

The Nutshell Guide to the Courts and Tribunals Bill 2026

Comments by the Criminal Bar Association

| | |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Clause 1</p> | <p><u>Removing the right to elect Crown Court trial.</u></p> <p>This proposal affects either-way offences¹.</p> <p>Defendants charged with a criminal offence make their first appearance in the Magistrates' Court. The Magistrates make an initial decision whether they think the case should be sent to the Crown Court. They can do so only: (a) if they consider that their sentencing powers would be insufficient, or (b) if it is a case involving unusual complexity.</p> <p>If the Magistrates are willing to retain the case, the defendant is then given the choice whether they wish for their case to be heard in the Crown Court. This is known as 'the right of election'.</p> <p><u>The proposed change</u></p> <p>Clause 1 proposes to abolish the right of election altogether.</p> |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

¹ In England and Wales, criminal offences are divided into three types:

- **'Summary-only' offences.** These are minor offences which ordinarily can be tried only in the Magistrates' Court. Examples include low-value shoplifting, low-value criminal damage, common assault and most driving offences.
- **'Either-way' offences.** These are more serious cases which can be tried either in the Magistrates' Court or the Crown Court. Examples include sexual assault, sexual assault of a child, unlawful wounding/GBH, drug supply offences, theft, fraud and burglary.
- **'Indictable-only' offences.** These are the most serious offences which can be tried only in the Crown Court. Examples murder, manslaughter, rape and robbery, and conspiracy offences.

| | |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p><u>The CBA’s Position on the Right to Elect</u></p> <ul style="list-style-type: none"> • The CBA’s position is that the right to elect should be retained. • The allocation criteria applied by the Magistrates are restrictively narrow (essentially, focussed on length of sentence). In making their initial decision, Magistrates cannot take into account any other factors, such as the wider consequences of conviction for the defendant. It is the right to elect which gives flexibility to the process. • The choice of trial by jury is not the only reason why some defendants elect trial by jury. The procedures in the two courts are materially different. For example, the Crown Court has the power to dismiss a charge on a pre-trial application if the evidence is insufficient or the case is legally flawed. Also, the provision of disclosure in the Crown Court more robust. |
| <p><u>Clause 3</u></p> | <p><u>Curtailing the Right to Trial by Jury</u></p> <p>The effect of this proposal is to restrict the remove the right to trial by jury for either-way offences unless the likely sentence is more that 3 years imprisonment.</p> <p>Cases will be tried by a Judge alone.</p> <p>The Bill seeks to achieve these changes by amending the Senior Courts Act 1981 (‘SCA’).</p> <p><u>New Section 74A SCA – Allocation of Cases to Trial by Judge Alone</u></p> <p>This will permit cases in the Crown Court to be tried by a Judge sitting alone, without a jury².</p> <p>A decision as to ‘allocation’ will be taken at a pre-trial hearing. The Judge can order trial with a jury <u>only if</u>:</p> <p>(a) the defendant is charged with an indictable-only offence; or</p> |

² Although this is materially different from Sir Brian Leveson’s proposal of a Judge and two Magistrates, the Government still calls it the Crown Court Bench Division.

| | |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>(b) the likely sentence for the defendant³ is more than 3 years imprisonment.</p> <p>There is no right of appeal against the allocation decision.</p> <p>Notwithstanding the basis on which the case was allocated, following conviction in a Judge-alone trial the Court can still pass a sentence of <u>more</u> than 3 years imprisonment.</p> <p><u>The CBA’s Position on Trial by Jury</u></p> <p>The CBA strongly opposes the curtailment of the right to trial by jury for either way offences.</p> <p><u>These proposals will not solve the backlog.</u></p> <ul style="list-style-type: none"> • Even Sir Brian Leveson says that juries are not the cause of the backlog.⁴ • The curtailment of jury trials has been mis-sold to the public as a measure to reduce delays and bring down the backlog. The mantra is ‘swifter justice for victims’. This argument does not stand up to scrutiny, even on the Government’s own figures. • If we take the figures in the Impact Assessment at face value, this proposal will save 5,000 sitting days pa. That is about 3.5% of the Crown Court workload. That means that rape complainants/victims who currently have to wait a year for their trial to be heard might see their cases brought forward by about a week. • In fact, the figures in the Impact Assessment are both flawed and inconsistent⁵. They are based on an assumption that the average length of the trials in scope of this proposal is 6.25 sitting days. The reality is that these are cases in which the trials are relatively short, even with a jury (typically about 3 days). The Impact Assessment has therefore over-estimated saving by about double the true position. • A more focussed analysis by the Institute for Government (‘IFG’) has shown that these proposals will make an overall difference only of 1% or 2% to the speed at which cases are heard in the Crown Court⁶. |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

³ If there is more than one defendant, the test is whether one or more of them is likely to receive a sentence of 3 years or more.

