 on 4 February 2026. In the Review, he identified a profound and escalating crisis within the criminal justice system, particularly in the Crown Court. Importantly, Sir Brian has been clear that "more money and efficiency measures alone will not be sufficient to allow the system to operate as it should. To be given the best chance of success, it requires all three critical levers – money, structural reform and efficiency.

We ask for the evidence that supports the assertion that only all three 'critical levers' are capable of bringing about 'the best chances of success' rather than one or two.

- Sir Brian highlighted that these delays result in a host of problems: devastating impacts on the lives of victims and witnesses, leading to a number who may withdraw from proceedings; defendants left in limbo for years; and knock-on effects on the rest of the criminal justice system. These pressures collectively erode public trust and compromise the fairness and effectiveness of criminal justice.

Delays do result in the problems suggested but the delays are not caused by juries.

8. The Government's arguments to support the assertion that judge-alone trials will be quicker, are set-out in three paragraphs (on p.10):

- Currently, almost all trials in the Crown Court are heard by a judge and jury. Hearing certain cases by judge alone is expected to reduce hearing times, freeing up Crown Court capacity to hear other, more serious, cases with a jury.

- Jury trials require specific time dedicated to the management and handling of jurors, including jury selection, jury instruction, and deliberation time. Sir Brian Leveson's Review says that trials proceeding without a jury could reduce hearing

times by at least 20%, and he says that he thinks this is a very conservative estimate.

9. In the great majority of cases, it does not take long to select and swear-in a jury. No court time is consumed by jury deliberations. When juries deliberate, judges get on with other work in Court including other trials. If judges had to deliberate instead, court time will be lost that is currently used to hear cases.

10. The Impact Assessment fails to assess the ways in which the proposals will consume rather than save time. According to s.74A (1) and (2) of the Bill, '(1) where one or more defendants are to be tried on indictment for one or more offences, (2) the court must…determine in accordance with this section whether the trial is to be conducted with or without a trial'. If a defendant faces trial for an either way offence and (if convicted) would be likely to receive a custodial sentence of more than three years, the case will be tried by jury. A judge must conduct a hearing to determine this issue. A hearing that is not currently necessary.

11. The procedure for making this determination is set out in s.74C. According to that section, the court must give the parties an opportunity to make representations on the point, consider the applicable guidelines and other relevant considerations such as defendant's previous convictions. Accurate decisions will necessitate the

judge having a complete picture (the evidence would have to be available and all parties in a position to make observations on it). If the case involves multiple defendants, judges must assess eligibility based on the highest likely sentence of any one defendant. In a case with six defendants, a judge would have to hear from six representatives and the prosecutor. These hearings will consume many hours of court time.

12. Many defendants plead guilty after the PTPH but before trial. The time spent allocating their cases will be rendered completely useless by their plea, and the sentencing judge (perhaps not the same as the allocating Judge) will have to hear the submissions on sentence again.

13. According to s.79A (4) of the Bill, 'Where the Court convicts or (as the case may be) acquits a defendant, the Court must give a judgment which states the reasons for the conviction or acquittal'. Juries do not provide reasons. Judges will spend many hours writing judgments; time that is currently used in court dealing with or trying cases.

14. Jury verdicts may not be impugned unless they are perverse. Judges' reasons will be impugned regularly and cause an exponential rise in applications to the Court of Appeal.

15. The assertion that: 'Sir Brian Leveson's Review says that trials proceeding without a jury could reduce hearing times by at least 20% and he say that he thinks this is a very conservative estimate' has no evidential foundation. The Impact Assessment does state how that conclusion was reached but, with the greatest of respect to the Ministry of Justice, the explanations would make the script writer of 'In the Thick of it' wince with embarrassment at his failure to capture the verisimilitude of moderate levels of meaningless verbiage rather than the total gibberish we are offered:

- Sir Brian's Review reached this assumption by conducting:

- Quantitative analyses explored potential proxies for jury trial savings by drawing comparisons within the current system. This provided a framework for elicitation workshops and judicial engagement. A structured elicitation workshop with expert operational staff from HMCTS. The quantitative analysis was shared with participants, and the workshop generated a suggested estimated range of 10-30% for lower to upper end plausible time savings, with 20% given as a median value.

