

REASONS WHY THE JUDGE-ALONE PROPOSALS IN THE ‘COURTS AND TRIBUNALS BILL’ SHOULD BE REJECTED

INTRODUCTION – SUMMARY OF PROPOSALS (§§1–7)

1. Currently, a Crown Court jury tries any case in which a defendant, charged on indictment, pleads ‘not guilty’. It is now proposed that a significant number of these cases, drawn from two statutory categories of offence, should be allocated to ‘judge alone’ trial in a new, but parallel, tier of the Crown Court. Crown Court judges will not be restricted to sitting either in one tier or the other - they will sit in each. The two categories of offence from which these ‘judge alone’ cases are to be drawn are (i) those ‘*triable only on indictment*’ (these are the most serious offences); (ii) those ‘*triable either way*’ (ie. either on indictment in the Crown Court or by magistrates in a Magistrates Court).

2. **Offences triable ‘only on indictment’:** Under the Bill (s4) these offences will ordinarily continue to be tried by a jury, but in some cases, where the trial is to be particularly long or complex (neither being defined in the Bill) in certain circumstances, a judge may order a ‘judge alone’ trial. Under the Bill (s4 and Schedule 1), additional provisions are added to the *Criminal Justice Act 2003*, namely – Part 6A (consisting of ss 42A-42C), and Schedule 3ZA (Parts 1 [Offences to which s 42A applies] & 2 [Power to amend Part 1 of the Schedule]). Under the new provisions where:

- (i) *one or more of the defendants are to be tried on indictment for one or more offences* and
- (ii) *one or more of the offences in the indictment is listed in Part 1 of Schedule 3ZA* and
- (iii) *none of the offences in the indictment is an excluded offence* (theses are listed in s 42B) and
- (iv) *a preparatory hearing has been ordered under s 7 of the Criminal Justice Act 1987 or the Criminal Procedure and Investigations Act 1996 – a court may at any time before the beginning of the trial, order a ‘judge alone’ trial, but only if:* (a) *it is satisfied that the likely complexity or the likely length of the trial (or both) makes it appropriate for ‘judge alone’ trial;* (b) *the court does not consider that jury trial is in the public interest, and* (c) *there are no other reasons for considering jury trial would be more appropriate.*

3. Part 2 of Schedule 3ZA provides that the Secretary of State may by order amend Part 1 so as to (a) add an offence to the list in that Part; (b) remove an offence from that list. ‘*Offence*’ includes an offence under any enactment ‘that is no longer in force’. No such powers are given either in relation to the list of ‘*excluded*’ offences in s42B or in relation to adding ‘*excluded*’ offences to the list in Part 1 of Schedule 3ZA

4. ***Offences triable ‘either way’***. A much larger cohort of cases is to be drawn from offences in this category for trial by a single judge sitting alone (‘judge alone’ trials). The Bill (s 3(1)) introduces new provisions in the *Senior Courts Act* 1981 (ss 74A-74D). The test to be applied in order to distinguish between ‘*either way*’ offences, which will continue to be tried by a jury, and those now to be allocated to ‘judge alone’ trial, is whether the allocating judge, having regard to what he is told about the particular offence and the defendant, determines that the ‘*likely*’ sentence (having also considered the relevant *Sentencing Guidelines*) following trial and conviction will be ‘*more than 3 years*’. If it is, then jury trial; if it is not (ie. if the ‘*likely*’ sentence is to be 3 years or less) then ‘judge alone’ trial. Further details of these provisions are set out below (see §§9 et seq).

5. ***The provisions in the Bill also apply ‘retrospectively’ to most of the thousands of cases already constituting the current ‘backlog’***: Where s 42A of the 2003 Act (see §2 above) applies in relation to a trial, and the preparatory hearing (whether under the 1987 or the 1996 Act) was ordered before the day on which subsections (2) and (5) of the Bill come into force, an order may be made under that section without a hearing: s4(7) and (8)(c).

