Bar Council response to the Independent Review of the Criminal Courts

The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential.

We lead, represent and support the Bar in the public interest, championing the rule of law and access to justice by:

- Providing advice, guidance, services, training and events for our members
- Inspiring and supporting the next generation of barristers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Promoting the Bar of England and Wales to develop career and business opportunities for barristers at home and abroad

As the General Council of the Bar, we're the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB).

Our qualification to comment

1. Each contributor to this report is a criminal barrister. They range from junior barrister to silk, and all specialise in the prosecution and defence of criminal cases.
2. Each contributor appears in the Crown courts on a regular basis. They advise both the Crown Prosecution Service (CPS) and defence on sentence, and also on appeal.
3. The review asked for consideration of the following:
    a. Longer-term options for criminal court reform, with the aim of reducing demand on the Crown Court by retaining more cases in the lower courts.
    b. The efficiency and timeliness of processes through charge to conviction/acquittal.
    c. Any other recommendations to tackle the outstanding caseload that emerge as a result of reviewing the options and evidence.

Our Recommendations

Intermediate courts

- We oppose the introduction of an 'intermediate court' that removes the right to trial by jury. Our objections are based both on practicality and on principle

Diversion

- We propose a new model for diversion for criminal trials, building on the models already found in Deferred Prosecution Agreements and referral orders

Appropriate preventative measures

We recommend:

- Allowing greater use of cautions and conditional cautions for low-level offending by those of good (or relatively good) character in circumstances where offences are not admitted in interview
- For cases of insanity where all medical practitioners agree that a defendant is insane, a judge – upon hearing oral evidence of insanity from two registered medical practitioners – should be able to enter such a verdict and recommend the appropriate disposal

Improving the effectiveness of the Crown Court/justice system

We recommend:

- The court estate must be utilised to full capacity
- Consideration should be given as to whether the prosecution of an either-way offence is necessary, where a summary-only offence is likely to provide sufficient sentencing powers
- The criminal procedure rules should be amended to provide greater flexibility for hearings and to allow virtual courts which do not require a court room
- Live transcription should be utilised in all Crown Courts
- The digital case system should be better utilised
- All available judges, including judges who have retired but are below the age of 75, should be allowed to sit as many days as they are available
- The removal of the mandatory minimum term for third strike offences
- Defendants awaiting trial should be remanded to the most conveniently located prison to the court at which they face trial
- All defendants must be produced for plea and trial preparation hearings (PTPH)
- As a short-term measure, that credit up to one third could be offered to any defendant who pleads guilty, where their case has not reached trial
- Further opportunities should be explored for schemes such as the 'Trial Blitz' in Greater Manchester and whether and how they could be rolled out further

Small court centres

We recommend:

- Virtual court rooms should be created to be used for all short matters, other than sentences involving custody where the defendant is on bail
- Small court centres should list trials Monday to Thursday only so all short matters can be dealt with on a Friday

Magistrates' sentencing powers

- We recommend an extension of the magistrates' courts' sentencing powers to two years' imprisonment, exercisable by District Judges or Deputy District

Judges only. This could be accompanied by a reclassification of offences which may, or may only, be tried by those tribunals

Working with the legal professions

We recommend:

- The review work under the Criminal Legal Aid Advisory Board (CLAAB) should consider remuneration as a whole, to ensure that early preparation and resolution of cases is properly remunerated, and that practitioners are not disadvantaged by keeping cases out of the Crown Courts
- The courts must take account of counsel's personal and professional obligations

Sustainable funding for the justice system

This submission should be read alongside our recommendations to the Treasury ahead of the Spending Review.[1] The key recommendations are:

Restoring adequate resources to the justice system to promote growth and protect the public

- Funding for the justice system should be in line with the demands made of it
- Remove the cap on sitting days in the Crown Court and provide sufficient sitting days in all jurisdictions, especially family

Recruiting and retaining criminal barristers to ensure the long-term sustainability of the criminal justice system

- Government to match-fund the cost of 100 additional criminal pupillages (barrister traineeships) a year to provide for the long-term sustainability of the criminal Bar
- Immediate uplift of 15% to criminal prosecution and defence fees to provide enough publicly funded barristers to meet the demand
- Provide ongoing inflation-related fee increases through the establishment of an independent fee review body to properly reward and sustain a publicly funded Bar

Rebuilding and recognising the courts as a vital public service – like schools and hospitals – to help deliver swift effective justice

- As part of its mission to deliver modern public services, the government should provide adequate funding for the repair and improvement of much neglected court infrastructure. We endorse the need for capital spend of £1bn identified by HM Courts and Tribunal Service

[1] Bar Council (September 2024), Submission to the spending review.

- A longer-term infrastructure plan should be developed to rebuild a court estate which can function efficiently – akin to the approach taken with prison building.

Background

4. The restriction on jury trials during the pandemic is the initial cause of the dramatic increase in the numbers of cases awaiting trial in the Crown Court (the 'backlog'). However, it must be noted that the backlog was significant even prior to Covid and the criminal Bar action standing at 40,862 in March 2020[2], this was a direct result of reducing court sitting days, meaning court rooms were left sitting empty, with part time judges (Recorders) not being utilised to hear cases. This short-term money saving exercise had a significant impact on the number of cases awaiting trial – and on confidence within the criminal justice system as parties disengaged due to what was perceived to be a failing system.

5. Post Covid, the direct *ongoing* cause of the failure to reduce that 'backlog' **at all**, let alone to 'normal' pre-pandemic levels, is also very clear. Consistently, since the recovery from the pandemic, receipts (cases coming in) have been greater than disposals (cases being concluded by means of verdicts etc). Even where rates of disposal have been at their highest, and *higher than they were before the pandemic*, rates of receipts have been higher still.

[2] Ministry of Justice, (December 2024), Criminal Court Statistic Quarterly : July to September 2024 (Table C1)

6. To give specific figures, there were 31,683 cases received into the Crown Court in Q3 2024, the highest quarterly value since 2016 - and a 4% increase on the previous quarter and 12% above levels in the previous year[3]. Conversely, there were 29,502 cases disposed of at the Crown Court in Q3 2024, the highest quarterly value seen since Q1 2017, and up 5% on the previous quarter, 12% above 2023 levels and well above the levels in Q3 2019.[4]

7. It is likely that part of the increase is a direct result of the employment of a greater number of police officers. There was no consideration that investment in police officers may lead to more arrests, and thus more criminal cases[5]. Whilst there was investment in detection there was no investment in the court system to deal with any potential increase.

8. As a result, the number of cases in the 'backlog' has continued to steadily increase over time, despite all the good work done to improve the number of cases leaving the system. This has led to the point where the outstanding 'backlog' is now circa

[3] Ministry of Justice, (December 2024), Criminal Court Statistic Quarterly : July to September 2024
[4] Ministry of Justice, (December 2024), Criminal Court Statistic Quarterly : July to September 2024

[5] Institute for Government, (September 2024), Overflowing prisons are just one aspect of deep disfunction across our failing justice system.

74,000 cases, increasing all the time. This figure is conservative and does not reflect the number of people involved or the complexity of cases because the Ministry of Justice (MoJ) collects data in the form of cases rather than number of defendants and the backlog is not modelled according to case complexity.[6] In other words, the issue is not (or not only) the 'debt' of the backlog figure itself but the 'deficit' in the system's ability to deal with it. 7

9. Fundamentally and most importantly, the criminal justice system requires proper and substantial funding. This is made clear in Sir Christopher Bellamy's Independent Review of Criminal Legal Aid (CLAR). There must be a floor that no government can dig below in the future. Barristers in criminal law provide a public service and the reason they were given the status of key workers during the pandemic. Our courts have been described by former Lord Chief Justice Burnett as being "one of the bedrocks of a free society governed by the rule of law."

10. However, the good news is that, apart from funding, the steps required to address the problems, eliminate the "deficit" between receipts and disposal, and begin the

[6] Ministry of Justice (December 2024) **'Courts reform to see quicker justice for victims and keeps streets safe'**

[7] And a 'normal' level of cases waiting to be tried, somewhere around the figures experienced pre-pandemic, is inevitable and not problematic in and of itself, indeed is expected in ordinary times to allow proper preparation of cases.

process of bringing the backlog back to the pre-pandemic level, may be significant but are relatively self-contained.

11. The MoJ/His Majesty's Courts and Tribunal Service (HMCTS) may well say that everything has been tried within their power. There are however some things which are *outside* of their power which can, and should, be done, as well as some areas where, frankly, the MoJ and HMCTS could improve their own performance.

12. The **most important** factor to consider is 'receipts' – the cases coming into the system. If that number were to reduce, it is likely, based on the data from the last few years, that this alone would cause the backlog to begin to reduce substantially (assuming current levels of productivity are maintained). It may be politically unpalatable to suggest that fewer people should be charged with criminal offences, but in our experience as practitioners, and in the views of many expert and informed observers, far too many people do indeed enter the criminal court system unnecessarily.

13. We have already urged the Independent Review on Sentencing led by the Rt Hon David Gauke to consider more options for diversion away from the criminal

courts, both before charge and during the currency of proceedings.[8] Our submission should be read in conjunction with our response to the Gauke Review.

14. To take one example, it would be a relatively easy and cost-effective step to allow greater use of cautions and conditional cautions for low-level offending by those of good (or relatively good) character in circumstances where offences are not admitted in interview (e.g. because the suspect exercised their right to silence following advice) or after charge. With proper resourcing for making of representations by solicitors, and consideration of the same by the prosecution, many offences (including a large number of cases where people of good character elect trial by jury in order to avoid the consequences of a criminal record) could be removed from the courts.

15. In cases with defendants with mental health issues, liaison and diversion with community mental health services is vital to prevent people ending up before the court. When a mental health issue is driving offending, treatment could prevent future reoffending.

[8] Bar Council (January 2025) Submission to the sentencing review

16. Mental health issues affect many people in the criminal justice system. Many of the cases in the Crown Court 'backlog' will be 'trials of the act' where persons are not fit to stand trial. Are those cases all still in the public interest to be pursued in the light of that situation? Furthermore, the grounds for an acquittal on the grounds of mental health (insanity) are very hard to establish, but the grounds for a mental health disposal at sentencing following a trial are often much more easily made out. In such cases where there are clear mental health issues (reducing culpability substantially, but not quite as far as a defence of insanity) which likely indicate treatment as being the only appropriate 'sentence', is it in the public interest to have a trial on indictment, given the pressures on the criminal justice system?

17. For cases of insanity where all medical practitioners agree that a defendant is insane, the matter must still at present be heard by a jury. We see no reason for this and recommend that a judge, upon hearing oral evidence of insanity from two registered medical practitioners, can enter such a verdict and recommend the appropriate disposal.

18. In fact, in our view, this review, and the review on sentencing must work very closely together to resolve the issues of the 'backlog' and the straining prison

population. As the Bar Council has observed before, previous efforts to resolve issues with one part of the criminal justice system have failed because they did not properly take account of all the potential impacts on the rest of the system[9], or on society more generally.[10]

19. We also address below ways in which the sheer *number* of jury trials could be reduced– some of those proposals which would have less impact on the interest of justice include (i) removal of jury 'trials of the act' where defendants are not fit to stand trial in some or all cases (ii) reallocation of some specific offences to the summary-only jurisdiction of the Magistrates' Courts (potentially with enhanced sentencing powers in respect of those offences) and (iii) the potential issues should juries be removed for serious frauds.

20. Further, the review should work with the Criminal Legal Aid Advisory Board (CLAAB) to consider remuneration as a whole, to ensure that early preparation and resolution of cases is properly remunerated, and practitioners are not disadvantaged by keeping cases out of the Crown courts.

[9] Institute for Government, (September 2024), Overflowing prisons are just one aspect of deep disfunction across our failing justice system.
[10] E.g. proper provision of mental health care

21. We do not support the introduction of an 'intermediate court'. This is on the basis that it seems to be a cumbersome and resource draining solution, taking some considerable time to bring into operation. intermediate courts will remove the right to a jury trial for a diverse tranche of defendants and cases, with little practical benefit and some serious potential risks to public confidence in the administration of justice. We also have not seen evidence as to where the extra court and judges would be found. In terms of saving of time, one practical effect of trials by jury is that a judge starts the next jury trial whilst one jury is in retirement. This would not occur if the judge had to retire to decide and write up a judgment.

22. Sir Brian Leveson requested that we submit a paper providing detail of the criminal Bar, based on the data to which we have access. That paper has been submitted in conjunction with this response. It provides headline statistics on work volume, demographics, earnings and numbers at the self-employed criminal Bar of England and Wales.

Longer-term options for criminal court reform, with the aim of reducing demand on the Crown Court by retaining more cases in the lower courts

Intermediate courts

23. We oppose the introduction of an 'intermediate court' that removes the right to trial by jury. Our objections are based both on practicality and on principle.

24. We note that the terms of reference are lacking in detail as to what is proposed as an 'Intermediate Court'. There has been some reference in public to the proposals of the Rt Hon Lord Justice (Sir Robin) Auld in his 2001 Review of the Criminal Courts of England and Wales.[11] We have considered his proposals as a starting point in terms of what an intermediate court might look like, although we recognise that this review will not be limited to that. It is however difficult to respond substantively to a proposal that has no concrete form. Necessarily we, as a representative body, would have further submissions to make on the detail of any proposal. That said, we are strongly of the view that there is no basis for altering the structure of the court system, especially where it will limit the right of our citizens to be tried by a jury of their peers.

[11] Ministry of Justice (September 2001) Review of the Criminal Courts of England and Wales

25. The stated aim of the review is to identify proposals for 'reforming' the courts 'in light of the current pressures on the Crown Court'. We do not accept the premise that the *structure* of the court system is a driver of those identifiable pressures. We also question the premise that 'the scale of cases entering the courts is now so great that, even with the Crown Court sitting at a historically high level, this would not be enough to make meaningful progress on reducing the outstanding caseload and bring down waiting times' and query the data upon which that assertion is made.[12]

26. The reality is that financial restrictions imposed on the criminal justice system mean that the Crown Court has not been operating at full capacity for many years. At present, up to 20% of the Crown Court rooms in England and Wales sit empty on any given day. That has nothing to do with the scale of the cases entering the system. There are no longer enough barristers to cover the work entering the Crown Court. Further, some courts are closed due to the restriction on sitting days and budgetary constraints imposed on courts' listings.

27. Delays are endemic in the system because of historic lack of investment in legal aid and in the court estate, poorly implemented advances in technology such as issues surrounding the common platform and the failure of third-party agencies

[12] Independent Review of Criminal Courts (December 2024) – quote taken from first par of context

(such as those that transport prisoners to court) to comply with their contractual obligations.

28. We are not aware that any modelling has been done, or any evidence collated to show that intermediate courts will bear down on the backlog. The primary focus of government should be on identifying how the current situation has come to pass. Only that will lead to solutions that will make a difference, rather than making radical changes to the nature of our criminal justice systemin the mistaken belief that it radical means good.

29. We absolutely accept that innovative thinking is required to solve the crisis in our criminal justice system and, in particular, to reduce the backlog so that waiting times between charge and trial are reduced. We put forward a number of potential alternative approaches to increase efficiency. All of them should be tried before making structural changes that remove the right to trial by jury for allegations of greater severity than are already tried in the magistrates court. An intermediate court is not the answer.