⁴ See Para 35 of the Overview.
<https://assets.publishing.service.gov.uk/media/6982095e8c1e89ed1e91bbc7/independent-review-criminal-courts-overview.pdf>

⁵ https://publications.parliament.uk/pa/bills/cbill/59-01/0389/IRCC_impact_assessment.pdf at pages 16, 17 and 37.

⁶ <https://www.instituteforGovernment.org.uk/publication/judge-only-trials-court-demand-productivity>.

| | |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>The IFG argues that this would have a negligible impact on trial delays, and that it is drawing resources and focus away from far more meaningful measures.</p> <ul style="list-style-type: none"> • On the Government’s own estimate, these changes will not take effect until 2028/29 at the earliest. They are not a solution to the current crisis. • More broadly, the Impact Assessment is based on a false premise, in that it compares ‘Do Nothing’ with the effects of the all of the Government’s measures. ‘Do Nothing’ is not on the agenda: radical investment and reform is already taking place, it has universal support and it will bring the backlog down by more direct means. <p><u>These are not ‘minor offences’</u></p> <ul style="list-style-type: none"> • Cases where a defendant may receive a sentence of up to 3 years are not ‘minor offences’. • Take the case of a 20 year old student charged with Unlawful Wounding where someone’s face was gashed by a glass thrown in a bar. Under the sentencing guidelines, if they were of good character they would be facing imprisonment of 2 to 3 years. A conviction would be life changing. Under the proposals, that young defendant would not qualify for trial by jury. • The 3 year cut off will cause perverse results. Take exactly the same case, but involving a 40 year old defendant with a long criminal record who has been to prison many times before. Because of their record, the likely sentence for the same offence would exceed 3 years. He would get a trial by jury when the young man with no convictions would not. <p><u>Juries are a safeguard against prejudice</u></p> <ul style="list-style-type: none"> • In his 2017 report, David Lammy MP identified juries as the best way of achieving equitable results for participants, regardless of ethnic background. He highlighted the importance of the fact that juries deliberate together as a group, which deters prejudice.⁷ |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

What the IFG pointed out is that the question is not the number of cases would fall within scope of Judge-only trials, but how long does it take to try them. The IFG looked at the proportion of Crown Court time which is spent on different areas of its work: 35% is spent on non-trial business; 40% is spent on the trial of indictable-only cases (fewer in number, but taking much longer to try); and 20% on the trial of either-way offences, about half of which will remain trial by jury in any event. The work which would fall within the scope of Judge-only trials represents between 5% and 10% of Crown Court working time. Even if (which is strongly contested) those trials could be completed 20% quicker, that represents overall only a 1% to 2% saving of Crown Court time.

⁷ The Lammy Review was the “An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System”. His key conclusions on the importance of trial by jury

| | |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> • David Lammy explained why juries are a protection against prejudice of all forms. He wrote [p.32]: <i>“In the final decision, power is also never concentrated in the hands of one individual. If consensus cannot be reached, then a majority verdict can be delivered. Those holding an outlying point of view can be outvoted.”</i> • David Lammy also raised concerns about the diversity of the judiciary. He wrote: <i>“A fundamental source of mistrust in the CJS among BAME communities is the lack of diversity among those who wield power within it. Nowhere is this more apparent than in our courts, where there is a gulf between the backgrounds of defendants and judges.”</i> • The CBA commissioned an independent survey of Criminal Barristers⁸. 2,029 responded. 94.1% raised concerns about lack of diversity in the proposed CCBD. 88.5% were against the introduction of the CCBD. <p><u>The public have confidence in the verdicts of juries</u></p> <ul style="list-style-type: none"> • The British public have high confidence in the verdicts of juries. • An independent study commissioned by the MoJ in 2009 showed strong public support for juries. The public rated trial by jury as the most important democratic right⁹. • A YouGov poll following the Government’s announcement in December 2025 found positive support for trial by jury, especially among those who had served on juries¹⁰. • Professor Michael Zander’s recent article in the Criminal Law Review, based on the detailed work of the Crown Court Study, shows the high respect which is held for jury verdicts¹¹. <p><u>Juries are a safeguard for Judges too</u></p> <ul style="list-style-type: none"> • Leaving fact-finding to juries protects the judiciary from public criticism. |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

can be found at pages 6, 7, 31 and 32.