6. Where s74A of the 1981 Act (see §4 above) applies to a trial on indictment of a person *and the arraignment of the person on the indictment took place before the coming into force of that section* – the court must decide *as soon as reasonably practicable* whether the trial is to be with or without a jury. That decision may be made without a hearing: s3(4) of the Bill.

7. With regard to ‘mode of trial’ decisions in either case, there is to be no right of appeal.

GENERAL AND PRINCIPLED REASONS FOR REJECTION (§1-8)

1. These proposals did not feature in the government's election manifesto; there has been no bona fide consultation exercise. The Bill runs to 100 pages in all. The judge alone provisions are complex and border on the impenetrable. Between its publication and Second Reading, MPs were given 13 days to consider it.
2. The judges most affected by the proposals are those best able to understand their many ramifications. These judges appear to have been under instruction to remain silent, as have the senior judiciary, who have even failed adequately to explain their silence to the public.
3. As jurors, the public constitutes an essential cornerstone of the criminal justice system. That crucial role is now to be very significantly restricted. The public is entitled to be informed about, and if it sees fit to challenge, the nature and extent of this unwarranted trespass upon, and partial dismantling of, their centuries-old role. The plans, collectively, are an affront to this key component of criminal justice – the jury. Jurors are recruited from ordinary members of the public for the sole purpose of shouldering the heavy responsibility of determining the verdicts in Crown Court criminal trials.
4. The jury's historic role and significance are universally accepted and respected. It undoubtedly retains public confidence. Yet the government, particularly those within the Ministry of Justice, have chosen to embark upon a process of violation.
5. Not one of the many current failings in the criminal justice system can be attributed to the role of the jury.
6. **2-tiers of Crown Court trials:** The introduction of the proposals will result in two very different types of trial running in parallel in the Crown Court – one, the '*adversarial*' form we have long been familiar with – barristers each representing the two sides (prosecution and defence) and a judge holding the ring, ruling on points of law and carrying much of the responsibility for ensuring the fairness of the trial. The other form of trial (a judge, who sits alone, rules on points of law, has the responsibility for ensuring the fairness of the trial *and* determines the verdict) - is akin to a continental-style '*inquisitorial*' trial.

Example: (Concurrent trials – in tier A (judge alone), in tier B (jury): On trial in tier A is a black man (X) in his 30s of good character and in employment. He is charged with an offence of dishonesty similar in nature and seriousness to that faced by the defendant (Y) on trial in tier B. Y has many similar offences of the same character stretching back several years and has served several sentences of imprisonment.

The defence advanced by both X and Y in their current trials is that he was 'framed' by the police. In each case, the respective character records of X and Y will have been the determining factor in the allocating judge's decision to order a 'judge alone' trial for X ('likely' sentence bracket 3 years or under) and a jury trial for Y ('likely sentence bracket more than 3 years). This perfectly plausible example makes a mockery of the 'device' used to determine who is tried by a jury and who is tried by a judge. In this example, who really has the most to lose? If, as it should be, the answer is X, why should he (unlike Y) not have the benefit of 12 minds considering his defence rather than one?

7. *The claim: saving time (therefore saving costs) thereby cutting the 'backlog':* The government claims that 'judge alone' trial will make a significant contribution to the reduction of the current Crown Court backlog (70-80,000 cases) by saving much court time. This claim, unsupported by any respected set of statistics, is the rationale for this ill-judged experiment in criminal justice.

8. A recent report in *The Times* May 7 2026) demonstrated, under the headline '*Courts data casts doubt on jury reforms*', how the backlog is very gradually being reduced. The daily disposal rate is better than HM Courts and Tribunals Service's chief executive had anticipated. This improvement has been significantly assisted by the government easing its cap on judicial sitting days, although courts are still not sitting at full capacity. The Court's Minister is reported to have said recently that '*one of the greatest drivers*' of trial delays was '*workforce pressures – the fact that we do not have enough prosecutors and defence barristers*'. Yet, *The Times* reports that the Bar Council cannot get the government to produce the increase in criminal legal aid fees promised last December – a boost of the fees by £34M annually.