30. We believe that it will likely be too cumbersome as a solution to an immediate crisis, and that it will have too limited an impact. In addition, we consider that the

creation of an intermediate court would have a negative impact on the interests of justice and public confidence in the criminal justice system. In particular:

a) We do not believe an intermediate court will in fact substantively mitigate the central problem of receipts into the Crown Court consistently outstripping disposals. Moreover, the backlog does not just affect the Crown Court – there are equally serious problems in the magistrates court which this proposal will do nothing to address. Indeed, it arguably risks making it worse.

b) Altering the fundamental structure of the delivery of criminal justice is not a principled response to a crisis which was not, in truth, caused by that structure in the first place. The current system can work perfectly well if sufficiently resourced. We recognise that the present economic landscape is challenging. That is not a justification for a wholesale amendment to how cases of more than minimal severity should be tried.

31. There are also profound objections in principle to the removal of jury trial as the mechanism for resolving serious criminal allegations which could result in imprisonment of up to two years. Those objections apply even if such a tribunal were never in future expanded so as to deal with even more serious allegations -

although we are deeply concerned at the potential for this proposal, if enacted, to be used to reduce further the right to jury trial at a later stage.

32. We urge the review to adopt other much more practical, much more effective, and much more principled ways to address the current crisis in the criminal courts.

Objections based on practicality

33. Any solution involving an 'intermediate court' is too cumbersome as it will no doubt require primary legislation. As the review is due to report in late spring, it would seem unlikely that legislation on such a sensitive topic could be enacted before the autumn, with a consequent delay in dealing with cases until this time next year **at the earliest**.[13] In the meantime, without action, the number of receipts into the system will continue to outstrip disposals, and the 'backlog' will continue to get worse and worse – meaning that the impact of any intermediate court would be nullified. Other, more practical, solutions, such as those outlined elsewhere in this response, will likely have a quicker and greater impact.

[13] And the Ministry of Justice, with respect, has not proven itself capable of bringing about such large-scale change swiftly.

34. In the absence of a detailed proposal, it is difficult to address the practicalities of how an intermediate court might operate. However, we suggest that the following significant difficulties are likely to arise and the review, in considering the merits of an intermediate court, will need to grapple with them:

a) Where would these courts sit? Many magistrates courts have been closed. If the intermediate court is to sit in present Crown Court buildings, what will that do to alleviate pressure on the Crown Court as it is?

b) How is this system of administration and procedure to be funded? If there is already insufficient money to run the Crown Court at full capacity, we query how adding a further layer is going to alleviate the pressures that exist.

c) From where are the judges and the advocates who will work in this tribunal be found? Or the magistrates? Or the court staff? And at what cost? Is the significant capital outlay required to set up an intermediate court really a better use of public money than funding the present Crown Court so that it can work at full capacity?

d) What are the practical implications of requiring circuit judges (or Recorders) to sit with magistrates and deliver written determinations as to fact? Is it at all likely that such an approach would be welcomed by the professional judiciary?

e) How is the Legal Aid Agency to fund defence counsel? There are already too few defence solicitors and barristers. If the funding model adopted for the intermediate court were to put up further barriers to junior defence lawyers earning enough money or gaining enough exposure for career advancement, we consider that the result could be catastrophic for the referral profession. Assuming jury trials are to be retained for the most serious cases, as they plainly must, then consideration must be given to where the advocates appearing in those trials will be drawn from in future.

f) What will be the appeal structure? We address this further below, but we venture to suggest that the creation of a route of appeal from the intermediate court is likely to place yet more pressure on an overburdened Court of Appeal and/or King's Bench Division.

Objections based on principle

35. Regardless of how quickly or easily such a system as a third layer of criminal courts could be set up, there are serious issues with it as a concept. These objections apply whether the intermediate court is identified as a solution to the immediate crisis or as part of longer-term reform in the name of 'efficiency'.

36. Sir Robin Auld, former Lord Justice of Appeal, in fact proposed (in chapter 7 of his review) a 'unified' criminal court, with three divisions, and a District Judge determining allocation between the three divisions (very different from a new 'intermediate court'). The allocation between divisions would, in his proposals, have been based on likely sentence (not by legal maxima as has been suggested elsewhere) with a right of appeal to a Circuit Judge.

37. It appears to us that this is a point of real importance. There is a clear distinction between the jurisdiction of the 'District' division proposed by Auld LJ (where cases would be tried if, in the opinion of a District Judge, the maximum sentence upon conviction would be two years) and the apparently intended 'intermediate court' (where, on the face of the proposals publicly articulated by the executive, jurisdiction would be limited to cases where the legal maximum sentence would

be two years). This is a significant difference that the review will have to contemplate with care, but both proposals are, in our view, problematic.

38. If it were to be the case that an intermediate court were to have jurisdiction of all matters triable either-way with a **legal** maximum of two years, then we highly doubt that would actually make any appreciable difference and it would be a significant waste of public resources to set up an intermediate court with jurisdiction limited in that manner. A table of the relevant offences that are punishable up to two years imprisonment is provided at Annex 1. Very many have fallen into desuetude or are otherwise very rarely, if ever, charged.[14] We believe that the only offences in that list with any current substantial incidence of being charged are the following:

    i) S.1 Assaults on Emergency Workers (Offences) Act 2018 (assaulting emergency worker)

    ii) S.29(1)(c) Crime and Disorder Act 1998 (racially aggravated criminal damage)

    iii) S.31(1(a) Crime and Disorder Act 1998 (racially aggravated causing fear of violence)

[14] Eg because there is an alternative offence available with a higher maximum sentence and/or which is easier to prove

iv) S.31(1)(b) Crime and Disorder Act 1988 (racially aggravated intentional harassment)

v) S.32(1)(a) Crime and Disorder Act 1988 (racially aggravated harassment)

vi) S.6 Identity Documents Act 2010 (possession of false identity document, no intent)

vii) S.24A Immigration Act 1971 (obtaining admission by deception)

viii) S.5(2) Misuse of Drugs Act 1971 (possessing Class C drugs)

ix) S.38 Offences Against the Person Act 1861 (assault with intent to resist arrest)

x) S.40C Prison Act 1962 (bringing etc. list B article into prison)

xi) S.40CB Prison Act 1962 (throwing article into prison)

xii) S.2 Road Traffic Act 1988 (dangerous driving, no death or serious injury caused)

xiii) S.12A Theft Act 1968 (aggravated vehicle taking not resulting in death)

39. The Government (in the form of HMCTS, the CPS and potentially HMPPS) will no doubt be able to provide this review with full and accurate figures, but we would further anticipate that the number of cases currently being tried *on indictment*[15] for

[15] As opposed to summarily, or in the Youth Court.

these offences (and only these offences)[16] will be relatively small compared to the overall number of offences in the Crown Court 'backlog'.

40. If, statistically speaking, there would be real utility in removing trials of these dozen or so offences from the Crown Court backlog, then a far better course than creating an intermediate level court would be to recategorise some or all of the above listed offences as being capable of only being tried summarily. This could be achieved, as appropriate for each offence, either by (i) decreasing the maximum sentence, or (ii) increasing the magistrates' courts sentencing powers for just those offences[17], or (iii) retaining the higher levels of sentence (and/or the right to trial on indictment) for offences with specified aggravating factors or offenders with relevant previous convictions.

41. Alternatively, if allocation to an intermediate court were based on likely sentencing being no more than 2 years (rather than the legal maximum) then that would still be undesirable. First, as anticipated by Auld LJ, there would likely have

[16] So with no other, more serious, offences also present on the indictment.
[17] Particularly appropriate for the offence of assaulting an emergency worker, given the greater speed with which those victims will then be able to obtain justice. That new offence has now (due to its higher maximum) effectively replaced the old offence of Assaulting a Constable which was only triable summarily, so it is hard to see that there would be any particular impact on the interests of justice by removing the right to trial by jury for that particular alleged offending.

to be an appeals process against such an evaluative allocation decision, causing unwanted delay. Secondly, we question what actual numbers would end up in the intermediate court.

42. A figure of 9,236 cases in the year to June 2024 has been publicly quoted as being the number of occasions 'where an offender appeared before a Crown Court and was sentenced to between one and two years in jail'.[18] It is unclear to us whether that includes (a) committals for sentence and/or (b) cases where an offender pleaded guilty before trial, potentially at the PTPH and/or (c) cases where the relevant defendant has been joined to, and sentenced alongside, co-defendants facing more serious charges. If that figure does include one or more of those categories of offender, that would reduce the number of cases capable of entering the intermediate court considerably. Furthermore, a large number of those included in that figure (of those sentenced to between one to two years) will also be cases that would never been considered suitable for an intermediate court (for example because they were originally charged with, and acquitted of, more serious offences, or mitigation has been put forward at sentencing that would not have been apparent or available at the stage of allocation).

[18] Charles Hymas, The Telegraph (December 2024) Jury trials could be scrapped for thousands under plans to reduce backlogs

43. Our belief that an intermediate court would have only a limited impact is reinforced by the fact that the overwhelming majority of cases tried on indictment are for rape and serious sexual offences (RASSO), serious theft/fraud offences, serious drug cases and serious violence (i.e. s.20 OAPA1861 and above) and so would never come within the scope of any 'intermediate court' as proposed.

44. Finally, and crucially, is the question of appeals. That the findings of an individual district judge, or a bench of lay magistrates, are capable of being wrong (for whatever reason, including prejudice) or otherwise unsatisfactory (again for whatever reason, including the *perception* of prejudice) is recognised by the criminal justice system and dealt with by the provision of an <u>automatic</u> right to a <u>re-hearing</u>.

45. Uniquely within our justice system, no grounds of appeal need be provided, and no flaw in decision-making or process need be identified – it is a total re-hearing. This is to guard against the problem of a 'rogue' decision-maker (or one perceived to be such) – one can simply ask for a reconsideration of the whole decision as to guilt or innocence from scratch by a second, independent, decision-maker.

46. Juries perform a similar function, in a different way, against a 'rogue' decision-maker in the Crown Court – the number of people in a jury, their random selection and their non-professional status all reduce the influence of conscious or unconscious bias in the crucial decision as to guilt or innocence.

47. What then, would be the bulwark against a 'rogue' decision-maker in the intermediate court? Would there be an automatic right to a re-hearing like in the magistrates' courts? Or would one have to identify 'grounds' of appeal – identifiable flaws in the decision-making process or firm reasons to believe that improper considerations played a part (something which can be notoriously difficult to establish to the relevant standard)?[19]

48. Public confidence in the criminal justice system is paramount and **must not** be compromised. It is difficult, if not impossible, in modern Britain credibly to accuse a whole jury of being prejudiced. If one suspects that a magistrates' court bench or judge has, or may have, acted due to bias (consciously or unconsciously), the response is that one can get the case entirely re-heard in front of a new, independent, tribunal. What is the remedy for such a situation in the intermediate

[19] Auld LJ in his 2001 Review (Chapter 12, para 44) suggested that appeals from the 'District Division' (his middle/intermediate tier) should only go to the Court of Appeal, so as a merits-based appeal rather than an automatic right to a re-hearing (which Auld LJ also recommended abolishing for Magistrates' Courts)

court if there is no right to a retrial? Great diffidence is invariably shown by the appellate courts to the judgement of the factfinder who actually hears the evidence. In the absence of demonstrable bias (as stated before, almost impossible to prove) overturning such decisions on appeal is very difficult. That then could easily lead to a public perception of the intermediate court as a place where fair justice is not always available **and** where there often no effective remedy. That would be disastrous – and a far worse outcome than even the current 'backlog' situation.

49. To that end, any proposal for an intermediate court (particularly one with no automatic right for a re-hearing) would need to be the subject of the most extensive and robust equality impact assessment. The fullest consideration of the different outcomes for persons with any protected characteristics (not limited to race and/or religion, but also to every other protected characteristic e.g. gender, protected beliefs etc) based on judicial decision-making as to guilt or innocence would likely have to occur for the proposals to withstand scrutiny. When considering public confidence in judge-made (as opposed to jury-made) decisions about guilt, it is of note, for example, that, in 2022, the Black ethnic group had the highest proportion of defendants electing themselves to be heard at a Crown Court, at 26% (despite only making up 10% of all defendants). This was followed by defendants from the

mixed ethnic group (19%), Asian and other defendants (17%), and white defendants (15%).[20]

50. Again, we are concerned that an intermediate court, with judges making decisions as to guilt carrying custodial sentences for up to two years, that did not carry the confidence of **all** sections of society would be extremely harmful to the interests of justice – particularly if there were no automatic right to a re-hearing (see above).

51. We invite the review to reflect carefully on the fact that jury verdicts were the *only* part of the court system identified by the Lammy Review in 2020 where the ethnic background of the defendant had no apparent impact – see Chapter 4 thereof.[21] Any proposal made by this review that endangers that fundamental protection to defendants on trial would require the strongest of justifications. Historic mismanagement of court resources resulting in system failure would not be an example of that.

52. We are also deeply concerned at the prospect of the establishment of a criminal court of first instance, from which appeal is only available on a point of law, which

[20] Ministry of Justice (March 2024) **Statistics on Ethnicity and the Criminal Justice System, 2022**

[21] The Lammy Review (February 2020)

would have jurisdiction over offences with a maximum sentence of more than two years subject to an allocation decision by a District Judge. That would bring within that court's jurisdiction a large number of offences which simply should not be removed from the jury system. Illustrative examples from current Sentencing Guidelines include:

i) Sexual Assault in Category 2

ii) 20 GBH in Categories 1C or 2B

iii) Street Robbery in Categories 2C or 3B

iv) Theft in all Categories from 1B downwards

v) Fraud in Category 1C and from 2B downwards

vi) Perverting the Course of Justice in Category 1B

53. In all of those examples the sentencing guidelines indicate a starting point after trial of two years. All of them could, along with many others, conceivably therefore come within the jurisdiction of the proposed intermediate court. That would, in our opinion, be fundamentally wrong.

54. The reason we have profound concerns about this proposal arises from a combination of the potential implications for a defendant upon conviction going beyond imprisonment (this is acutely the case in allegations involving sexual

misconduct or dishonesty) and the necessity for the tribunal of fact in such cases to consider issues which engage analysis of objective societal standards. Obvious examples of the latter include whether touching was 'sexual' or 'indecent' or whether a given course of conduct was 'dishonest'.

55. Whether the jurisdiction of any intermediate court is based on legal maxima, or likely sentence, we would in any event urge careful consideration of the position of sexual offending, and of non-recent sexual offending in particular. Many of the previous statutory offences for what are now rightly treated as very serious crimes have very low maximum penalties such as imprisonment for up to two years – see for example sections 2, 3, 4, 6, 7, 9, 12, 13, 19-24 and 26-29 of the Sexual Offences Act 1956 which include offences still regularly being prosecuted today such as gross indecency. Those offences should not become part of any 'intermediate court' system, for the same reasons.[22]

56. Auld LJ noted in his review (see for example Chapter 7 paragraph 23) the importance of maintaining an appropriate lay presence within the tribunal of fact. Juries perform precisely this function and their importance to our constitutional

[22] It does not appear that Auld LJ in his 2001 review specifically addressed the position of these offences when suggesting an intermediate division of a unified criminal court, despite the Sexual Offences Act 1956 being in force at the time.

settlement is not only overwhelmingly obvious but was established centuries hence. The more serious the allegation, especially where it involves considering what 'the ordinary person' would think about the conduct alleged, the more important it is to have a larger number of lay citizens deliberating on whether the prosecution has proved its case. Trials involving allegations as serious as those that would come within the examples above should not be resolved by a tribunal of fact which includes only three people, even if - and arguably especially if - one of them is a judge.

57. The right to trial by a jury of one's peers is intimately bound up in our system of criminal justice. It is obvious that a balance has to be struck somewhere as to which cases are to be tried by a jury and which by a smaller panel of fact finders. But once the balance has been shifted so that cases of moderate severity are taken out of the jury system, there is clear scope for future governments to restrict the right to jury trial further still. We caution against any recommendation that could have this result. It is a precedent which should not be set – especially in the name of 'efficiency'.