<https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>.

⁸ The CBA ‘snap survey’ was conducted by Professor Katrin Hohl of City University. The results are published here: <https://www.criminalbar.com/resources/news/monday-message-28-07-25/>

⁹ https://www.researchgate.net/profile/Mike-Hough/publication/237526529_Public_Opinion_and_the_Jury_An_International_Literature_Review/links/02e7e52eca39e9e7e6000000/Public-Opinion-and-the-Jury-An-International-Literature-Review.pdf

¹⁰ <https://yougov.com/en-gb/articles/53623-jury-service-leaves-britons-with-positive-opinion-of-justice-system>

¹¹ <https://www.barcouncil.org.uk/static/65ce57b4-4cc0-46cb-b1a13bd307292201/2026CrimLRIssue3PrintZander.pdf>

- As former senior judge HH Geoffrey Rivlin KC has pointed out, if Judges were routinely deciding (say) cases involving sexual offences, people would start ‘keeping score’ to identify potential bias. Parties and their lawyers would start ‘Judge shopping’ – trying to ensure that cases were tried by a Judge with a reputation for deciding cases in a particular way¹².
- A study in New South Wales showed that, after Judge-only trials were expanded there, it was found that Judge-only trials were significantly more likely to result in an acquittal (by a margin of 12%).

The CBA supports radical alternative measures

- The CBA are not opposed to strong reforms.
- The CBA broadly supports all of the measures set out in Part 2 of Sir Brian Leveson’s Review.
- We believe that there are many relatively minor offences which could be re-classified as summary-only and tried in the Magistrates’ Court with an increased maximum sentence of up to 12 months imprisonment.
- The measures which will make a real difference to backlogs and delays do not require legislation. These include the removal of the artificial cap on sitting days, use of ‘blitz’ courts, investing in technology and improved services.
- It is simply not true that the investments and reforms are dependent on the passage of the Courts Bill or the curtailment of jury trials. Most of the necessary non-legislative reforms are already at an advanced stage and have been awaiting funding from the Government.
- The average number of hours which each Crown Court Judge actually sits in court each day has fallen to 3.2 hours¹³. This is due to inefficiencies such as technological breakdown, prison transport delays, and difficulties with interpreter services. Just getting back to the 2016/17 level of 3.8 hours would be an 18% improvement, far outstripping the 1% to 2%

¹² <https://committees.parliament.uk/writtenevidence/161374/pdf/>

¹³ Leveson Review, Part 2, Vol 1. Paras 37 and 38.

Further reading

The CBA's position is supported by the Law Society, Bar Council, Criminal Law Solicitor's Association, London Criminal Law Solicitor's Association, JUSTICE and former Judges who worked in the Crown Courts.

- For a detailed critique of the proposals, we recommend the paper submitted by HH Geoffrey Rivlin KC, the former resident judge at Southwark Crown Court, to the Justice Select Committee¹⁴.
- For a detailed discussion of confidence in the verdicts of juries, we recommend the article by Professor Michael Zander KC (Hon) in the Criminal Law Review [2026] Crim LR 150¹⁵.
- For the arguments on the quality of decision making by Juries, we recommend the article by former CBA Chair Chris Henley KC 'Trial by Jury or the Wisdom of One'¹⁶.
- For further arguments on the Courts Bill generally, see the JUSTICE briefing papers¹⁷.

New Section 74B – Reallocation of Cases

This would allow a case to be reallocated (from Judge-only to jury trial, or vice versa) in the event of a change of circumstances (eg. if additional charges were added).

Unlike the original allocation decision, the Judge at this stage has a greater discretion. There is a list of specified criteria which the Judge can take into account, but no other matters may be considered. These include the interests of the alleged victim, inconvenience to witness and risks of administrative delay. The list does not include unfairness to the defendant.

The CBA's position

This proposal shows the one-sided nature of the Courts Bill. Justice is meant to be even-handed.