STRUCTURAL FLAWS

A. THE SENTENCING DEVICE FOR DETERMINING MODE OF TRIAL (§9-22)

9. *Senior Courts Act 1981 ss74A-74D: The ill-considered, time-wasting and flawed ‘sentencing exercise’ in respect of defendants in ‘either way’ cases committed for trial in the Crown Court – namely, the judicial pre-trial determination that if the ‘likely’ sentence is ‘3 years or less’ then trial by ‘judge alone’; OR, if the ‘likely’ sentence is over 3 years, then trial by jury:*

10. Determining a sentence within the spectrum of 0 to 3½ years is often a difficult exercise even when embarked upon following trial, conviction, mitigation and the assistance of various reports upon the defendant. It is particularly difficult in relation to the significant cluster of cases falling within the 2½ to 3½ years spectrum. To embark upon this crystal ball exercise even before trial, for a purpose having nothing to do with the actual sentence, but merely to determine ‘mode of trial’, is a mystifying waste of valuable judicial time.

11. Essentially, this is an administrative decision. To lend judicial credence to it, it is unveiled in the Bill, within a cascade of complicated statutory provisions (involving much time-wasting) as a judicial decision. All of this is to achieve but one purpose: a very substantial, but note - judicially controlled, reduction in the number of jury trials. Discreetly revealing the true nature of the ‘mode of trial’ decision, the Bill expressly provides that once made, the decision as to the ‘likely’ sentence-bracket has no further relevance to any future sentencing issue (whether trial is to be by jury or by ‘judge alone’). This is because the length of the actual post-conviction sentence which can lawfully be passed, is unrestricted (save for any statutory ‘maximum’ for that particular offence). A ‘judge alone’ trial may therefore lawfully conclude with a sentence of *over* 3 years and a jury trial may conclude with a sentence of 3 years or less (*see the proposed s. 74D (4) of the Senior Courts Act 1981 set out in s. 3 (1) of the Bill*).

12. The time of other individuals will also be wasted (so inevitably will be taxpayers’ money) – barristers and solicitors (not to mention listing officers and other court staff). The procedural exercise involved in making this determination is elaborate (although there is no right of appeal - ‘judicial review’ may be another matter). The judge must (s74C (4)(b)): *‘to such extent as may be prescribed have regard to any **sentencing guidelines** that are relevant to the defendant’s case’*. Further, before making the determination, *the court must have regard to any **allocation guidelines** (or revised allocation guidelines) **issued as definitive guidelines** under s. 122 of the*

Coroners and Justice Act 2009: s74C (5) – see §21 below. Prosecution and defence advocates must (74C (3)) have an *opportunity* to make representations as to ‘*the sentence which a defendant would be likely to receive...*’ [but as to the meaning of these words, see further at §16-17 below]. The prosecution must also have an *opportunity* to inform the court of the defendant’s previous convictions (if any). There is no provision requiring the prosecution to have an opportunity to inform the court of a defendant’s ‘good character’ (see §16-17 below). Nor is there provision for the production of ‘sentence-related’ Reports: probation, medical, employment, and the like. Strangely, although the Bill requires the judge to ‘*consider any of the [prosecution and defence] representations*’, no provision requires the judge to require, let alone consider, any Report relevant to sentence. The inference is that, for the purpose of this exercise, no Report is regarded as necessary. The ‘sentencing exercise’ for the purpose of determining ‘mode of trial’ is simply a ‘device’ which has nothing to do with an actual sentence – assuming the defendant is convicted.