SUMMARY ONLY AND INDICTABLE OFFENCES

Principle

58. In our submission, decisions as to whether an offence should be reclassified as triable summarily only, or indictable will depend on:

    a. the potential seriousness of the offence (including the maximum penalty that will need to be available, and the likely minimal seriousness of such an offence);

    b. whether the offence is one for which trial by jury is required to protect the integrity of the justice system;

    c. whether the offence is one that ought to be chargeable more than 6 months after the commission of the offence (albeit even if the offence is kept summary only the ordinary limitation provisions can be disapplied);

    d. the cost and resource implications of extending jury trials to such offences (including matters such as the frequency of such offending).

Problems

Issues in practice arise where:

i) Summary only offences do not have a sufficient maximum penalty;

ii) Offences that are triable either-way when its seriousness does not merit them being triable on indictment;

iii) Offences that are triable either-way cover too broad a range of conduct, and result in behaviour that was previously chargeable only as a summary only offence being charged as an either-way offence, taking up Crown Court resource where the seriousness of the behaviour does not merit it (but where a defendant elects for trial by jury); and

iv) Indictable offences that could reasonably be dealt with in the magistrates' courts because of the relatively low level of seriousness take up Crown Court resource.

Insufficient sentencing powers

59. The first of these issues is tied up closely to the maximum penalty available in the magistrates' courts for summary only offences and cannot properly be considered without considering what the appropriate maximum penalty available to magistrates' courts should be. The working group's views on that issue are set out below in a separate section.

Seriousness of offence does not merit being tried on indictment/cover too broad a range of conduct

60. Concerns about sentence 'creep' have long been held. The Crown Court Sentencing Survey and research by the Sentencing Council forms a solid basis for concluding that those concerns are not misplaced. A particular issue that arises with sentence creep is when new offences are created which act principally to increase the maximum penalty for behaviour that is already criminal. Due to limits on magistrates' courts sentencing powers this often pushes cases from the magistrates' courts caseload into the Crown Court. Classic examples from a practitioners perspective have in the last few years been the specific criminalisation of assaulting an emergency worker (moving offences that were previously common assaults into the Crown Court); and offences contrary to section 7 of the Public Order Act 2023 (which moved various non-violent protest offences from the magistrates' courts into the Crown Court – i.e. offences that would have been aggravated trespass or obstruction of the highway).

61. On one view there are legitimate criticisms of the decision to make these offences triable either-way to appease political concerns. Certainly, many of the offences would as a matter of principle be able to be kept in the magistrates' courts if the magistrates had the ability to retain jurisdiction. One option in relation to such

cases is to amend the ability of defendants to elect trial by jury in those cases. For others the solution may be to make the offences summary only. The offence contrary to s.7 of the Public Order Act 2023 has a maximum sentence of 12 months' imprisonment and it could be queried why that maximum sentence cannot be accommodated in the magistrates' courts (or if not, whether it is necessary to have a maximum of 12 months as opposed to 6 months).

62. One underappreciated factor with summary only offences is that section 127 of the Magistrates' Courts Act 1980 effectively provides a 6-month time limit for the institution of proceedings. It can be queried whether in respect of some of these offences the same considerations that justify the summary time limits apply equally.

63. It does not appear that prosecuting agencies give much consideration to this discrepancy between summary only offences and offences that are triable either-way when considering the public interest test. Part of the perceived issue with some of these offences is that they are being charged where the seriousness of the offending does not merit the increased sentence or changes to venue. In particular, there appears to be a concern with some prosecutors that a failure to add an additional specific charge reflecting the new offence ignores Parliament's will: see the proliferation of additional charges of strangulation alongside offences of actual

bodily harm which the Court of Appeal implicitly criticised in *R. v Dytlow* [2024] EWCA Crim 1627.

64. We can only work in the criminal justice system we inhabit, and so unless specific guidance is given to prosecutors on some of these offences, or the offences are amended to require the Director of Public Prosecution's consent or similar, then this practice is likely to continue. We would encourage more consideration of whether the public interest requires the prosecution of an either-way offence where a summary only offence is likely to provide sufficient sentencing powers given the significant savings to court time that summary only offences provide. An intermediate option would be to require a more senior Crown Prosecutor to approve the decision in such cases. In our view, there is merit in considering this in the selection of charges and perhaps in specifically reflecting this view in the Full Code test.

Indictable only offences that cover a broad range of seriousness

65. Most indictable only offences are inherently of such seriousness that it would never be appropriate to try them in the magistrates' court; if they were either-way offences then any magistrates' court dealing with an allocation decision would inevitably send them to the Crown Court. Classic examples include offences of

rape, causing grievous bodily harm with intent or possession of a prohibited firearm.

66. Other indictable only offences do, however, cover a very wide range of behaviour and there is no obvious reason why they are indictable only.

67. The most significant example is that any decision to charge a conspiracy under section 1 of the Criminal Law Act 1977 makes an offence triable only on indictment. The result is to artificially limit the way prosecutors put their cases in the magistrates' court; where a case could be more easily charged as a conspiracy as opposed to joint offending there may well be a decision to charge it as joint offending to enable it to be kept in the magistrates' court. The law on conspiracy is not so complex that no conspiracies cannot be dealt with in the magistrates' courts, before a District Judge. It is our view that if an offence is triable -way then the conspiracy to commit the same offence should be similarly triable either way. In the very rare situation in which a summary only offence is tried as a conspiracy it too should remain summary only. We make clear we do not suggest that the safeguards and limitations on trying summary only offences as conspiracies contained in section 4 of the Criminal Law Act 1977 should be removed.

68. It is outside the scope of this response to consider every indictable only offence but by way of illustration, it may be possible to consider changes to offences of

perverting the course of justice. Whilst these offences frequently carry custodial sentences many of these offences are in essence lies told in response to notices of intended prosecution in respect of driving offences. Where the offence is a simple one-off matter, or admitted, it is not obvious why the offence would need to be dealt with in the Crown Court if there are suitable sentencing powers.

Magistrates' sentencing powers

Background

69. The present position in the magistrates' courts under section 224 of the Sentencing Act 2020 is that:

    a. In respect of a summary only offence the maximum imposable is 6 months' imprisonment (or less if the offence creating provision so provides);

    b. The maximum imposable for an either-way offence is 12 months' imprisonment.

70. Where the court is dealing with multiple offences section 133 of the Magistrates' Courts Act 1980 provides that the maximum imposable for multiple either-way offences is 12 months' imprisonment, and for multiple summary-only offences is 6 months' imprisonment.

71. The increase to 12 months' imprisonment for a single -way offence was effected by the Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2024 (SI 2024/1067). It repeats an 11-month experiment that was brought to an end 19 months earlier by the previous government. It is enabled by powers in the Judicial Review and Courts Act 2022 which provide a novel on/off switch in relation to changes to magistrates' courts sentencing powers.

72. The intent, as explained in the explanatory memorandum to the 2024 SI, was "to ensure that a greater number of cases will remain in the magistrates' court rather than being sent to the Crown Court". Self-evidently, this will be the aim if any magistrates' court sentencing powers are increased; the intent is not broadly to simply send people to prison for longer but to better allocate the work in which people need to be sent to prison.

73. Any change to magistrates' court sentencing powers will inevitably have an impact on whether offences should be summary-only or not (because if there is an increased maximum for summary only offences then that may mean an offence should not be either-way); and on any decisions as to charge and allocation. The effect of the Sentencing Council's guideline on allocation is such that in general, either way offences should be tried summarily unless:

a) the outcome would clearly be a sentence in excess of the court's powers for the offence(s) concerned after taking into account personal mitigation and any potential reduction for a guilty plea; or

b) for reasons of unusual legal, procedural or factual complexity, the case should be tried in the Crown Court.

Practical experience suggests that this is entirely ineffectual.

74. If there is an increase to magistrates' courts sentencing powers then more offences should (all things being equal) be able to be kept in the magistrates' court (albeit with either-way offences there always remains the option to elect a trial in the Crown Court). Statistics on election do not seem easy to find but from a practitioner's perspective, it is often the case that defendants will be advised they have better prospects of success in the Crown Court. This section does not deal with the power of a defendant to determine whether or not to elect, and unless more significant changes will be made that procedure it is suggested the principal way of limiting any elections is to ensure the offence can only be tried summarily.

Concerns

75. When between 2 May 2022[23] and 30 March 2023[24] the previous government initially increased the sentencing powers of magistrates' court for either-way offences, there was concern it would result in an increased number of defendants electing trial or appealing sentences. In the working group's opinion there has been insufficient statistical analysis of the effect of this period on this data. The impact assessment that companied SI 2024/1067 was brief and lacked proper scrutiny. Any changes to magistrates' sentencing powers will need to be evidence based, to ensure both that there are no unwanted effects, and that the measure adopted achieves the desired result. Reform needs to be effective.

76. To the extent that information can be gleaned from the impact assessment, it appears that on the assumption that sentences given by magistrates will remain the same as those that would have been given by Crown Court judges, that the Government did expect a small long term increase to the prison population and expected only a reduction of 1,900 to the Crown Court caseload. There are – and always have been – real concerns that sentences imposed by the magistrates' courts will exceed that imposed by Crown Court judges and lead to significant

[23] Criminal Justice Act 2003 (Commencement No. 33) and Sentencing Act 2020 (Commencement No. 2) Regulations 2022 (SI 2022/500).
[24] Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2023 (SI 2023/298).

inflationary pressure on the prison population, due to the different case load experienced by each. If changes are to be made, then analysis of whether this is evidentially borne out would assist in persuading those involved in the justice system of the merit of the change. Moreover, by December 2023 the total number of outstanding cases in the Crown Court was 67,284, having increased from 62,637 in Q4 2022, and 58,522 in Q4 2021[25]. If any change to sentencing powers is likely to have only a minimal impact on the backlog, then there are inevitably queries about whether it is worth taking this risk. It should always be remembered that the number of prisoners and the days of imprisonment imposed upon people are not mere statistics; any additional day of imprisonment imposed upon someone is a significant punishment for that individual, and not a mere rounding error when in fact being experienced.

Reform

77. As a pure matter of principle if we accept magistrates' courts can be entrusted to impose sentence of up to 12 months' imprisonment (as we have for many years) there can be no objection to increasing that maximum provided there are sufficient safeguards. The objections are practical concerns about how those powers are to

[25] [25] Criminal court statistics quarterly: July to September 2024 - GOV.UK Table C1.

be exercised, and the seriousness with which magistrates' courts should be entrusted.

Approach to reform broadly

78. If there is to be any reform to magistrates' sentencing powers then we would encourage that there be an on/off switch of the sort introduced by the Judicial Review and Courts Act 2022 that can be used to reverse the reforms if there are unintended effects on prison places.

79. More broadly, if reform is to be considered to increased sentencing powers it is suggested it should be considered alongside potential changes to powers to elect trial and to appeal from magistrates' courts sentences. A change to only one part of the system in isolation is to be discouraged, not least because of the potential consequences on other aspects of the system, such as the decision to elect trial by jury.

80. Any reform is recognition that one size does not fit all. Where a sexual allegation is highly likely to be contested to trial, many drug/violent or dishonesty cases will ultimately plead. Treating all such cases as the same for the purposes of encouraging Early Guilty Pleas (EGP) for example makes no sense. It is those type of cases where there is a statistical basis for saying that there is a prospect of an EGP which should be the focus of the court's effort. In such cases the reality is that

the service of key evidence (e.g. CCTV of the violence, a phone download showing drug supply, DNA/fingerprint) which will be most effective in securing an early plea. More consideration should be given to "streaming" types of cases as they arrive at the Crown Court. Such an approach would allow more flexible timetabling of the service of evidence and response by the defence. If a case is to be listed one to two years away, there is little necessity in pressuring the parties to go through the stages in the usual way. Whilst robust judicial management can be very effective in some cases, the frankly heavy-handed approach of the CPR and the threat of sanctions often simply leads to what are unnecessary applications and hearings.

81. A streaming approach would potentially allow for more robust judicial intervention in those cases where a guilty plea is statistically more likely (e.g. a defendant in custody facing a sentence which they will have largely served by the time the case comes for trial).

82. Undoubtedly more investment in effective community orders would encourage the judiciary to pass more non-custodial sentences. A further option would be to consider hybrid sentences – a shorter period in custody but coupled with a community order. Giving the sentencer more flexibility might well encourage

more EGP. Most guilty defendants who do not plead do not do so because they do not want to go to custody. Equally a defendant on bail has no real incentive to plead if the trial is months or even years away.

83. More attention should also be placed on those trials where a defendant can be expected to seek a trial (thereby adding to the backlog) 'to see if the complainant comes to court' e.g. domestic violence. The use of body worn camera footage at the scene has allowed many more prosecutions to proceed even where a victim is unwilling to attend through the admittance of res gestae evidence. Such an approach could be strengthened (with appropriate safeguards) so that a defendant will know that the absence of the complainant will not affect the trial going ahead.

A two-tier system

84. In the magistrates' courts, there are lay benches and judicial appointees (District Judges and Deputy District Judges). Broadly speaking both have the same powers, but if any reform is to take effect to increase sentencing powers for magistrates, then one option may be to consider increasing the sentencing powers of District Judges and Deputy District Judges only. This may mitigate concerns about sentence inflation.

85. This would need to be considered alongside a reform to classification of offences, as a means of filtering or allocating cases to the lay or judicial tribunal. For example, an extension of the magistrates' courts sentencing powers, to two years' imprisonment, exercisable by District Judges or Deputy District Judges only, could be accompanied by a reclassification of offences which may, or may only, be tried by those tribunals. Conversely, it would be possible to allocate the least serious offences to lay benches in the magistrates' courts. Depending on the mode of reform adopted, this could also be accompanied by a committal power where a bench felt their sentencing powers were insufficient, allowing a sentence of up to two years.

Suspended sentences

86. Any sentence of up to two years' imprisonment can be suspended. We are aware the Independent Sentencing Review 2024 to 2025 will be considering whether changes can be made to this. One more radical reform option would be to allow magistrates' courts to impose suspended sentences of up to two years for either-way offences, but to only impose immediate sentences of imprisonment of up to one year as they presently can.

Sentence length

87. An advantage to increasing the maximum sentence of two years' imprisonment, only to be available to district judges s, would potentially be to make a significant number of offences that are currently triable either-way triable summarily only (with a potential power to add them to the indictment where other offences have been validly sent to the Crown Court as can be done with e.g. common assault). [See annex 1]

Consecutive sentences

88. We would be cautious in reforming the power of a magistrates' court to impose consecutive sentences that exceed what they can impose for a single offence. The temptation will invariably be to structure sentences in such a way as to impose more significant sentences than could otherwise be imposed, and to vary the sentence that can be imposed for a set of behaviours significantly by reference to arbitrary charging decisions.

89. It is hard to understand at a principled level why a court could be trusted to impose consecutive sentences up to a certain amount if they cannot be trusted to impose a single sentence for that same amount.

The efficiency and timeliness of processes through charge to conviction/acquittal.

90. There must be improvements in some of the services offered by the MoJ/HMCTS (and where appropriate partner agencies). To take one obvious example, timely delivery of prisoners to court is, in the very clear experience of virtually all criminal law practitioners, **far** below acceptable levels. If those within government responsible for the resourcing, procurement, monitoring and enforcement of this commercially-provided service protest otherwise, then that simply demonstrates that *those* governmental processes are being executed equally poorly. The normal court day is 10:30am – 4:30pm with a one hour break for lunch. This allows for a maximum of 5 hours working time. In reality, very few courts sit for their full 5 hours. One cause of this is defendants brought to court late from the prison estate. A prisoner brought to court 1 or 2 hours after the point at which a legal conference followed by the start of the court sitting day should have occurred is a reduction in 20-40% of the available jury-sitting day, and a consequent addition on the length of a trial, leading to a lack of productivity and lower disposal rates. If resources comparable to those being expended on this review were brought to bear on just this particular issue, then it would seem inevitable to us that performance would improve considerably, leading to a consequent improvement in the rate of disposals.