- Engagement session with judges to understand their personal expectations of potential time-savings, intended to provide an anecdotal indication of where and

how the judiciary thought time savings may or may not become apparent in a CCBD. Their views were in keeping with wider estimates.

16. If anyone can make any sense of this, please get in touch.

17. However the estimate has been reached, it sits in stark contrast (both in terms of the bases for its conclusions and decipherability) to the report produced by the Institute for Government ('IFG') which assesses the likely saving of court time to be closer to 1% to 2%.

18. The Government's own assessment (at pages 16 and 17 of the Impact Assessment) is that their proposal for Judge-only trials will save 5,000 sitting days per year. We say three things about their figures:

    a. This is based on Sir Brian Leveson's 'guestimate' of a saving of 20% per trial, which we believe is no more than a finger in the wind.

    b. The Impact Assessment states that 4,000 cases will be in scope of the proposals. They project that 5,000 sitting days will be saved, which is 1.25 days per case. They have therefore assumed that each of the cases within scope currently takes 6.25 sitting days to try with a jury. That is plainly wrong. The cases which are in scope are those where the likely sentence is

between 18 months' and 3 years' imprisonment. As practitioners know, those are cases such as Possession with Intent to Supply, s.47 and s.20 Assaults, Sexual Assault and Burglary. Typically, those are cases where the evidence, speeches and summing up take about 3 days. The jury then retire, and the Judge gets on with other work while they deliberate. This is a fundamental error in the calculation which means that the estimated saving is about double what it should be.

c. But let's imagine that the Impact Assessment is correct. What does a saving of 5,000 sitting days actually mean in practice? The projected 'demand' is 137,000 sitting days per annum. 5,000 days is a saving of 3.5%. So for rape victims who are currently waiting on average a year for their case to be heard, that means that their case might be reached about a week and a half earlier. That is not a meaningful difference. That is not 'swifter justice for victims'. Is it worth decimating trial by jury for such a negligible gain?

19. The reason why the IFG's figures are correct, and the Government's are wrong, is that the IFG considered the proportion of Crown Court time which is actually taken up by trying these types of case. 35% of Crown Court time is spent on non-trial business (PTPHs, guilty pleas, sentences etc). 40% of Crown Court time is spent on the trial of indictable-only offences (which are fewer in number, but take

much longer to try). Only 20% of Crown Court time is spent trying either-way offences, of which at least a half will remain as trials by jury because the likely sentence is more than 3 years. The cases which are in scope only take up between 5% and 10% of Crown Court time. So even if those cases could be tried 20% quicker that only makes a different of 1% to 2% to the overall work of the Crown Court.

20. Further evidence of the over-optimism of the Impact Assessment can be found in the estimate of the impact of removing the right of election and of increasing the sentencing powers of the Magistrates' Court. The table at page 17 of the IA states that these changes will remove 24,000 sitting days of work from the Crown Court but add only 8,500 sitting days to the work of the Magistrates' Court. How does that work? It assumes that the caseload which takes the professional judges in the Crown Court 24,000 days to complete will be despatched by volunteer magistrates in 8,500 days. Are magistrates three times more efficient than professional judges?

21. Perhaps the answer to how the Government arrived at this astonishing figure is to be found in the table of 'assumptions' at page 34 of the IA. The assumptions are that magistrates will complete each of these trials within **four hours** and guilty pleas/sentences within **30 minutes**. Is there is an expectation that magistrates will be dispensing rough justice when they have these more complex, more serious

cases allocated to them? Or are the assumptions in the Impact Assessment simply wrong?

22. Having analysed all the available evidence and observations made about the Government's proposed reforms, we can discern no obvious benefit of substance. We can, however, foresee the ruination of a Criminal Justice System of which we were, once, rightly proud. We ask the Government to pause and consider ways in which we may all become proud guardians of the rule of law again.

CBA

26th February 2026