13. *Flawed formula for determining ‘mode of trial’:* The provisions therefore identify the basis for determining ‘mode of trial’ – namely, the answer to one question: whether ‘*the defendant if convicted of the offence ... for which he is to be tried would be likely to receive a sentence of more than 3 years?*’ – if ‘YES’ then jury trial; if ‘NO’ then ‘judge alone’ (see: s 74A (5)) Note that here, the ‘likely’ sentence appears to mean not a specific ‘likely’ sentence but rather, which of two **sentence brackets** (‘over 3 years’ and ‘3 years or less’) is the ‘likely’ bracket.

14. However, on the face of s.74C (3), although the language changes and becomes specific [‘*Before determining for the purposes of ss74A or 74B the sentence which a defendant would be likely to receive for any offence or offences...*’], the approach presumably remains as that laid down in s74A(5) because what is determined for the purpose of ss 74A and 74B is *not* a specific sentence but rather into which of two sentence brackets the ‘likely’ sentence will fall. The argument supporting this view is based upon s74A (2), (3) & (5), s74C (3). Section 74C (3) must be read in conjunction with the provisions in s 74A.

15. But even a determination of the ‘likely’ (probable) *sentence bracket*, must cater both for the offence *and* for offender. If, for the purpose of this exercise, the defendant’s circumstances are to be largely disregarded (particularly in this range of sentences, ie. from non-custodial to over 3 years), the word ‘likely’ should be replaced by the word ‘possible’. The word ‘probable’, let it not be forgotten, sets quite a high bar – it is the

standard of proof required in the civil courts. Would any judge, mindful of the judicial oath, contemplate determining in every 'allocation' case coming before the court (perhaps one, two years or more before trial, conviction and mitigation), into which sentence bracket the sentence which may eventually be passed upon a defendant, would be 'likely' to fall, without having access to all the necessary reports and relevant information about that defendant? Yet this is precisely what the Bill appears to require. This means that in many cases (particularly those in the 2½ to 3½ years cluster (which of course spans the both 'modes of trial'), the determination as to 'mode of trial' will be made on a flawed basis – namely, inadequate information about the defendant for the purposes of determining into which of the two 'sentence brackets' the offender and his offence is 'likely' to fall. No wonder there is no reference to the need for reports – more money, more delay in preparation etc.

16. *Defence 'representations'*: Defending advocates will be in an impossible position. In many cases their preferred 'mode of trial' will be trial by jury. What representations can they possibly make? Is it seriously contemplated that before trial and conviction the advocate should at this stage embark upon a form of mitigation? That absurdity is further compounded because to achieve a jury trial advocates will have to argue that the 'likely' sentence will be over 3 years! If they argue for '3 years or less', then they are heading for 'judge alone' trial. No provision caters for defendants who decline to participate in these pre-trial exercises – what, some might ask, does any defendant really have to lose by so doing? The defence '*opportunity*', given in the Bill, to make '*representations*' appears to be pointless – a hollow gesture to disguise a flawed device.

17. *'Mode of trial' (good character)*: A marked preference for trial by jury, is a point of great importance to some defendants, (and their advocates), particularly defendants of good character who are innocent and for whom their good character matters greatly. Just as 'previous convictions' alone could carry a defendant into the 'more than 3 years' camp (trial by jury), those with an impeccable past are very probably going to fall within the '3 years or less' camp - so no jury trial for them. Some might regard this inevitable, and eminently avoidable outcome, as unjust if not outrageous. It is certainly an affront to any notion of 'Justice'.

18. *The absence of a 'public interest' factor in the 'mode of trial' determination' under s 74A*: Under s 42A(3) (see *Introduction*: §2 above) before a court can order that a long or complex case can be heard without a jury, it may only

do so if (b) *'the court does **not** consider that it is in the public interest for the trial to be conducted with a jury, and (c) the court does not consider there are any other reasons why it would be more appropriate for the trial to be conducted with a jury'*. Why have these two caveats been excluded from the s74A provisions? The assumption that no 'public interest' issue can possibly arise in cases where the 'likely' sentence bracket is determined to be '3 years or less' is impossible, to understand, let alone defend.