¹⁴ <https://committees.parliament.uk/writtenevidence/161374/pdf/>

¹⁵ <https://www.barcouncil.org.uk/static/65ce57b4-4cc0-46cb-b1a13bd307292201/2026CrimLRIssue3PrintZander.pdf>

¹⁶ <https://www.counselmagazine.co.uk/articles/trial-by-jury-or-the-wisdom-of-one->

¹⁷ https://cdn.prod.website-files.com/67becde70dae19a9e5ea2bc3/699dc14dd95b46045b4ae249_JUSTICE%20briefing%20-%20jury%20reform%20-%20Feb%2026.pdf

| | |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>A defendant is innocent until proved guilty. A provision which allows the Court to take into account unfairness to one side but not the other is wholly contrary to the ethos of the Criminal Justice System.</p> <p><u>New Sections 74C and 74D – Further provisions relating to allocation</u></p> <p>These are important procedural sections dealing with the processes described above (eg. absence of right of appeal) and should be read together with 74A and 74B.</p> |
| <p><u>Clause 4 and Sch 1</u></p> | <p><u>Trial of Complex and Lengthy Cases (Fraud Trials)</u></p> <p>This proposal would give the Crown Court the power to direct that certain types of complex and/or lengthy cases be heard by a Judge alone if it is in the public interest to do so.</p> <p>Sch 1 specifies the offences which would be in-scope. They are exclusively cases of fraud, money laundering and terrorism funding. However, only ‘one or more’ of the charges has to be on the list. The Bill also proposes that the Lord Chancellor should have the power to specify further offences by statutory instrument.</p> <p>In contrast to Clause 3, the Judge has a wide discretion whether to make such a direction.</p> <p><u>The CBA’s position</u></p> <ul style="list-style-type: none"> • The CBA opposes this proposal. It is wholly unnecessary. • In our independent survey, 78.2% of criminal barristers opposed the removal of the right to trial by jury in cases of fraud. • These proposals were debated in Parliament in 2007 and rejected. Nothing has changed. • Many of the cases which are in scope are really serious, involving cases with potential sentences in excess of 10 years imprisonment. • The argument for change has not been demonstrated. The gains are negligible because this cohort of cases occupies a small fraction of |

| | |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>Crown Court business. The Impact Assessment¹⁸ estimates that a total of 200 sitting days pa might be saved by this reform (approx. 0.14%).</p> <ul style="list-style-type: none"> • The issues which juries decide in fraud trials are factual, not technical. They are matters such as: is the defendant telling the truth?; what did the defendant intend by their actions?; and was their conduct dishonest by the standards of ordinary people? • Judges do not always get these judgments right, as the unravelling of the Libor cases has proved¹⁹. • In 2023, the Government commissioned an independent report into the prosecution of fraud offences from Jonathan Fisher KC. That report has been delivered to the Government, but it has not been published. It is obvious that the report makes recommendations on trial by jury, and the failure to publish the independent report before publishing the Bill is deeply concerning²⁰. |
| <p><u>Clauses 3(2) and 4(6), and Explanatory Notes</u></p> | <p><u>Transitional Provisions and retrospective effect</u></p> <p>The provisions on trial by Judge alone will take effect from a ‘specified day’. They will apply to cases regardless of the date on the case was first sent to the Crown Court. This rule applies both to the trial of either way offences (Clause 3(2)) and the trial of lengthy or complex cases (Clause 4(6)). There is also provision in Clause 22 for the Lord Chancellor to make further regulations by way of transitional provisions to bring the changes into effect.</p> <p>The Government’s intention is made clear in the Explanatory Notes, which show²¹ that the Government intends that as soon as the measures are in place they will be applied to existing cases which are already listed for trial, regardless of the expectation of the parties.</p> <p><u>The CBA’s position:</u></p> <ul style="list-style-type: none"> • Over and above our principled objections to Judge-alone trials, we believe it is conspicuously unfair to apply them retrospectively to cases which have already been listed for trial. |

¹⁸ https://publications.parliament.uk/pa/bills/cbill/59-01/0389/IRCC_impact_assessment.pdf at page 17

¹⁹ <https://caselaw.nationalarchives.gov.uk/uksc/2025/29/press-summary>

²⁰ See the report of this issue in the Financial Times: <https://www.ft.com/content/6626c027-e555-4cf2-914b-5184a6392613>