91. A significant number of counsel that have been asked, from different parts of the jurisdiction, state that this issue remains widespread and is having a crippling effect on the efficiency of trials. For example, in a three-week trial, if the defendants are roughly an hour late most days, this would equate to roughly two to three sitting days being lost. This is the difference between a three-week trial running into the following week and preventing a new trial from starting or from it going slightly short, and allowing a new trial to start on the Wednesday of week three.

92. A simple solution is to impose conditions on all Court security providers that defendants must be at court no later than 9:30am, with financial sanctions if they fail to meet this target. If such sanctions are already included in the relevant contract(s), those provisions must be enforced effectively. We submit that the cost of slightly more prison transport vans or increase in payment of contracts even if a prisoner arrives one hour late, this is 20% of the court time that is not being used. The cost of these contracts must be cheaper than wasted court time.

93. Another problem is prisoners not being kept in the prison that is the most local and practical one to the court in which they face trial – often called aligned prisons. This matters because a prison van will do its first drop off at its local court and then do drop offs at other courts. By way of example, it is not uncommon for

defendants facing trial at Birmingham Crown Court to be kept at HMP Hewell in Worcestershire. However, HMP Hewell is the 'local' or 'aligned' prison for Coventry/Warwickshire. It will drop off prisoners to Warwickshire courts first. It will then drop defendants off at Birmingham Crown Court. As a result of this, these defendants will be consistently late for their trial or hearings in Birmingham Crown Court. The situation for female prisoners is even worse as they have to travel much further across the country due to the smaller number of women only prisons. This approach is repeated throughout England and Wales.

94. Often the company employed to bring the prisoners to court is distinct from the company who runs the prison, and distinct from the company who runs the cells at court.

95. There are occasions when prisoners do not attend. There is often a lack of clarity regarding the reasons behind this, which, on occasion causes concerns. The common answer is either, prisoner did not want to come or there were resources/staffing issues/logistical issues. If these external companies are to be responsible for ensuring prisoners attend hearings, then there is a need for them to fulfil their duties. It is understood that this may be difficult to police as there are inevitably going to be occasions where defendants themselves do refuse to attend,

but the onus should be on the agencies to prove this. One suggested policy idea is that officers wear body cameras for example when collecting prisoners to come to court/the video booth. If they fail to ensure the attendance of prisoners, then there should be consequences, such as fines/ warnings/ the risk of losing the contracts. It is also recognised that any proposals to use body cam footage must incorporate consideration of how to respect the privacy of potentially vulnerable individuals.

96. **Recommendation**. Defendants awaiting trial should be remanded to the most conveniently located prison to the court that they face trial at. The system/contracts for delivery of prisoners to court must be reformed to address the above issues.

Defendants being produced for important hearings

97. There is a frequent practice of defendants not being produced at court for PTPHs and not being produced at a hearing despite a judge ordering their production. This undermines the efficiency of PTPHs as it hampers defence counsel's ability to give proper, considered advice following a full discussion of the evidence with the defendant. Owing to tight timescales, often no instructions have been taken from the defendant prior to the PTPH. A 15 minute video link is not sufficient time to fully advise a defendant in anything other than a straightforward case.

98. Sometimes, defendants who require interpreters are also via video link. Clearly this situation is undesirable and again counterproductive to appropriate early guilty pleas. Further, judges' attempts to robustly case manage, by providing defendants a realistic steer of the case, carry less weight when given remotely. The defendant being remote prevents the hearing being given a short adjournment for the prosecution and defence to reflect on their respective positions following a Judge giving their views on the case.

99. Further, there are Defendants for whom, once issues have narrowed following PTPH, would benefit from further advice from counsel at a Pre-trail review (PTR) or Further Case Management Hearing (FCMH). Judges will order defendants to be produced, often following a request from defence counsel. This is often preferrable to a prison conference given they are in short supply and the effect an in-person hearing can have on focusing the minds of all parties. When a defendant is produced over the video link for PTR/FCMH when they have been ordered to be produced, this results in a wasted hearing and prevents a potential resolution to a case.

100. **Recommendation**. All defendants must be produced for PTPHs. If a judge orders a defendant's production at a hearing, they must be produced. If the prison or

transport provider fail to do so, they must provide an explanation in writing. We accept that this may require altered listing of cases to manage an increased number of defendants in the court cells in certain days.

101. **Potential alternative**? The default position should be that all defendants must be produced for PTPHs. Defendants should only be produced by video link if their representative confirms that full instructions have been taken, and there would be no advantage to the defendant being produced in person at court (for example where firm instructions have been given and there would be no need for more than the 15 minute video link conference prior to the PTPH hearing).

Information available at PTPH

102. The recommendations above can only be effective if there is sufficient material upon which to advise at PTPH. It is not uncommon for there to be inadequate information available to PTPH to fully enable the narrowing of issues and resolution of the case. Achieving Best Evidence (ABE) interview transcripts are frequently not provided at PTPH. This is particularly poor given the ABE frequently is the key part of the Crown's case, although we accept that cases involving ABEs do not that see early guilty pleas that frequently.

103. Perhaps more important, are cases towards the lower end of the scale. For example, a burglary where the DNA forensics are outstanding or an affray where the CCTV is not served. It is these cases that often will resolve once the service of evidence has been reviewed and considered. By failing to serve stage 1 by PTPH, these cases end up going into the system and taking up trial dates.

104. Providing full information at PTPH would further assist effective case management by ensuring that relevant issues can be properly identified, and witness requirements be properly considered. This should include ABE interview transcripts, SFR (streamlined forensic reports) and any CCTV relied on by the Crown. This may have the effect of reducing trial estimates as more witnesses may be capable of agreement.

105. We know that the 'Crown Court Operating model' is in place for some cases in some CPS areas. Under this model, stage 1 is being served by PTPH. We are not aware what CPS areas or types of cases this is being used in.

106. **Recommendation**. Stage 1 be met by PTPH. The PTPH date for bail cases, could be pushed back slightly to ease the pressure on the police and the CPS.

Payment for conferencing

107. We submit there would be a long-term benefit if representatives were paid for conferences, certainly for a conference at this stage of proceedings before PTPH once the evidence had been served. Currently, counsel receives no payment for conferences but has to take time out of a paid court day to undertake the same. Court work therefore takes priority, especially given the backlog. It also means that conferences are more likely to take place on the date of PTPH, when although counsel may do their best, the defendant may require subsequent time to consider matters. This recommendation observed that a conference however can only be effective at this stage if the aforementioned recommendation regarding the availability of evidence prior to PTPH is in place.

Listing

108. Greater use could be made of specific approaches to the listing of certain kinds of case in order to use court time more effectively.

109. For example, one approach would be to allocate court time for specific periods to deal with a large number of cases already within the system, that would otherwise be heard at a significantly later date. One such scheme was adopted in Greater Manchester in 2023, known as the "Trial Blitz". Cases that were identified as suitable for inclusion in the scheme were listed for trial during a two-week

window in December 2023 or a three-week window in January 2024. Two courtrooms being allocated for trials of these cases, with each court having two trials listed each day.

110. Cases with an estimate of one to two days were considered for inclusion in the scheme, and work was undertaken by the CPS and court staff to identify cases suitable for inclusion. Judicial scrutiny of suitable cases played a significant role in the selection of appropriate cases for the scheme. The type of cases identified as suitable for inclusion were comparatively more minor cases such as driving matters, low level assaults and possession with intent to supply (low level/ street supply) cases.

111. It was expected that prior to trial, the parties would have sought to resolve the case. Having been identified as suitable cases for inclusion in the scheme, cases were listed for mention prior to the trial window. At that hearing, if the case was considered to be suitable, the trial date previously allocated to the case could be vacated and the trial given a fresh date within the two-week listing window of the scheme. Parties were also encouraged at that hearing to seek to resolve the case if possible, and the parties could seek the assistance of the court in this, if appropriate.

112. 91 cases were included in the scheme. Of these, 49 (54%) were disposed of prior to the trial date. 33 cases resolved by way of guilty plea. In 16 cases the prosecution offered no evidence. Of the 42 cases remaining, 17 were effective, 1 was ineffective due to the defendant not attending, and 24 cases cracked at trial.

113. The scheme therefore permitted cases that would otherwise have been heard at a significantly later date to be resolved more quickly. It is also noteworthy that a significant number of cases were resolved at the PTR, rather than at trial. It may be suggested that active case management (appropriate identification of cases, work done by all parties to ensure effective discussions had taken place prior to the PTR and, where appropriate, judicial assistance at the PTR) played a significant role in these outcomes.

114. It is recognised that this scheme provides a good example of cases already in the court system being brought forward to facilitate conclusion of those cases, rather than being an initiative that could be adopted in relation to new cases being brought before the court.

115. The initiative also required considerable work to be done by all parties, including judges and court staff. Bringing cases forward from their original trial date also could result in instructed trial counsel not being able to represent the defendant at an earlier trial date. These are matters that must be considered. However, it is significant that the scheme included cases that were typical of the kinds of cases that junior barristers would conduct, meaning that their acquisition of skills and experience was not jeopardised by the courts' necessary focus on prioritising more serious cases due to limited court capacity.

116. Listing schemes that could be applied to new cases received at the Crown Court include schemes that identify certain types of case where listing trials sooner might be of benefit. These could include cases where the issues are relatively straightforward, the trial estimate is short, and the attrition of witnesses is a significant issue. Prioritising such cases is an effective means of court resource as they can be dealt with relatively quickly, and given relative simplicity, do not require the preparation time that may be necessary in more complex cases, and the consequences of delay upon both witnesses and the defendant can be reduced. Many courts adopt some version of this prioritisation already through expedited trial schemes. It is recommended that consideration of such schemes be adopted across the court system.

Police charging decisions and the policy and timeframes involved in the same – looking at certain types of offences

117. In Manchester, there are a significant number of matters coming before the magistrates' court on a daily basis. Anecdotally, on a morning in January 2025, it was said in open court by a sitting District Judge that there were 54 'overnighters' (individuals appearing for first appearances being brought from the police station). It is said by those who regularly attend the magistrates' court that this is the norm.

118. This is a huge number of individuals to deal with logistically and a huge number of cases per week that need to be dealt with, many of which undoubtedly will be sent to the Crown Court for trial.

119. It strikes us that a reduction in the number of individuals appearing before the court from the outset would decrease pressures on the system as a whole.

120. There are a number of areas that would decrease such pressures at this stage of the process:

a. Decision to charge

More stringent criteria applied to decisions to charge.

Should limitation periods be imposed for an increased number of triable either way offences such as low-level theft/ criminal damage/ possession (drug) offences to ensure that charging decisions are made swiftly, or not at all?

Could there be an extension of the type of offences that result in cautions being offered?

b. Diversion.

Diversion from the system at an early level would decrease significant strains on the system.

If there were more qualified individuals attending on defendants in the police station to diagnose mental health and cognitive problems at an early stage with a view to hospitalisation, or assisting them within the community, without criminalisation of these people, not only would money be saved in the short term as they would not be appearing before the courts, but long term their risk of reoffending would obviously be reduced.

At the current time, forensic medical examiners (FME) attend on defendants in police stations. These are not doctors who can make diagnoses. Very often, when doctors are instructed later in proceedings, they make diagnoses that

were not recognised at the police station. By that stage, often mental illness may have gotten worse resulting in longer periods of recovery and more money being spent on the same and often mean that a significant number of hearings both before the magistrates court and the Crown Court are inevitable. Experts will also have been instructed by that time to assess and report on defendants, and this is inevitably costing the system hundreds of thousands of pounds (we are aware from our own practices how expensive but necessary expert psychiatric and psychological reports are). If proper assessments were carried out at the police station, with a view to diversion, this would result in reducing pressures, both time and money, on the CJS.

121. Evidence available at first appearance

Very little material now has to be provided at the first appearance Initial Details of the Prosecution Case (IDPC) can be limited to an MG5 (a police summary) therefore it is often nigh on impossible for the lawyers to fully advise clients as to the strength of the evidence. If there was a policy that evidence had to be provided at the first appearance so as to establish a case against the defendant, this may result in more cases resolving. This should be viewed alongside the comments made about PTPH above.

It would of course also be dependent upon there being sufficient time for lawyers to go through the same with the defendants. It is understood that for first appearances, 'overnighters', there is no set time for defendants to attend court, they are brought to court when the police station is able to deliver them to the court. In recent years, one of the authors has waited all day only for a defendant to be brought to the court after 4pm, resulting in little to no time allocated for conferencing. There need to be more stringent conditions put on the timing of delivery of prisoners to the courts even at this stage of the proceedings.

122. Stand down reports

We are unaware of the prevalence/ availability of stand down reports by probation at this early stage of proceedings. Certainly, if not already in place it makes sense that if a guilty plea is entered and the matter is to be dealt with by way of a community penalty, that reports are undertaken immediately with a view to resolving matters at the first opportunity rather than adjourning to a different date for a report to be prepared.

Decriminalisation

123. It is a subject for more wider discussion, but in the context of increasing criminality through additional legislation (1 in 4 men between the ages of 10-52 people now have a criminal conviction[26]) and indeed increasing prison sentences (thus perhaps making guilty pleas less likely and decreasing the possibility of effective rehabilitation through institutionalising individuals, especially young people), if decriminalisation took place and sentencing was lowered then there would inevitably be less pressure on the system.

Diversion

124. There are a number of areas where we assess that diversion could work, either pre/post charge, which would alleviate short- and longer-term stressors on the criminal justice system. It is acknowledged that these may require the input of third-party agencies.

Mental health

125. We recognise an increase in mental health diagnoses at all levels of the criminal justice system. It is becoming more prevalent that mental illnesses are not

[26] [26] 15 per cent of people between the ages of 10 and 52 in England and Wales in 2006 are estimated to have had at least one conviction for a standard list1 offence. The equivalent figure for males is 24 per cent and for females 6 per cent.. Ministry of Justice Statistics Bulletin (July 2010) Conviction histories of Offenders between the ages of 10 and 52 England and Wales Conviction histories of offenders between the ages of 10 and 52 bulletin

being diagnosed/ recognised/ assistance given until the individual appears before the court, often being criminalised for the same.

126. We understand that there are huge financial and other pressures on the NHS, including particularly mental health services (it is understood that as of 2022, only 9% of the NHS budget goes on mental health services)[27]. It is often [28]clear however that there is a direct impact upon the criminal justice system, with people with mental health difficulties not always able to access justice at an appropriate level.

127. It is opined that if mental health difficulties were often recognised at an earlier stage, it may mean in certain cases that those individuals did not subsequently appear before the criminal courts at all.

128. The aforementioned submissions regarding assessment at the police of arrest at the police station are reiterated. Better training for police officers in recognising mental health and/ or cognitive difficulties would also be of assistance.

[27] In 2021/22, around £12 billion, or 9% of budget was spent on mental health services. Progress in improving NHS mental health services - Committee of Public Accounts
[28] Mind (May 2018), An unjust system.

129. Anecdotally, one author of this report dealt with a defendant at committal for sentence, who had appeared unrepresented at the police station and the magistrates' court where he had entered guilty pleas. Upon defence-instructed assessment once the matter reached the Crown Court it transpired that he had suffered a significant brain injury and had anterograde amnesia (he could not form new memories, 'Dory Syndrome'); he was in assisted living. He was declared unfit to plead. The Crown did not proceed. His illness has been missed by numerous individuals working within the system. If training was improved and/ or proper medical intervention occurred at the police station, this case would not have progressed as it did.