If s74A is to be implemented, it should be subject to each of the two caveats identified in s42A (3). How they could operate within a s74A context is shown in the example of the parallel tiers in operation given in §6 (*above*). Many would claim it is in the public interest that a defendant of 'good character' should be tried by a jury.

19. ***The proposals now allow a government to by-pass jury trial:*** These provisions now create an opportunity for a government to create offences with a maximum of 3 years, thereby ensuring a 'judge alone' rather than a jury trial. Even if the maximum sentence was fixed at 5 years, the government could be reasonably confident, certainly in the case of those with a good character, that the case would be allocated to 'judge alone' trial. In short, the government has now created for itself a golden opportunity to by-pass 'trial by jury' in 'sensitive' cases - for example, any new public order-type offences. The jury remains a citizen's best protection against ill-conceived or perverse prosecutions based either on an ill-judged assessment of the strength of the case, or on evidence of otherwise doubtful veracity. The role of the jury also extends to protecting citizens from freedom-restricting legislation enacted by a government to micro-control citizens activities in relation to freedom of speech and freedom to protest. This important protection will now disappear.

20. However, the true significance of such a development must be assessed in a much wider context – commonly characterized as 'mission creep', driven not so much by any particular government, but by the state, with the intention of eventually controlling the criminal justice system. This particular 'mission' arguably dates back to the *Courts Act 1972* which abolished the old courts, largely locally controlled, of Assize and Quarter Sessions and replaced them with a single, centrally administered court for England and Wales – the Crown Court. Next came the abolition of the ancient office of Lord Chancellor, invariably in those days an eminent, very experienced and well-respected lawyer – certainly a politician – but essentially an experienced and respected lawyer who, by virtue of the office, headed the judiciary. Although the title of the office remains, the status and powers are very different – the Lord Chancellor now

heads a government ministry. Since 2010, there have been 12 Lord Chancellors, some not even qualified lawyers. The former and sturdily constructed bridge between the judiciary and the government no longer exists – Lord Chancellors these days do not have one foot embedded in each camp. The Lord Chancellor's oath also rings rather hollow: *'I swear that in the office of Lord Chancellor ... I will ... defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible.'*

The 'Lord Chancellor's Office' was responsible for judicial appointments. That role is now in the hands of the Judicial Appointments Commission. A visit to its website, assuming it is up to date (many are not), is both informative and revelatory. A cynic might say that this 'mission' may be nearing its conclusion if these 'judge alone' proposals pass into law.

21. ***'Allocation Guidelines' [s74C (2)] issued as definitive guidelines under s.122 of the Coroners and Justice act 2009:*** Inquiries as to these have proved fruitless. At the time of writing (June 2026), they do not appear even to exist. The extent to which, if at all, they shed any light upon how the judge should proceed (i) in relation to the extent of the information a judge can consider - in particular information as to the defendant's circumstances, before determining the 'mode of trial'; (ii) if the 'determination' falls within a 'likely' sentence bracket which spans the current pair - namely, 2 ½ -3 ½ years; (iii) in cases where the defendant is of 'good character'.

22. It would be highly unsatisfactory, but not surprising, if these proposals became law before such guidelines were published.

B. ACTUAL AND PERCEIVED UNFAIRNESS. (§23-26)

'Innocent until proved guilty': 'unfairness' arising from features of a 'judge alone' trial when contrasted with jury trial

23. A jury hears nothing of evidence sought to be introduced by the prosecution, if it has been ruled *inadmissible* by the trial judge. Similarly, a jury will hear nothing of a defendant's 'previous conviction(s)' unless he puts his own 'character' in issue or

attacks the character of a prosecution witness or unless one or more of the convictions are relevant and admissible in relation to any other live issue in the case. In 'judge alone' cases, the judge will also be required to rule upon the admissibility of any prosecution evidence if its admissibility is challenged by the defence. If the judge rules any evidence 'inadmissible', the judge must wholly disregard it for the purpose of determining the verdict. Depending upon the quantity and nature of the inadmissible evidence – that, too often, will be a tall order.