²¹ See §§ 68, 223 and 253 of the Explanatory Notes.

| | |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> • Complainants, witnesses and defendants all have a legitimate expectation that their case will be tried by a jury. • The cases which will be affected by this change include cases where a defendant was given the choice of venue and elected Crown Court trial because they legitimately expected a trial by jury. It is clearly unfair for them to be tried by a process which did not even exist at the time of their election. • The CBA estimates that up to 30,000 existing cases could be affected by this proposal. • The CBA predicts that these existing cases will become mired in ‘satellite litigation’. In each case, Judges would have to conduct an allocation hearing and decide whether to direct a Judge-only trial. That means a burden of additional hearings and the preparation of written submissions. The Court will have to decide whether the reallocation is lawful and fair. • Decisions could be challenged by appeals or Judicial Review, leading to further delays while the higher courts determine the legal principles. Similar cases in the past have been fought all the way up to the Supreme Court. • The key point is not the strength or otherwise of the Government’s case on whether it would be lawful to give retrospective effect, or what the decision is likely to be in any individual case. It is the fact that the Government is unnecessarily opening up an area of burdensome litigation. |
|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>Clause 5</u></p> | <p><u>Rules about Trial by Judge Alone</u></p> <p>This clause contains provisions to give effect to Clauses 3 and 4.</p> <p>This requires the Court to give a judgment setting out the reasons for the Judge’s verdict. The judgment must be given as soon as practicable after the announcement of the verdict.</p> <p><u>The CBA’s position:</u></p> <p>We believe that the Government has underestimated the burden on Judges which this requirement will involve.</p> <p>The judgments would need to be ‘appeal-proof’ (ie. correctly identifying all issues of law, and giving cogent reasons which address all of the issues and arguments raised in the trial). As other jurisdictions show (eg. the</p> |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>Immigration and Asylum Tribunals) reasons can become extremely lengthy in order to avoid time-consuming appeals.</p> <p>The ‘reasonable time’ provision is poorly drafted. It requires a judgment to be provided as soon as reasonably practicable after the delivery of the verdict, but it says nothing about the delay between the conclusion of the trial and the delivery of the verdicts. In other countries which have Judge-only trials (such as Canada and New Zealand), the parties often wait for weeks or months after the conclusion of the trial to find out the verdicts.</p> |
| <p><u>Clause 6</u></p> | <p><u>Increasing Maximum Sentencing Powers in Magistrates’ Court</u></p> <p>The sentencing powers of the Magistrates’ Court were increased in 2022 from 6 months to 12 months.</p> <p>This proposal would allow the Lord Chancellor to further increase the maximum by statutory instrument to either 18 months or 24 months.</p> <p><u>The CBA’s position:</u></p> <ul style="list-style-type: none"> • The current 12 month maximum is an appropriate limit. • Increasing the limit to 18 or 24 months would bring a significant number of more serious and more complicated cases into the exclusive scope of the Magistrates’ Court. • The practices and procedures of the Magistrates’ Courts are necessarily “summary” in nature. They are designed for the trial of minor offences. • This is a recipe for rough justice. The cohort affected by this change is, by definition, cases where a defendant is expected to get a prison sentence of between 1 and 2 years. The Impact Assessment²² shows that the Government assumes that in the Magistrates’ Courts each of these trials will be completed within just 4 hours. The IA also assumes that cases with a guilty plea will take 30 minutes. Either the Impact Assessment is wrong, or these cases will not be receiving the scrutiny they deserve. • The rules on eligibility of Legal Aid in Magistrates’ Courts are likewise different. The eligibility cut off is significantly lower, because it is assumed either that a defendant is likely to be capable of |

²² https://publications.parliament.uk/pa/bills/cbill/59-01/0389/IRCC_impact_assessment.pdf, at page 34.