130. It is suggested that if there was a manner in signposting/ diverting individuals away from the system that would necessarily reduce pressures on the CJS. It is reliant however upon agencies working together.

131. In this context, emergency provision for diversion to hospital and out of the CJS for those suffering from mental breaks would be of assistance.

132. A general change in attitude is needed regarding the appropriateness of criminalising individuals who suffer from genuine mental health problems.

Employment diversion

133. From the authors' experiences in the CJS, those who find themselves as defendants before the criminal court system often do not have purpose or routine within their lives. A large number of individuals who come before the courts are unemployed.

134. A diversion to employment scheme for first time and/ or young offenders (below 25) who are out of work and who found themselves committing non-violent offences related to their employment status (for example, low level drug dealers, low level thefts) could be an effective way in which to ensure that these individuals are given a second chance and put on a path to rehabilitation through work, thus also benefiting society.

135. For example, if there was a plea to the same at the first opportunity and they were recognised as being suitable for an employment diversion programme, defendants could be sentenced to such a scheme which would assist with CV building, basic training and job interviews (even putting them in touch with employees who may link into the programme) to ensure that they get back into

work. At the end of the scheme/ upon finding work, it may be that their conviction becomes spent immediately, such as with a conditional discharge.

Drugs

136. More diversion to drug programmes such as that being piloted at Liverpool crown court are recommended, noting that on a common-sense basis, this arguably increases the likelihood of a guilty plea.

137. It would be of benefit to extend programmes such as this, an earlier stage in proceedings to avoid the need to have additional hearings before the Crown Court.

138. It is relevant that according to the Liverpool pilot scheme: *'Studies show that getting offenders to confront their addiction through specialist support helps drive down their chance of committing further crimes. Research from several countries suggests that on average a 'problem-solving' approach resulted in a 33% decrease in the rate of arrests compared to offenders who receive standard sentences.'*[29]

[29] https://www.gov.uk/government/news/new-court-approach-helping-get-offenders-off-drugs

Bail diversion

139. There are a number of cases (notably in Manchester) that have been running for many years now.

140. A general policy is suggested that defendants facing an offence for which a custodial sentence would not be imposed, who had been on court bail for a period of 18/ 24 months and who had not reoffended, could be diverted in some way; perhaps a conditional caution (aligned with requirements such as the rehabilitative ones outlined above, or a short period of unpaid work or a fine). This may, the authors suggest, reduce the number of cases in the backlog waiting for trial.

Recommendation: More diversion options at all stages of the process.

Sentencing

141. If more cases could be resolved at the point of plea/ conviction, without the need for an additional sentencing hearing it would reduce the number of hearings before the court.

142. There are very few community-based sentences that can be imposed without the input of probation services in the form of a full report. The authors

query whether the sentences that could be imposed without the need for a report could in fact be extended. That is an issue that does need to be discussed with the probation services.

143. It would also be beneficial to increase the numbers of stand down reports that are done. It has decreased in recent years. Stand down reports were regular about 10 years ago, but that is no longer the case.

144. We understand that the probation services are also facing huge financial and personnel pressures. However, if there were more personnel at court, and stand down reports could be affected, there would need to be less adjournments for full reports prior to sentence. The pressures, arguably, would decrease long term.

Recommendation: Effect less adjournments prior to sentence.

Listing issues

145. This is a practical issue affecting legal representatives in court. The authors understand that the courts are facing increased listing difficulties and increased pressures in respect of every aspect of their work. However, if the courts could assist legal representatives in requests for time markings, listing of hearings on

certain dates etc then the effectiveness of those hearings would be increased. It would also mean that other commitments could be dealt with.

146. For example, one solicitor-advocate tells of his difficulty in obtaining a prison visit out of area to visit a client to take instructions. He booked an afternoon visit, weeks in advance, and was hoping to attend the same. The evening before that prison visit, his previously listed morning matter was moved to the afternoon; he asked the Court that it remain in the morning and was told no. This had the knock-on effect of him being unable to attend the prison conference, which meant that not only was he unable to properly prepare for the next hearing but that additional time was spent trying to book a new visit.

147. In addition, the court system needs to be aware of a number of scenarios that are increasing pressure on counsel:

c. Floating/ backer trials/ double listed trials. These sort of listings require counsel to put a huge amount of work into preparation to be ready for a trial that may not find a court room and will be vacated. Often, they have been returned to new counsel, which means that before the trial even gets called on at least two counsel have prepared the case. The trial will often be

re-listed on a date that counsel cannot do in order to obtain the first trial listing. This type of approach results in wasted preparation time, away from family and friends, often at weekends and results in low morale at the Bar.

d. Care when listing trials. The above sentiments are echoed, when at the PTPH Judges refuse to take trial counsel's availability into account. Due to the relative lack of barristers (especially those who may conduct certain types of work, or whom may be of appropriate seniority) it is often the case that it is not possible to return trials, even at that early stage. This results in counsel doing unremunerated work on a case that they will not be undertaking at trial.

Recommendation: Courts need to take account of counsel's personal and professional obligations and try to assist with the same.

148. Similar considerations also apply to the provision of interpreter services, the role of technology (e.g. video-link facilities) and maintenance of the existing court estate. All those areas require additional resources in a time of straitened financial circumstances, but as is being currently demonstrated, *not* providing

those resources is a completely false economy, simply leading to greater need for greater expenditure in the future.

149. One example of this is the poor state of the wifi connectivity in many courts, this leads to many aborted or truncated hearings which could otherwise be conducted via Cloud Video Platform (CVP). If money was spent improving the digital infrastructure it would save huge amounts of money on prison transport and security.

150. Another way of increasing productivity, and the rate of 'disposals', would be to remove the onerous (and in our view normally unnecessary) requirement for a detailed factual summary of evidence to the jury at the end of a case. In a standard 3-5 day trial, the summing up could take an hour or two (or more) of which only a very small amount of time would actually be spent on directions of law to the jury. The rest is taken up with a recitation of evidence which has been heard just hours or days before by the jury. We are unaware of any robust evidence to show that juries are in fact ever in need of such a detailed reminder of the evidence. Although the time taken for the summary of the evidence might not be a very long period in an individual trial, it nevertheless has to happen in every case, and so the time saving <u>overall</u> by removing this requirement would be

enormous, with the consequent impact on productivity. There would have to be a residual discretion to remind the jury of the evidence in *very* lengthy cases (see however the proposal for judge-only trials for complex fraud cases), or to correct inaccuracies in counsels' speeches, or where otherwise truly necessary in the interest of justice. This change would be easy to bring about (a change to the relevant procedural rules[30] and/or suitable direction from the senior judiciary) and highly cost-efficient (in fact, free). We believe it would also be met with approval from the judiciary, as it would reduce the (already burdensome) workload on them. Often summing-up has to be delayed to allow a judge sufficient time to prepare the summary of the evidence, further extending the length of a trial (and preventing a new trial from being heard).

151. We have considered whether reducing the number of jurors who try a case would have any impact on the backlog. In Scotland a jury of 9 is sufficient, compared with the 12 who are required in England and Wales.

[30] Criminal Procedure Rule 8.5.9

152. We believe that a jury trial would take the same length of time with 9 jurors as it would with 12, thus we consider that there are no time nor efficiency savings to be had.

Fraud trials

153. The group did consider the controversial suggestion of removing juries for fraud trials that are listed over 3 months. This legislation was already once placed on the statute books (by the previous Labour government) but was never brought into force.[31] Although there are not many of those trials, they do take up a disproportionate amount of court resources given their length – often taking an entire jury-equipped courtroom (and a Crown Court judge) out of the system for months at a time.

154. The Bar Council has previously, and in different circumstances, opposed removing juries from deliberating on such trials. Our position on that has not changed, especially as such cases necessarily involve considering the issue of dishonesty, However, if the choice were to come to a decision between (i) judge-only trials for offences punishable for up to and around two years imprisonment for a larger, more diverse, cohort of defendants and cases, and (ii) judge-only trials

[31] S.43 Criminal Justice 2003, repealed by s.113 and sch.10, part 10 Protection of Freedoms Act 2012,

for complex heavy fraud offences featuring a very small number of defendants, we believe that the interests of justice would be better served by, and there would be more public confidence about, option (ii). This is particularly so given the likely greater access to quality representation in complex fraud, and the more detailed reasoning provided by judges in complex fraud (and better scrutiny of the same). Inevitably also, when dealing with the larger amounts of people involved in allegations of lower-level offending, there will be consequently much greater need for very careful consideration of the impact of judicial fact-finding on equality of outcomes by protected characteristics, as indicated above.

155. **Our firm view however is that juries should be retained for fraud cases.** The arguments in favour of removal historically focused largely on a perceived inability of a jury to comprehend and process the allegations, which the Bar Council and the criminal bar have tended to push back against, and is refuted by experience of juries reaching nuanced verdicts in some of the most lengthy and complex cases of this type.

156. We consider the jury to be a vital protection for the popular legitimacy of verdicts in cases of serious and complex fraud. It is easy for a convicted defendant to claim institutional bias, coverup, conspiracy etc. if an adverse verdict is returned

by a judge, even with full reasoning provided. It is rather harder to make a convincing case that a randomly selected impartial jury represents the coming together of the establishment in order to ensure that the fall guys take the blame for the failings of those higher up the managerial chain than them (which is a not uncommon theme of defences in cases of serious fraud). And the converse is equally true - acquittals of establishment figures by professional judges would be hardly more attractive.

157. In any event, if the removal of juries from long fraud cases is with a view to reducing delay in the Crown Court (which is of course the present question), then we do not believe that it will assist to any substantial extent. There will still be a need for public understanding of what goes on in such a criminal court - arguably to a greater extent than now, in the absence of a jury representing that public - and that will require full opening and closing speeches, and all evidence to be given in real time (rather than allowing witness statements to stand as evidence in chief as in civil trials). And the same number of judges, and an appropriate venue (whether it be a large Crown Court room or other space), will still be needed.

158. Additionally, the likely wait for a reasoned verdict might be expected to be longer than that for a jury verdict, given experience of cases in which judgments

are reserved across the justice system., Judges would need to take time out of court to write up their rulings (as in civil cases), meaning that they could not be sitting on their next case (as they do now while the jury is out). So it is by no means clear that there will necessarily be any real time savings, and when balanced against the costs in terms of the perceived legitimacy of any verdict - and indeed the basic fairness of the process from the perspective of a defendant, for all the reasons usually given in favour of jury trial, including those relating to diversity – we are strongly of the view that juries should be retained for fraud trials.

159. We have given consideration as to whether there could be greater use of Deferred Prosecution Agreements, presently used by the Serious Fraud Office (SFO) for companies, but not generally against individuals. One argument put forward was that individuals facing fraud charges could be offered a period of time to repay any money said to have been fraudulently obtained, remain trouble free, and then not face criminal trial. Ultimately the group felt that this would not have a sufficient deterrent effect for fraudsters, that they may well continue offending in order to recoup money paid out to victims in another case, and further there could be a perception that those with means were evading justice by buying their way out of a conviction.

160. Having weighed up all arguments the group remain in favour of retention of jury trials for complex frauds.

Consideration of how effectively previous recommendations –including those contained within the 2015 review Efficiency in Criminal Proceedings –have been implemented and if more could be done for these to successfully increase efficiency within the criminal courts

161. The 2015 review was limited in its reference to focussing on changes which could be implemented without legislation. The recommendations drafted so far in this Bar response would require legislative change.

162. As Leveson J repeated in his 2015 review, citing himself in R v Crawley [2014] EWCA Crim 1028, the criminal justice system requires the highest quality advocates. This is no less true when considering the efficiency of the system. Proper and increased funding of legal aid is imperative to retain those of the highest quality.

163. The CJS Common Platform was proposed in the 2015 review. It has been implemented in part and cancelled in part at a reported loss expense of £5.6 million.[32] It is not functional. Further the HMCTS annual report set out that the number of data breaches increased from 2,682 in 20/2021 to 10,225 between April 2023 and March 2024. The report refers to an HMCTS acceptance of responsibility

[32] https://www.publictechnology.net/2024/11/22/public-order-justice-and-rights/moj-records-5-6m-loss-after-scrapping-common-platform-functionality/

of the criminal and civil courts for 45% of the breaches and their being caused by incorrectly uploading personal information onto new case management systems such as the Common Platform.

164. It appears that the Crown Court Digital Case System (CCDCS) will be retained and will not be replaced by the Common Platform. The £300 million roll out of the Common Platform has not effectively been implemented in the crown court.[33]

165. The 2015 review proposed a first overarching principle of "Getting it Right First Time", which relied on the police and CPS making appropriate charging decisions, based on a fair appraisal of sufficient evidence, with proportionate disclosure of material to the defence". In fact, it is a frequent occurrence that material is not ready at the point of the PTPH. Evidence has not been served on the CCDCS and, even, an absence of an indictment. This is likely due to the underfunding of the system and the consequential over burdening of the CPS.

166. The Second Overarching Principle cited is "Case Ownership". The review cited the preference of one advocate have conduct of the case. The current backlog, in the context of the stark loss of advocates from the criminal Bar, means that advocates are stretched to breaking point. Case ownership is an impossibility. The current challenge is finding an advocate to represent a defendant and/or to prosecute. It is a regular feature of court cases that there is no progress due to lack of advocate. The review recognised that "Legal Aid must reward efficiency".

[33] https://www.publictechnology.net/2024/03/07/public-order-justice-and-rights/common-platform-hmcts-opts-to-retain-existing-case-management-tool-for-criminal-courts/

167. The 2015 report made prescient proposals for video hearings at a time before the COVID pandemic could be contemplated. It envisaged hearings being conducted from Judge's chambers. That is not something that has been implemented: all remote hearings still require the use of a courtroom (as our submission has already identified). There is also an inconsistency between courts and judges in their attitude toward remote hearings. The Criminal Procedure Rules should be amended to provide greater flexibility for such hearings and to allow virtual courts which do not require a court room. Recording of the hearing could be conducted remotely. The current CVP platform has that functionality, which is used already, for example, in the Mental Health Tribunal.

168. The 2015 Review cited the need for "High quality equipment". The reality is far short of this need. Hearings often are delayed due to an issue with the functioning of technical equipment.

169. The review also cited the need for a "sophisticated listing system for audio and video hearing so that cases are "queued". This has not been implemented and is a vital element of modern working which should be pursued. The current situation leads to advocates being trapped in the waiting toom "waiting for the conference host to join" with no indication of when their case may be called on. In modern practice where advocates are required to be appear in separate courts this is unmanageable.

170. The 2015 review cited the need for better opportunity for defence advocates to conference remotely with defendants. The current system is insufficient. Fifteen minutes is afforded per conference which is invariably too little. In addition, a

regular occurrence is to join the link for the conference (assuming you are lucky enough to have the correct link) only to find a different conference is ongoing. Conversely, a barrister can be in a conference with their client and another legal team joins as the conference has not been locked by the prison. This can cause issues over confidentiality and breakdown of trust of the client speaking on key issues in the conference. This system must be better regulated with advance notice to the prison of which defendant should be in each booth and when. It may require defendants to be brought sooner to the booth area.

171. The 2015 review addressed the need for technology to present evidence to juries. The method and provision of such technology is inconsistent. We suggest standardisation. In addition, the "show to jury" function on CCDCS has never been implemented. It should be.

172. Body worn cameras for police officers appeared to be in their infancy at the time of the 2015 review. This is something which has been implemented nationally with significant success.