24. Among the various judicial warnings given to the jury at the beginning of, and routinely during, any criminal trial, is that the jurors should not discuss the case with anyone outside their own number – e.g. friends, relatives, advisors and strangers. This is important and is intended to protect the eventual verdict from any risk of 'outside' influence. Some judges in 'judge alone' trials will find themselves having to break what, until now, was the harmless habit of a judicial lifetime. The observance of this rule by judges responsible for returning verdicts in criminal trials is obviously essential. They should be required to record in each trial that the rule 'will be' and 'has been' observed. Other similar warnings are given to jurors (e.g. accessing the internet to gain further information *etc.*). These too should apply to judges conducting 'judge alone' trials. Jurors return to their usual daily routine and their working lives after completing their service. For judges, the role of determining verdicts will be continuing and relentless. Over time, the demands upon an individual judge's intellectual discipline will become just too great. This risk is by no means catered for by merely requiring the judge to explain the verdict in a reasoned judgment (whatever, in this context, that is meant to mean) given at, or as soon as reasonably practicable after, the conviction or acquittal.

25. The prospect of 'judge alone' trials prompts a reflection about the wider role of the jury in a criminal trial, rarely if ever acknowledged. A jury consists of 12 members of the public (men and women), from different backgrounds and with different experiences who, almost certainly, are unknown to each other. United by their oath, each is immediately aware of the very considerable, but shared, responsibility he or she has undertaken to deliver a verdict – each knows he/she is there to function, collectively, as a judge. A jury is accorded much respect both by the trial judge and the advocates. The very presence of a jury can act as a restraining factor upon any temptation, to which either 'Bench or Bar' might fall, to display eccentricities or rank unfairness. The presence of a jury underpins the defendant's confidence *and* the public's confidence in the fairness of criminal trials. This dimension would be dangerously absent in a 'judge alone' trial.

C VULNERABILITY OF JUDICIARY (§§26-28)

26. *Vulnerabilities of the judiciary resulting from these provisions:* The proposals ignore (or, at best, overlook) the pressures, threats and dangers (including psychological) to which participating judges may now be exposed. Contrast the position of a single judge who has to determine the verdict *alone*, with that of the shared anonymity and responsibility of 12 jurors who, having returned their *collective* verdict, return to the privacy and anonymity of their daily lives. Individual judges may also become the subject of the sort of statistics and predictions more commonly found in betting shops, with even a potential for the emergence of an underworld 'postcode sentencing lottery'.

27. *Public confidence in criminal justice:* The implementation of these proposals will create a significant risk of further, and very seriously, undermining the public's confidence in the criminal justice system. The confidence and respect afforded by the public to 'trial by jury' are founded not upon a sense of tradition or feelings of nostalgia, but upon a system which demonstrably works effectively, and has at its core 12 independent minds randomly selected from ordinary members of the public – in short, collectively a jury constitutes an invaluable harvest of commonsense. It would be foolish to assume that the same degree of confidence will be transferred to judges who return the verdicts.

28. In the ever lengthening litany of 'miscarriages of justice' and of convictions in high profile cases being quashed by the Court of Appeal, what went wrong in each of these cases cannot be attributed to the functioning of the jury, but to the malfunctioning of others or of procedures (often both) - the police, expert witnesses and/or witnesses in other categories, failure to disclose material which should have been disclosed, judges (in relation to the conduct of the trial or the summing-up), and improved scientific knowledge – particularly in relation to DNA analysis, which can rectify the lethal effect of evidence given (albeit in good faith) many years earlier.

CONCLUSION – THE JUDGE-ALONE PROVISIONS ARE UNWORKABLE

Given all the above, are the s. 42A and s. 74A 'judge alone' provisions workable?