| | |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>representing themselves on a minor charge, or if private legal representation is required it will be affordable. That is not the case if Magistrates will be trying more serious cases with trials lasting 3 or 4 days, or longer.</p> <ul style="list-style-type: none"> • An increase in unrepresented defendants has a number of adverse consequences. It means complainants / victims / witnesses will be cross-examined by the alleged perpetrator of the crime. It will slow the proceedings down. It risks unfairness to the accused. It means that the outcome of cases will depend on whether the defendant can afford expensive lawyers, not the true justice of the case. • The Magistrates' Courts do not have the capacity to deal with these more serious cases any more than the Crown Courts do. The Impact Assessment assumes that the work which is currently taking 24,000 sitting days in the Crown Court, staffed by professional judges, will be completed by Magistrates, staffed by volunteers, within 8,500 days²³. In other words, three times faster. That is clearly naïve in the extreme. |
| <p><u>Clause 7 and Sch 2</u></p> | <p><u>Changes to appeals from Magistrates' Courts: the Permission Test</u></p> <p>At present, a defendant convicted or sentenced by the Magistrates' Court has an automatic right of appeal to the Crown Court. Whether they are appealing against conviction or sentence, the hearing in the Crown Court proceeds as a re-hearing before a Judge and two Magistrates.</p> <p>The proposal is to replace rehearings with a process which involves: (a) applications for permission to appeal, based on written grounds and transcripts of the Magistrates' Court proceedings; (b) a Crown Court Judge will then review the papers and the grounds and decide whether to give permission for an appeal hearing; (c) the appeal hearing would then be heard by a Judge sitting alone, deciding whether on legal grounds the conviction is 'unsafe'; (d) if the appeal is successful, the case would in most circumstances be sent back to the Magistrates' Court for re-hearing.</p> <p><u>The CBA's position:</u></p> <ul style="list-style-type: none"> • The CBA supports the permission test for appeals against sentence. Given the use of Sentencing Guidelines, such cases can readily be determined on the papers. |

²³ https://publications.parliament.uk/pa/bills/cbill/59-01/0389/IRCC_impact_assessment.pdf, at page 17.

| | |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> • The CBA opposes the new procedure for appeals against conviction, which is unnecessarily complicated and burdensome. • Appeals against conviction from summary trials are an important safeguard. On the latest figures, 42% of appeals were allowed. • The current system is both swift and efficient. • The proposed new system will cause much greater delay, involving multiple stages. • On the current system, the Crown Court decides the appeal there and then. Further delay will be caused by cases which are remitted to be reheard in the Magistrates' Court following an appeal. • Access to justice will be harmed. Who is going to find the lawyers who have time to review transcripts of evidence and prepare grounds of appeal? Who is going to pay them for that work? What about the defendants who were ineligible for Legal Aid, because of the lower cut off for eligibility? • The opportunity for Magistrates to sit with a Crown Court Judge to hear appeals is an important one. It helps with the training of Magistrates and drives up standards. Under the Courts Bill, there are no circumstances in which lay Justices would sit with professional Judges. |
| <p><u>Clauses 8 to 10</u></p> | <p><u>Extending Restrictions on Cross-Examination</u></p> <p>These provisions would extend the restriction on cross-examination of a complainant about previous sexual behaviour to all offences, and codify the test. They would also place restrictions on cross examination about compensation claims and about previous complaints.</p> <p>The CBA are consulting on these reforms and will respond separately.</p> |
| <p><u>Clauses 11</u></p> | <p><u>Bad Character Evidence: Domestic Abuse</u></p> <p>This provision would amend Section 103(2) of the Criminal Justice Act 2003, which concerns the admissibility of previous convictions as evidence that a defendant has a propensity to commit offences of the same type as the offence with which they are currently charged.</p> |

| | |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>This provision would specifically provide that evidence of convictions for ‘a domestic abuse offence’ would be admissible in a case where the defendant is currently charged with such an offence.</p> <p><u>The CBA’s position:</u></p> <ul style="list-style-type: none">• It is almost certain that such evidence would be admitted under the existing law in any event, but this amendment provides clarity. |
| <p><u>Clauses 12 to 15</u></p> | <p><u>Extending Special Measures</u></p> <p>Special Measures are the arrangements which may be made to assist witnesses when giving evidence to the criminal courts, pursuant to the Youth Justice and Criminal Evidence Act 1999. Existing measures specified in the Act include the use of screens, video recorded testimony, live video links, use of intermediaries and the use of aids to communication.</p> <p>The Bill proposes extensions to the scope and availability of special measures, including giving formal recognition to the use of persons to accompany a witness when giving evidence. The provisions also make arrangements to ensure that the principle of open justice is observed.</p> <p><u>The CBA’s position:</u></p> <ul style="list-style-type: none">• The CBA supports these proposals. |