173. The 2015 review considered the number of cases being sent from the magistrates' to the Crown court. A great inefficiency has been caused by the Court of Appeal's decision in R v Gould [2021] EWCA Crim 447. Its interpretation of s.66 Courts Act 2003 has caused total rigidity and removed the ability of the Crown Court to rectify technical errors in sending from the magistrates' courts. As a result, where matters are incorrectly sent (which amounts often only to the wrong section being cited on the sending sheet) the entire case has to be sent back to the

magistrates' court to be sent correctly. There is disapproval of a Crown Court Judge turning themselves into a District Judge for the purpose of correcting a procedural error. This process used to work efficiently in the past. Flexibility should be returned to the Crown Court. Some of this process may require legislative change.

174. The 2015 review reported that inefficiency, and consequent late pleas, were caused by inadequate charging decisions. It cited late pleas to lesser offences offered at a late stage by the Crown. Proper charging would be assisted by the Bar having the ability to speak to the named CPS reviewing lawyer. It can still be incredibly difficult to contact a reviewing lawyer, or even to obtain a contact number or email address for that lawyer.

175. The 2015 review noted that warned lists and floating trials are imperfect but there was no other option. The warned list system in the context of the current backlog leads to delay bordering on injustice, exacerbated by the effect on witnesses of multiple listing. But for the impossibility of the system in smaller courts, we would propose that all courts moved to a fixture system. The review proposed that single advocate ownership was important to support the warned list system. For the reasons set out above that is not possible.

176. Crucially the list offices are forced to be creative due to lack of days that they can utilise the courts and judges. This causes last minute cancellations of trials as sitting on the trial would cause the court centre to exceed its number of sitting days. Over the next two months, for example, Woolwich Crown Court and Inner London Crown Court will function with the majority of their court rooms closed.

The cutting of sitting days does not take into account the expense of keeping a defendant in prison for a longer period, nor the expense of a different barrister having to prepare the trial. Further, judges and staff continue to be paid. Judges are forced to work on administrative "box work" as they are not allowed to sit on a trial or hearing due to budget constraints. In short, restricting sitting days does not save money. It also negatively impacts on morale of judges and barristers. There must be unlimited sitting days to allow the courts to use the courts, judges and recorders they have available to sit on cases.

177. The 2015 review proposed a reduction in the number of orders made for pre-sentence reports (PSRs) with, if necessary, legislative change. Anecdotal evidence suggests PSRs are still commonly ordered. The lack of probation officers at court to deal with oral reports negates the further proposal of the review. PSRs are important if a defendant is to be diverted from prison. We propose that PSRs continue to be ordered in cases where the ultimate decision of the court is likely to be whether to suspend a sentence or of which conditions should be applied to a community order. Where the sentence is unlikely to be a sentence other than custodial, but the defendant has no previous convictions, mitigation should be able to be presented by the barrister without the need for a PSR. A practice direction to this effect might be useful for courts to follow. We consider that PSRs should continue to be ordered for youths even where there is no prospect of any sentence other than custody. Further investment in probation is required. In addition, current issues include lack of probation staff at court to find accommodation for defendants applying for bail. Often this means that a defendant is in prison when, in the past, a bail hostel would have been available (or the case is further adjourned).

178. The proposals in Chapter 7 for the Crown Court are largely rendered obsolete by the EGP scheme being superseded by the Better Case Management and the implementation of the CCDCS in 2016. We do not propose any return to an EGP scheme, not least because of the unsuitability of the State in effect deciding that a case was one where the EGP should apply.

179. Currently the onus is placed on the defence to offer a guilty plea in writing. We suggest that the prosecution should proactively manage cases and contact the defence to explore a guilty plea to a lesser offence that would be acceptable to the prosecution (after consultation with the victim).

e. Woolwich Crown Court is piloting a scheme of the CPS selecting cases where they consider they can be resolved without trial. They are cases that are halfway through their Crown Court life of approximately 18 months before trial. It is in its very early stages but successful to date.

180. Advocates need to be properly paid for this work.

181. Prisoner arrival time featured in the 2015 review and is highlighted earlier in this submission. None of the proposals of Leveson to consider the contracts with private companies responsible for the prisoner delivery have had any effect.

182. The 2015 review did not endorse longer sitting hours, but did endorse a flexible approach to the use of Maxwell hours. There does not appear to have been significant implementation of this flexibility – which we consider has force.

However, it also needs to be considered carefully so as not to disproportionately negatively impact upon those with children or other caring responsibilities.[34]

183. The 2015 review addressed the overly long ABE interviews by suggesting that after the initial ABE interview there should be a second, more focussed ABE, which would be admitted in evidence. This has not been implemented. We do not support it. The financial constraints on the system render it unworkable and, in any event, the longer ABE would inevitably fall to be disclosed and would therefore need to be considered in any event. Cross-examination would follow on the wider ABE rendering the shorter version otiose.

184. The 2015 review proposed the Criminal Procedure Rules be amended to require a short defence opening speech immediately after the prosecution speech to identify in public the issues in the case. This has not been implemented. There are mixed views at the Bar as to its impact with some pointing to the defence statement as being the document where the issues should be clear. Whilst some consider that a defence speech would force focus on issues, others consider that a rigorous case management on reasons for requiring witnesses better addresses unnecessary questioning. Currently the BCM places the focus on stage dates rather than early analysis of the case. A return to active case management in relation to issues is important.

185. The 2015 review considered the necessary length of a judge's summing up. It recommended: "The Judge should remind the jury of the salient issues in the case and (save in the simplest of cases) the nature of the evidence relevant to each issue. This need be only in summary form to bring the detail back to the minds of

[34] See previous representations from WICL. https://www.womenincriminallaw.com/blog

the jury, including a balanced account of the issues raised by the defence. It is not necessary to recount all relevant evidence. Appropriate training on the constituents of an effective summing up should be a standard part of the crime seminars provided by the Judicial College". We are not aware of specific training on summing. up. The jury is given written directions in writing in a "split summing up". This is efficient and effective. We consider that a summing up of the evidence in short cases of 2-3 days should only last around thirty minutes. We support Judges and barristers receiving further guidance as to the content of summing up so that Judges are not concerned that their summing up will be appealed if they missed out some of the evidence and barristers also can manage clients' expectations.

Any other recommendations to tackle the outstanding caseload that emerge as a result of reviewing the options and evidence

A new model for diversion

Overview

186. A focus on the volume of trial receipts into the Crown Court will need to form a central part of any serious attempt to ensure that criminal trials are able to take place in a timely yet fair manner. When considering reforms which could assist in that regard, it may be helpful to consider the mechanisms for diversion which already operate within the criminal justice system.

187. This section of the paper draws on two in particular: Deferred Prosecution Agreements and Referral Orders. While these mechanisms take effect at what are generally considered to be very different levels of the criminal justice system, they have a number of features in common: each requires some form of acknowledgement of fault from the offender; they share a focus on resolution of offending behaviour through reform, informed by compliance; they require judicial approval; they involve ongoing monitoring; and both provide for the possibility of sanctions for breach.

Referral Orders

188. By way of brief overview, a referral order is a mandatory sentence in most cases in which a young person pleads guilty to one or more offences and has not previously been convicted of an offence. (The exceptions are where the offence is so serious that a custodial sentence is required, or so minor that a discharge is appropriate.) A referral order is also available, though not mandatory, following a guilty plea to subsequent offending.

189. The primary aim of a referral order is to prevent young people reoffending through an approach which draws on principles of restorative justice. The scheme involves the engagement of victims and the wider community, comprised of volunteer panels. Terms of any contract agreed as part of a referral order include

actions intended to make reparation for harm caused, including where appropriate to any identified victim. The offender will also receive support, including in relation to education and training.

190. Progress and compliance are monitored by regular review meetings. At the end of the duration of the referral order, the conviction will be spent. In the event of non-compliance, the panel can refer the young person back to the court, which has the power to revoke the referral order and re-sentence for the original offence.

191. The utility of referral orders (which were introduced in the Youth Justice and Criminal Evidence Act 1999) is reflected in an answer given by the then Minister for Justice in a 2008 response to a Parliamentary question: *"The referral order at 44 per cent. Has the lowest reconviction rate of any court sentence for under-18s."* [35] That is consistent with the findings of a 2016 report by HM Inspectorate for Probation, which concluded that Referral Orders were *"consistently more effective than other sentences"* in helping young people cease their offending behaviour before it became entrenched. [36] That view is understood to remain uncontroversial today.

[35] Youth Referral Orders - Hansard - UK Parliament
[36] Referral-orders-do-they-achieve-their-potential.pdf

Deferred Prosecution Agreements

192. Introduced in the Crime and Courts Act 2013, a Deferred Prosecution Agreement ("DPA") is an agreement between a designated prosecutor and a company, partnership or unincorporated association whom the prosecutor is considering prosecuting for a specified offence. Under a DPA, the company etc. agrees to comply with the requirements imposed on them by the agreement, and the prosecutor agrees that, upon approval of the DPA by the court, proceedings for the relevant offence against the company are suspended.

193. As explained in a Code of Practice jointly issued by the SFO and CPS in the early days of the DPA regime, the terms of a DPA will normally include (a) a financial order; (b) the payment of the reasonable costs of the prosecutor; and (c) co-operation with any investigation related to the alleged offence(s). The suggested financial terms may include, but are not confined to: compensating victims; payment of a financial penalty; payment of the prosecutor's costs; donations to charities which support the victims of the offending; and disgorgement of profits.

194. Other terms of a DPA that the Code of Practice suggests may be appropriate are: (a) prohibiting the company etc. from engaging in certain activities; (b)

financial reporting obligations; (c) putting in place a robust compliance and/or monitoring programme; and (d) co-operation with sector wide investigations.

195. Minor breaches of a DPA may be rectified without affecting the substance of the agreement. More serious breaches may result in the termination of the DPA and the reinstitution of criminal proceedings.

196. Opinions as to the effectiveness of DPAs are mixed, in that while agreements have been made with some high profile companies, subsequent trials of the individuals alleged to have been involved in the underlying criminality have typically foundered for one reason or another. However, there is no real dispute that at the level of corporate offending, DPAs have presented an opportunity to resolve alleged criminality to the mutual satisfaction of the prosecution, the company and the courts, without the delay and expense of a lengthy trial of the company.

197. An additional benefit has been the amount recouped by the Treasury by way of financial orders made under DPAs, which currently stands at around £2 billion[37]. [As an aside, were that money to flow back into the criminal justice system, many of the current resourcing problems could be solved at a stroke.]

[37] See the DPA tracker here Deferred Prosecution Agreement Tracker | Simmons & Simmons

A possible model for diversion

198. With that brief introduction, we consider that it would be possible to devise a model similar to that reflected in the schemes providing for DPAs and referral orders that could apply more widely in the criminal justice system.

199. Below is a rough outline of what such a model might look like. For the avoidance of doubt, this is presented for consideration of potential viability, rather than as a fully realised scheme. Our ultimate suggestion is that, if such a model were thought to have some merit, a focused consultation with key stakeholders could be conducted, along with some detailed research as to financial costs and benefits, including in relation to the potential impact on the Crown Court backlog.

Key features

Key components of a new Diversion Order could be:

1. Sign-off by a suitably senior Crown Prosecutor.

2. A requirement for legal advice and representation at any hearing related to such an order (perhaps modelled on the existing PTPH, for Crown Court cases).

3. A requirement for judicial approval.

4. Monitoring – which would be essential.

5. Community / restorative justice / rehabilitative requirements

6. The ability to deal with any breach with a further, or modified order (akin to extending the terms of a post-sentence community order).

7. The ability to prosecute for any breach (as there is, for example, for breaches of civil orders such as non-molestation orders, as well as community orders or suspended sentences of imprisonment).

8. The ability to prosecute for the underlying offence if the order is breached (as with DPAs).

Scope

Limitations on the use of such orders could include one or more of the below:

1. A requirement that the offender admit responsibility for the underlying offence (akin to a guilty plea). That could be reflected in an agreement which the offender would be required to sign.

2. That it only apply to first time offenders, or those with spent convictions.

3. That it only apply to offenders who would, if convicted, be unlikely to receive an immediate custodial sentence (on a straight reading of the Sentencing Council guidelines).

4. That it not apply in respect of (all or a specified class of) sexual or violent offences.

5. That the victim - if one can be identified – consents to the making of such an order.

Conditions

Conditions to comply with under a Diversion Order might be expected to include those relating to:

1. Compensation / other financial orders.
2. Education / vocational training.
3. Offender behaviour management (e.g. anger, driving issues).
4. Drug / alcohol rehabilitation.
5. Engagement with any identified victim or a relevant / representative community body (as with Referral Orders).

Structure for the consideration and making of such an order

Note: The below structure relates to Crown Court-level offending. A more streamlined approach could be adopted for summary offending, in order to avoid the paradox of offenders charged with ABH being offered diversionary options that were not available to, for example, those charged with common assault.

200. As to structure, this could be modelled on the existing criminal justice framework. So a defendant would be charged as usual, and some form of triaging for eligibility could take place in the magistrates court (*i.e.* Are they a first time offender? Is this an excluded offence?).

201. If eligible, or potentially eligible, they would be sent to the Crown Court for what might be called a Diversion Hearing.

202. Stage 1 of the process at the Crown Court would be akin to a PTPH, save that, crucially, rather than pleading Guilty (and acquiring a conviction) a defendant would simply indicate at that stage whether they were in principle prepared to agree that they had committed the offence. (That indication would be inadmissible as evidence of guilt in any future proceedings.) The prosecution would indicate whether they considered the case suitable for diversion, and would confirm the views of the victim, if identified. The judge would then express a preliminary view on the appropriateness of the course. The matter would be adjourned for a diversion report - something akin to a probation pre-sentence report – before Stage 2.

203. Stage 2 would be modelled on a sentencing hearing. The defendant would need to formally accept they had committed the offence, and perhaps sign an agreement to that effect upon the order being made. The requirements of any order derived from what might be terms a diversion report would be discussed with the assistance of legal representatives, and appropriate submissions made as to duration and terms. Finally, the order would be approved (or not, if for some reason it was considered not appropriate) by the court.

204. One benefit of this structure is that a fee scheme could easily be devised, modelled on AGFS for the Crown Court, with a fee for the stage 1 hearing in line with a fee for a guilty plea, and one for stage 2 in line with a fee for a sentence hearing.

Possible impact

205. While overall receipts to the Crown Court would not necessarily be reduced (unless and to the extent that such a scheme were to operate in the magistrates' court), trial receipts - which are the real cause of the Crown Court backlog - would be. That would save money in that part of the system, which would likely far outweigh the additional probation resources that would properly be required.

206. In line with research around referral order, there would likely be greater victim satisfaction as well as improved rehabilitation prospects for the offender, who (importantly - to distinguish this from an enhanced scheme of credit for a Guilty plea) would not receive a conviction.

207. As with referral orders, a diversion order could be deemed spent upon completion (albeit similarly disclosable, where certain checks were required). And there would be no expensive tweaks to the structure of the criminal justice system required (cf. intermediate courts).

Costs and benefits (financial)

208. Some rough modelling suggests that perhaps 10,000 cases could be removed from the Crown Court trials backlog through a model such as that outlined above, confined to first-time offenders or those with spent convictions, who are facing prosecution for non-sexual offences and who are not expected to receive a sentence of immediate custody.

209. While any new diversion order would come with costs – for example within the CPS at an early stage of the process, and more obviously within the probation service – the benefits in terms of savings in court time and costs, legal costs, and

delay to the retained Crown Court caseload would likely far outweigh these. Additionally, there are likely to be benefits in rehabilitation – which, seen logically, concerns the prevention of future crime and the creation of future victims – which itself would impact on the future burden on the criminal justice system.

210. While offender management in the community comes at a cost, to some extent that is a cost that would be required in many of these cases in any event, if post-conviction a defendant were sentenced to a community order or suspended sentence.