1. **12(i) S42A: (Long or complex trials)**

Before a 'complex or lengthy' trial under s 42A and, its related provisions, can be tried by a judge alone, rather than a jury, a number of qualifying conditions (see s. 42A (1)-(4) must be met. These include *'the court does **not** consider **either** that it is in the public interest for the trial to be conducted with a jury **or** that there are **any other reasons** why it would be more appropriate for the trial to be conducted with a jury.* Further, none of the offences in the indictment under consideration can be an 'excluded' offence (see ss 42A(1)(c) and s42B). Thus, the statutory framework for such a trial is tightly drawn and the issue of sentence is (as it should be) irrelevant to the 'mode of trial' decision.

The case against such trials is that – 12 minds are better than one, judges do not have a monopoly of commonsense; there is not a shred of evidence to demonstrate that a jury is unable to cope either with a complex trial or a lengthy trial or a trial sharing both features – all the evidence (and there is a lot of it) is very much to the contrary. That being so, why should the fairness of the trial be put in jeopardy by the judge, who is to determine the verdict, being exposed to what may be a substantial amount of prejudicial inadmissible, or undisclosable, material?

If it is thought to be acceptable for the judge in such a trial to conduct it in the manner apparently anticipated by Sir Brian Leveson [see *his 2015 Review, pp 356 & 357*], notwithstanding his claimed 'time-saving' effect, that would constitute a further, and serious, objection to this form of trial. It would be an unwarranted interference with the presentation and content of the evidence:

p 356 they [the judge and assessors] could pre-read and direct the parties to the central issues thereby avoiding what would otherwise be the necessary deployment of a great body of complex evidence.

P 357 It is worth adding that trials of similar complexity in the Chancery Division and the Commercial Court can be much shorter because the judge is able to provide feedback to the parties both on the evidence and the arguments that appear persuasive and those that are only of marginal (if any) relevance.

In effect, the judge will not only have taken over the role of the jury but will be in danger of trespassing upon the roles of the advocates. Further, what may be of 'marginal' relevance at the beginning of a criminal trial can develop into a central issue as the

trial proceeds. Above all, such conduct by a judge in a criminal trial could very easily jeopardize the fairness of the trial.

2. **S74A: (The three-year cut-off point)**

This provision identifies a crude and flawed device for determining whether a defendant, who is to be tried on indictment for an either way offence, should be tried by a jury or by 'judge alone'. The operation of this device, expressed in the Bill as a judicial determination, turns upon whether a judge considers it 'likely' that an eventual sentence (for *that* offence committed by *that* defendant) will fall into one, rather than the other, of two specified sentencing brackets – 'more than 3 years' (jury), '3 years or less' (judge alone). There is no 'public interest' factor to which the judge may have regard, indeed the judge has no discretion at all save in choosing the appropriate bracket. A defendant's 'good character' is an almost certain passport to trial by 'judge alone', whereas an 'old lag' with years of convictions and prison sentences behind him is a very promising candidate for 'trial by jury'.

Will these provisions (s74A and s42A) work satisfactorily? The answer must be an unqualified 'No'. There is an inherent unfairness in having two trials on indictment, each of a very different nature to the other, running in parallel in the same court. Can it really be said that one form of trial is equally as fair as the other? It is inherently unfair for one defendant having his verdict decided by one person (albeit a judge) and another defendant's verdict being decided by twelve jurors. Equally unfair is that a defendant of 'good character', almost by definition, has little prospect of being tried by a jury. The example given above in §6 highlights the absurdity of what is proposed. Under these proposals, judges themselves will inevitably become more vulnerable.

The media invariably respect a jury's verdict. Judges, who are anything but anonymous, cannot expect to be treated in the same way – especially as their verdicts will have to be explained. The enormity of the task now required of them was grossly underestimated by Leveson. It will not be confined to controlling the conduct of the trial, ruling on questions of law, and summing-up. It will now include determining the verdict(s) and providing a reasoned judgment. – very different exercises. Nor is there any reliable evidence that these proposals, if implemented, will save time – the stated rationale for this ill-considered and unjust experiment in criminal justice.

Sir Stephen Mitchell

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