211. The experience of victims is also likely to be improved (see relevant referral order research) from the present situation where one may wait four years to give evidence in a criminal trial at the end of which a defendant, if convicted, receives a community order or suspended sentence whose terms could be mirrored in a diversion order.

212. In order to build and retain confidence in the system and to guard against arbitrariness, guidance / a code of practice would be required. This is not

suggested to be a fully realised model. But one on which further consultation might be sought.

New technology and Artificial intelligence

213. Many of the ideas examined by the Leveson review have been successfully implemented or encouraged. E.g. digital working, video conferencing, pre-recorded cross-examination.

214. However, it is also necessary to accept that these changes bring their own issues and in fact ironically have contributed to the backlog. This is not to suggest that they are of themselves inappropriate, rather to ensure that a holistic approach is taken to the effect of innovation.

Alignment of technology

215. Align the systems used between the different courts. For example, dispose of The Common Platform and simply have CCDCS for all stages of the process. This would limit the number of hearings that are needed simply because the cases have been sent incorrectly, the information has not been shared properly, the lack of information between systems. It would streamline the manner in which cases moved from the magistrates' court to the Crown Court and improve the management of these cases.

216. A member of the drafting group tells of a scenario where three youths, sent to the Crown Court for attempted murder subsequently pleaded guilty to a section 18 offence. The material was on CCDCS. The case was remitted to the youth court. A certificate for assigned counsel was granted for the Youth Court. All the CCDCS papers had to be re-uploaded to the Common Platform so that the District Judge could access them, However, counsel who are not granted access to the Common Platform were unable to access the same. Solicitors had to be the go-between to detail what items were uploaded and put before the court. The barristers had to work from the different CCDCS system and paper. It was unclear and took considerable time to determine that everyone had the same material and where it was to be found. Two defendants were subsequently sent to the Crown Court for sentence, at which stage solicitors had to re-upload everything prepared before the lower courts and put on the Common Platform, to CCDCS so that the Crown Court Judge could access the same. It was extremely inefficient and time consuming for all involved.

217. We urge live transcription to be utilised in all Crown courts. The DARTS recording system at present is cumbersome, it does not allow for easy checking of what was said in court. Further if any party requires a transcript of proceedings

they must apply to a transcription service and wait several weeks. We advocate the use of immediate transcription services to allow all parties to have a contemporaneous note of what is said in court.

218. This would assist judges in their summing up, saving time in court meaning they do not have to take a note themselves, it would ensure accuracy for all sides and when it comes to victims, they could receive copies of relevant parts of the transcript, such as sentencing remarks for example.

219. We caution against the use of Artificial intelligence in any form of decision making however it has scope for us in trial preparation.

220. AI could be used to redact documents which would save the police/CPS significant time.

221. AI could also prove useful in assisting with disclosure reviews. However, this would inevitably be a staged/ 'learned' process which would require significant human review at least initially. Significant thought would have to be

given to how this could be employed effectively to ensure the fairness of such processes.

222. AI could also mean that transcripts are prepared more efficiently for earlier in proceedings. See above comments regarding evidence available at PTPH.

223. AI could assist both sides in the presentation of material at trial, not least telephone data and messaging, through the swift preparation of tables and schedules (detailing contact between parties, the level of contact, looking for patterns in the same for example).

224. We do consider that there must be scope to make our system more efficient through the use of advanced technologies and AI. We feel that given the tight timescales of this response, how AI can help the CJS should be given more considered thought.

225. We advocate that the Digital Case System be better utilised, the Comments sidebar should be grouped, with comment sections for Judges, Advocates, and other parties with access. All comments should run in chronological order to ensure clarity.

226. At present Judges in different courts record their orders in different ways, some use the side bar, others the Memo system, whilst others rely on the court log being uploaded. There needs to be uniformity in approach to allow any new Judge coming into a case to quickly assimilate the history – thus cutting down on preparation time for Judges.

Duty solicitor presence in prisons

227. At present, individuals are appearing at the Crown Court without representation, in circumstances where they would want representation, and have not been able to obtain it. Arranging representation through the court is a cumbersome process that introduces further delay. Consideration could be given to including in the legal aid contract a requirement that solicitors provide some attendance at a local prison at structured times to be able to consult/offer to represent individual who had hitherto not been able to secure representation. The attendance would have to be closely arranged and supervised to ensure that only those who did not have a representation order in place could see the duty solicitor. Ideally, the opportunity to see the duty solicitor in prison would also be afforded

prior to an individual's first appearance in the Crown Court, to enable meaningful instructions to be taken if necessary.

Reassessing Court suitability

228. Long term, Court buildings that are in prime locations (such as Minshull Street, Crown Square and the Magistrates' Court in Manchester) could be sold and large purpose-built court centres built out of town in low-cost land areas. This would mean that prison drop off would be decreased to one centre as opposed to two/ three in the area thus increasing efficiency. Increased numbers of court rooms could be built as required, with modern facilities (the technical problems in Court lead to significant numbers of delays) and larger jury areas, thus allowing for more trials to take place on any given day. Parking facilities would benefit all involved in the Court processes. It is understood that the purpose-built courts would inevitably have to be started and ready prior to the older buildings being replaced, but the long-term benefits, the reduction on costs for all involved in the system and the impact upon Court efficiency would inevitably be considerable.

Two court centres

229. Smaller court centres struggle with managing their short work, as well as dealing with trials. At a two court centre, if both courts have trials, these are inevitably disrupted with other matters being listed around them. Even if a court

has two sentence hearings listed before a trial this is at the very minimum 30 mins sitting on the trial lost. Over the course of one week this equates to two and a half hours at a bare minimum, which is half a court sitting day. This impacts of time estimates for listing of trials, effective use of jurors, and increases waiting time for witnesses and defendants.

230. At present CVP is used to enable participants to dial in remotely. This system was introduced during the pandemic and has since become widely used across the criminal courts. It has its issues, particularly in older court buildings with unreliable Wi-Fi, but when it works it can be incredibly efficient.

231. However, we would add the following in respect of CVP. Where courts once used to list quite a number of cases per day, in practice the number is much more limited due to the practicalities at the prison. Cases now often receive a time marking leading to delays in the court day waiting for the prison to link in. Conferences with counsel are often unsatisfactory and unproductive and where once progress could be made through discussion at court (and where appropriate asking to be put down the list to allow for discussion between the parties), this is rarely adopted due to the practical problems. If each courtroom had the CVP link available for a full day to a particular prison this could mean cases could be called

on as they are ready, as used to happen when all parties were at court, there could be a separate "virtual" robing room to allow all parties to speak during the court day.

232. At present CVP is only used in an existing court room, we see no reason why it could not be used in judge's chambers, or other rooms at court. In some instances, judges could even work from home, this could assist with some of the recruitment issues that have arisen.

233. In small court centres there are potentially two options

i) Create virtual court rooms. If a virtual court could be used for all short matters, other than sentences involving custody where the defendant is on bail, this would free up the court rooms for the trials, those cases that need a physical court room. This would allow them to be completed more quickly, whilst the short matters are dealt with by all parties attending remotely.

ii) List trials Monday to Thursday only so all short matters are dealt with in one day, namely Friday, minimising disruption for all other court users such as jurors, witnesses and defendants.

S28 hearings

234. Section 28 has been seen by some as a silver bullet to ensure that vulnerable complainants, especially child complainants, were dealt with at the earliest possible stage of the trial. In fact, the over-reliance on section 28 to include many adult complainants is itself causing delays to the whole system. In order to accommodate section 28 hearings, Counsel (and judge) usually mid-trial are expected to conduct the hearing. Experience shows that, in addition to the Ground Rules Hearing (usually on an earlier court occasion), section 28 hearings can take most of a morning. The judges conducting them are by and large the same judges trying 4-5 day Class 2 trials already. There can be a number of section 28s throughout the week during the course of a Class 2 trial either before the judge or involving trial Counsel who need to be released. The knock-on effect is that a 4/5 day trial becomes a 5/6 day trial meaning that other trials are not then reached frequently then delaying other Class 2 cases. Although the complainant has given evidence, the anxiety as to the outcome is also prolonged. The anxiety for the defendant is of course also extended. There are also huge pressures on counsel who conduct these cases as well as conducting trials. The use of section 28s needs to be more focussed on young complainants or those who are particularly vulnerable to allow for smoother running of current Class 2 cases.

235. Another serious example of unintended consequences arises from the Leveson Review that laudably mandated that the charge must be the "right charge" from the beginning. In practice this means that in many bail cases, especially Class 2 cases, the CPS now as a matter of policy will not charge a defendant until the police have submitted a full file. What has developed over the years since 2015 is that whilst the case is therefore at an advanced stage of readiness for trial when it arrives at court, the case may already be 18-24 months old because of the length of time it has taken to satisfy the CPS that they have all the information. This is particularly true in sex cases where it is common to see extensive delays. Ironically the case is then listed for a trial up to two years later, time that could have been used to carry out some of the enquiries that the CPS insist must be carried out pre-charge. It makes no sense to allow a good idea to essentially foster further delay through rigid application.

Blitz sentence sittings

236. There are presently 12,000 committals for sentence awaiting a hearing date.[38] Birmingham Crown court for example has 16 physical court rooms. If each

[38] 11, 909 as of September 2024. Criminal court statistics quarterly: July to September 2024 - GOV.UK

court sat and dealt with 10 sentences in a day 160 cases would be removed from the backlog in Birmingham alone.

237. At present 20% of courts are not being used on a daily basis, if these 20% courts reopened purely for committals for sentence the backlog could be cleared within months.

238. Many of these cases could be heard with parties sitting remotely, defendants linking in from prison, advocates appearing from home.

239. The NHS has embraced weekend working in a bid to "sweat the assets". We do not feel such a proposal would work at the Bar. Judges and advocates are unlikely to be willing to work for normal pay and thus an enhanced fee would be required- which we foresee the Government being unwilling to pay.

240. There may also be diversity issues, with pupils and those with caring responsibilities being forced to work weekends, this would only deter talented people from entering the criminal Bar at a time when there is already a recruitment crisis.

241. Further there must be recognition that all criminal barristers work every weekend already, they are preparing for the cases in the following week and beyond. To add further to their burden would lead to further attrition rates.

242. Therefore, whilst on the face of it, weekend sittings may seem attractive we urge the full use of courtrooms currently shut during the week.

Credit for plea

243. The Bar Council responded to the Government call for sentencing submissions. In that report we advocated the following:

"Credit for pleas of guilty

1. *From 2007, the Sentencing Guidelines Council had a Definitive Guideline in place on 'Reduction in Sentence for a Guilty Plea' ['the 2007 Guidelines'].*[39] *That stated that maximum credit for a plea of guilty (of a reduction of one-third) was for those cases where there had been a plea of guilty 'at the first reasonable opportunity'. This point was stated 'to vary from case to case'. Annex 1 gave some examples of how the assessment of 'first*

[39] Available at https://www.sentencingcouncil.org.uk/wp-content/uploads/Archived-SGC-Reduction-in-sentence-for-a-guilty-plea-2007.pdf

reasonable opportunity' could legitimately vary: it might be at the police station in interview, the magistrates' court hearing or at the first hearing in the crown court. The Court was obliged to consider whether the defendant (and their legal advisors) had sufficient information about the allegations.

2. *In 2015, the Leveson Review of Efficiency in Criminal Proceedings*[40] *['the Leveson Review']*[41]*, described and promulgated the 'National Early Guilty Plea Scheme'. As set out at Section 7.1 and Annex E of the Leveson Review:*

   "the rationale behind the scheme has been to create a national, consistent process in the Crown Court, eliciting guilty pleas in an efficient manner by producing the most effective opportunities for those who are guilty to plead at the earliest stage. The scheme is also designed to reduce the number of hearings per case across all Crown Court cases, which is not limited to those in which a guilty plea is entered before trial."

3. A system of reductions in sentence for guilty pleas is essential in a criminal justice system which values efficiency. It is important that it is widely understood that

[40] Available at https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf

[41] Not to be confused with the more recent and ongoing Independent Review of the Criminal Courts, announced on 12 December 2024, which Sir Brian Leveson has been appointed to lead, see https://www.gov.uk/guidance/independent-review-of-the-criminal-courts

such a reduction is made on a transactional basis to reflect the benefits to the system afforded by the defendant's decision to waive their right to a trial.

4. Those benefits are financial (in the saving of tremendous cost to the system involved in the investigation, prosecution, courts, prison service), the avoidance of requiring witnesses to give evidence and to provide victims and the public with a swifter resolution to the case. Those are significant benefits, especially at a time when public finances are stretched greater than ever before, and the time between arrest, charge, first appearance and trial is greater than ever before.

5. The fact that guilty pleas are transactional is reflected in the stepped reductions in sentence contingent upon the timing of the guilty plea. It is therefore important that the regime maximises the incentive to those who are guilty to plead guilty and to do so at the earliest opportunity.

6. *Complementing the procedural reforms, the Sentencing Council produced an new Definitive Guideline again on 'Reduction in Sentence for a Guilty Plea' in 2017 ['the 2017 Guidelines'].*[42] *Those guidelines limited the reduction in sentence of one-third solely to the first hearing where a plea (or indication of plea) was sought and recorded by the Court (namely, as Appendices 1-3 to the 2017 Guidelines made clear, the first appearance at the*

[42] Available at https://www.sentencingcouncil.org.uk/wp-content/uploads/Archived-Reduction-in-sentence-for-a-guilty-plea-Definitive-guideline.pdf

Magistrates' Court, regardless of whether the case was triable summarily, either-way or on indictment). The rationale for that structure was informed, plainly, by the Leveson Review and the desire to have early guilty pleas at the earliest possible stage: in the magistrates' courts. The reason for that is simple – committals to the Crown Court for sentence attract ***much*** *smaller fees and associated costs than cases sent to the Crown Court for trial, even if those sent for trial in fact plead guilty shortly thereafter, even without a trial date ever being set.*[43]

7. *Many judges nevertheless were following the spirit of the old guidelines, and the previously accepted norm that it was important that the defendant (and their representatives, if any) had been provided with sufficient information so as to allow for an informed decision about plea to be made.*

8. *In the case of Plaku*[44]*, the Court of Appeal reviewed the 2017 Guidelines and held that, in normal circumstances, only unequivocal indications of guilty at the Magistrates' Court stage in respect of either-way or indictable-only offences would attract one-third credit. The*

[43] For example only, the current defence advocate's fee under AGFS13 for conducting the sentence in case committed to the Crown Court for sentence is £175 (all cases). A guilty plea in the Crown Court (following the case being sent for trial) for, say, a fraud of between £100,000 and £1,000,000 would attract a fee of £1,645. Higher fees would be paid if the case was a 'crack', i.e. a plea of guilty after a not guilty plea was entered.

[44] [2021] EWCA Crim 568

Court was of the view that there would be very few occasions where a defendant who had not indicated a plea at the first stage (or did not come within one of the exceptions in the guidelines) would obtain more than a one-quarter reduction. It followed that even unequivocal indications of guilt entered very shortly after Magistrates' Court (for example by letter) would not obtain the maximum discount. Additionally, it would not normally be correct for any Crown Court judge to be able to order that 'full credit' (in the sense of one-third) be preserved as a result of any adjournment of arraignment.

9. *Plaku has effectively placed the rules on credit in concrete, and it is clear that is in a way that does not actually encourage suitable early pleas.*

10. *It is our experience, as advocates actually carrying out the task of reading papers and advising clients every day in the criminal courts, that the laudable aims of the Leveson Review and National Early Guilty Plea Scheme were based on flawed assumptions. Firstly, that proper rates of remuneration would be made available, and maintained in line with inflation, to ensure that work was done early to identify and properly advise those who should be pleading guilty. Secondly, that suitable amounts of information would be made available to defendants and their advisors to enable informed pleas.*[45]

[45] It is simply not realistic to state in response, as is sometimes done, that 'defendants know whether they are guilty'. That trite observation ignores, just for example (i) defendants who do not even remember

11. *Additionally, two more factors have increased since Leveson to the detriment of the scheme as currently constructed. Due to pressures on prisons, opportunities for conferences of useful length with legal advisors are too difficult to come by, and so defendants are not being advised properly – or sometimes not seen at all – during the crucial early stages of a case. Secondly, with delays for on-bail trials being what they are (up to or even over 2 years from the Plea and Trial Preparation Hearing (PTPH), a number of defendants are in effect serving any sentence they might receive by means of qualifying electronic curfews whilst on bail, and for all defendants the amount of credit at stake diminishes by a mere 15% over the course of what can now be a very lengthy period (from 25% at PTPH to 10% at day of trial). Both these factors significantly reduce the incentive on guilty people to plead guilty, in our experience.*

12. *Although reliable data is not easy to come by, it would appear that since 2015, the rate of guilty pleas has remained about the same, at around two-thirds of all cases (with a blip*

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their actions due to intoxication or mental health (ii) defendants who may have a defence that they cannot assess entirely properly themselves because it involves external considerations such as reasonableness (e.g. self-defence, modern slavery etc). In such cases, any competent advisor would want to see all materially relevant evidence before advising properly on plea, not simply the investigating police officer's own summary of the facts (which is normally all that is provided nowadays by way of initial details of the prosecution case).

during the pandemic), but the level of those guilty pleas which are entered early has fallen from nearly 50% to just over 40%.[46]

13. *It is accordingly our view that the Leveson-related reforms in credit for guilty pleas have not worked and are certainly not fit for purpose in dealing with the twin pressures caused by the increased criminal courts back-log and prison populations.*

14. ***Recommendation**: To reverse this, we suggest that*

    a. *the fee structure is revisited (for advocates and litigators) to ensure that they are remunerated properly*[47] *and*

    b. *the courts return to the pre-Plaku and pre-2017 situation where full credit can be made available, subject to judicial discretion, at the first hearing in the Crown Court (and if appropriate preserved whilst defendants are advised or receive necessary information).*

[46] See https://criminal-justice-delivery-data-dashboards.justice.gov.uk/quality-justice/courts

[47] To be clear, this does **not** mean a reduction in fee, as any reduction in fees will simply exacerbate the number of suitably qualified barristers and solicitors leaving criminal work. We are talking about an increase to 'level-up' the fees and remove potentially unhelpful remunerative structures or incentives.

15. *We believe, based on our direct experience, that the potential loss of 33% at the PTPH, having received full advice from properly briefed lawyers, will focus minds much more than 25% currently does.*

16. *Such a change can be easily accommodated by a change in the relevant Sentence Guidelines (as Plaku only applies to the current wording), and the Sentencing Council could be invited to look at the matter forthwith, taking into account a suitably prestigious review on the topic, as they did with the Leveson Review. Alternatively, or in the meantime, the Attorney General could make it clear in writing that the Law Officers would not seek to review under the Unduly Lenient Sentences scheme any case on the grounds that the sentencing judge afforded 33% credit for a plea of guilty entered at the PTPH stage. Ultimately, Parliament could, relatively swiftly, legislate to impose a scheme itself*[48] *or amend the requirement on sentencing judges to follow sentencing guidelines*[49] *to exclude this particular aspect of the relevant guideline.*

17. ***Recommendation****: the current regime should be tweaked to maximise the incentive to guilty offenders to plead guilty and avoid a trial and a Newton hearing while ensuring that*

[48] E.g. by amending s.73 Sentencing Act 2020
[49] S.120 Coroners and Justice Act 2009

sentences still result in effective punishment. This can be done by adopting the following measures:

a. *One third credit at the PTPH / first hearing in the Crown Court made available at the subject of Judicial discretion.*

b. *A steeper decline in the reduction following the first appearance in the Crown Court (to incentivise earlier pleas, by focussing the defence's minds). There should also be less discretion given to the court in determining the reduction between the first appearance, PTPH and day of trial:*

    i. *One-third at the plea hearing (first appearance in the magistrates' court or first Crown Court hearing subject to judicial discretion)*

    ii. *20% up to and including the Stage 2 date (where Stage 1 is complied with)*

    iii. *10% up to (but not including) the day of trial*

    iv. *5% thereafter*

18. *A separate quantified reduction for full admissions made in police interview/on arrest where followed by an early guilty plea (perhaps and additional 10%) The costs saved by not having to prepare the matter for trial would be significant.*

19. *A more formalised approach to reductions for remorse (which shows insight into offending, which is relevant to risk and recidivism)*

    a. *A less generous reduction in sentence where a guilty plea is entered but a Newton hearing follows where the issue is resolved in favour of the prosecution case (to further incentivise realistic bases of plea).*

20. *An additional area of wasted resource is a failure to notify the court and prosecution where a guilty plea will be entered. Engagement between the parties is crucial at an early stage and throughout. Currently, there are often submissions as to whether an indication of a guilty plea was unequivocal (such that it should attract the guilty plea credit from that point in time). We suggest a new Criminal Procedural Rule form to standardise the way in which the defence inform the court and prosecution that there will be a guilty plea. "*

244. The recommendations in respect of credit are just as important in this review. As a short term, dramatic measure, with a view to reducing the backlog, credit up to one third could be offered to any defendant who pleads guilty where

their case has not reached trial. This would incentivise further guilty pleas and reduce the backlog.

245. We also repeat our recommendations in respect of Goodyear indications[50]. As with all matters pertaining to the Criminal Justice System, there needs to be a joined up approach, thus if the Sentencing Review allows for judges to have more discretion in giving credit or assisting in Good year indications this could feed into the overall efficiency review.

Removal of automatic right to appeal to Crown court

246. At present anyone convicted of any offence, or sentenced in the magistrates court, has an automatic right of appeal. This is in contrast with the Crown Court where a defendant has to apply for leave to appeal, and then only goes to the full court with leave of the Single Judge, or on a renewed application to the full bench.

247. It has been suggested that this be implemented into the Crown Court with appeals from the Magistrates court. A single Crown Court judge can review an appeal and determine whether to grant leave or not.

[50] Bar Council (January 2025), Independent Review of Sentencing Submission

248. We refer to our paragraphs 50 onwards about the rationale behind this, as a safeguard against rogue decision making.

249. We also note that the magistrates court is not a court of record, and thus if this measure were ever considered to be introduced, we advise that a DARTS recording system is put in place in every Magistrates court so that there is an accurate record of what took place in the court below.

The court estate

250. Following a programme of court closures across England and Wales during the period of austerity, the limited court estate that remains is in a parlous state. Many court sitting days are lost simply because the court estate is not fit for purpose. Nottingham Crown Court currently has a leaking roof that is being fixed, but the leak means two courts have regularly been out of use. Harrow Crown Court closed in 2023 due to structural issues, a 6-court centre that will remain closed until 2026. Isleworth Crown Court was closed for a week as the boiler broke and the cells were too cold to use. If the backlog is to be cleared all courts must be available to sit, this means there must be investment in the court estate to ensure maximum sitting capacity.

Location of prisons

251. There are increasing numbers of young children coming before the crown courts, some remanded for offences such as murder. There is a dearth of Secure Remand Units for such children, meaning the court day is often delayed as prisoners are transported many miles to court.

252. There is no female prison in London, the Central Criminal Court doubles the time estimate for any trial for any case with a female defendant in custody owing to how often they are produced late.

253. A solution of having local prisons for local courts, and penalties for those producing defendants late, would remove considerable swathes of the backlog.

Less busy court centres taking busier centres work

254. It should be explored whether the system would benefit if centres where there was no backlog took some of the cases from court centres where the backlog is particularly acute. We invite this because there are some court centres that are so busy this is increasing the inefficiency akin to an engine that is overheating.

255. Thought would have to be given to enabling defendants, complainants and witnesses of low means to be able to travel to court centres out of area.

Anecdotally, some defendants struggle financially to get to their closest court centres on time (for example in Bolton, bus passes can only now be used post-9.30am in the area, which means that older/ disabled defendants are struggling to get to court for 10am hearings, and often 10.30am hearings).

Sitting days

256. If the backlog is truly to be reduced, then there must be no cap on sitting days. All available judges, including judges who have retired, but are below the age of 75, should be allowed to sit as many days as they are available.

257. On a daily basis 20% of court rooms lie empty- albeit they are often still lit and heated. The court estate must be utilised to full capacity.

Reform fee structure

258. We advise that the review looks at the Criminal Legal Aid Review Board review. At present fees, in particularly litigator's fees are far higher if a case is deemed to be a trial, this includes if a case pleads on the second day of what is deemed to be a trial. The difference for high page count cases can be significant, as much as £80,000 difference between a defendant pleading guilty at any point before trial, including on day of trial, compared with pleading once the trial has been deemed effective.

259. One can understand how this may produce a perverse incentive to bring matters to an "effective" trial.

260. The work done in reading and preparing the case early, and efficiently, should be recognised. The fee structure needs to be considered to ensure proper payment at an early stage for guilty pleas, avoiding the cliff edge change at trial stage.

261. One option would be to increase the solicitor fee for a 'crack' where there has been a meaningful conference with the defendant. Firstly, this would a fairer way to reflect that work had been done on the case compared to if no work has been done on the case and it just cracks at an interlocutory hearing. Secondly, this incentivises firms who are not in the practice of having detailed conferences with defendants between PTPH and trial, to do so. A significant number of cases crack on the first day of trial. This is often because this is the first time a defendant has had a prolonged amount of time with a lawyer to be advised on the evidence in detail.

262. There could be a specific provision dealing with 'big cases' i.e. when a case due to page count, usually 10,000 pages gets into the top bracket of payment. We recognise the financial pressure criminal defence solicitors are working under. Whether a few 'big cases' run as trials or as guilty pleas can make a big difference to the bottom line of a small criminal firm. At the same time, it is these large cases cracking on day 3 that lead to inefficiency in the system. The fee for solicitors in these 'big cases' could be more enhanced if there is a 'crack' following a conference.

Fast track access for professionals

263. A simple, but effective change would be to roll out the Fast track access procedure to professional court users such as police officer, and solicitors, ensuring they have early access to a court building.

264. By way of example, Birmingham Crown Court often has as many as 200 jurors arriving at court at 9am on a Monday morning. Any professional user who does not have the Bar Council ID has to queue in that line. It can take up to 2 hours to process through this queue. Offering these professionals a 'fast pass' would speed up conferences and court hearings.

End third strike sentence

265. To incentivise guilty pleas, we advocate the removal of the mandatory minimum term for third strike offences. In reality anyone convicted for the third time of the same offence will face a term longer than the mandatory minimum, yet knowing that they will face a pre-determined sentence can deter some offenders from pleading guilty, on the basis they have "nothing to lose". Remove this provision and there may be an increase in guilty pleas for such offenders as they will feel a judge is considering their sentence with unfettered hands.

Prosecuting Counsel and Crown Prosecution Service

266. Whilst it is understood that the CPS needs to keep control of decision making, the current system of prosecution counsel needing to locate a lawyer to speak to in order to get approval of a guilty plea at court which would remove the necessity of a trial can be time consuming and cause delays. Due to the workload of the Crown Prosecution Service, counsel prosecuting a case at court should have a more in-depth knowledge of the case and usually is able to obtain the views of the officer in the case at court, together with the victim's views. In a case where

prosecution counsel has obtained necessary positive indications from the officer and victim, we consider that the CPS could develop a protocol that contains a presumption that the guilty plea will be accepted by the CPS. This might expand the number of CPS staff who can be authorised to give approval and so save time at court. We also consider that the Judge can have a more active role in "plea bargains". Currently, the independence of the Judge from the decision making is such that the judge is expected not to express a view as to whether a case can be resolved. Judges have expertise and experience and an overview of crimes in their area of sitting, such that they could contribute more actively to obtain a just outcome for a case.

Unduly Lenient Sentences

267. At present anyone can ask that a case be referred to be considered as being Unduly Lenient. In every case where that occurs a CPS reviewing lawyer must prepare the case for counsel, advise, instruct counsel, and counsel must prepare a response. This all takes at least 20 hours. At a time when prosecution resources are stretched this is placing an unnecessary burden on the CPS and counsel.

268. We propose that only those with a connection to a case be allowed to refer a case under the unduly lenient scheme, this would mean any complainant, and any blood relative of a deceased in a case involving death.

Conclusion

269. We have used our collective experience of the criminal court system to offer constructive ideas for genuine reform. We recognise some of these suggestions may require an initial outlay, but the long-term savings would far outstrip the initial cost.

270. Citizens deserve a Criminal Justice System that is fit for purpose. Without confidence in the CJS the rule of law breaks down. The CJS has not been prioritised by any Government for decades. We see this review as an opportunity to start afresh, with renewed confidence and hope, to create a system that will deliver justice now, and for the future.

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Annex 1

Indictable offences with a maximum sentence of two years or less

(as listed in Thomas's Sentencing Referencer)

[Offences in *italics* are, in the experience of the criminal practitioners on the Bar Council, rarely if ever charged, normally due either to (i) the rare nature of the underlying criminality or (ii) other statutory offences being available with higher maxima or fewer elements required to be proved]

S.1 Assaults on Emergency Workers (Offences) Act 2018 (assaulting emergency worker)

S.25 Children and Young Persons Act 1933 (procuring child to go abroad by false representation)

S.1 Computer Misuse Act 1990 (securing unauthorised access)

S.3A Computer Misuse Act 1990 (providing tools for unauthorised access)

S.107(2A) Copyright Designs and Patents Act 1988 (making or possessing article designed for copying particular copyright work)

S.29(1)(c) Crime and Disorder Act 1998 (racially aggravated criminal damage)

S.31(1(a) Crime and Disorder Act 1998 (racially aggravated causing fear of violence)

S.31(1)(b) Crime and Disorder Act 1988 (racially aggravated intentional harassment)

S.32(1)(a) Crime and Disorder Act 1988 (racially aggravated harassment)

S.36(1) Criminal Justice Act 1961 (making false statement to procure passport)

S.5(2) Forgery and Counterfeiting Act 1981 (custody or control of false instrument, no intent)

S.5(4) Forgery and Counterfeiting Act 1981 (making machine etc., no intent)

S.6 Identity Documents Act 2010 (possession of false identity document, no intent)

S.24A Immigration Act 1971 (obtaining admission by deception)

S.1 Incitement to Disaffection Act 1934 (seducing member of forces from duty)

S.1 Indecent Displays (Control) Act 1981 (displaying indecent matter)

S.1 Knives Act 1997 (marketing combat knife)

S.2 Knives Act 1997 (publishing material)

S.126 Mental Health Act 1983 (possession of false document)

S.128 Mental Health Act 1983 (assisting absconded patient)

S.58 Merchant Shipping Act 1995 (endangering ship)

S.5(2) Misuse of Drugs Act 1971 (possessing Class C drugs)

S.11(2) Misuse of Drugs Act 1971 (contravention of directions)

S.17(4) Misuse of Drugs Act 1971 (giving false information)

S.18 Misuse of Drugs Act 1971 (contravention of regulations)

S.23 Misuse of Drugs Act 1971 (obstructing search)

S.34 Offences Against the Person Act 1861 (endangering rail passenger by neglect)

S.35 Offences Against the Person Act 1861 (causing grievous bodily harm by wanton driving)

S.36 Offences Against the Person Act 1861 (obstructing minister of religion)

S.38 Offences Against the Person Act 1861 (assault with intent to resist arrest)

S.60 Offences Against the Person Act 1861 (concealment of birth)

S.1 Official Secrets Act 1920 (gaining admission to restricted place/retaining document)

S.3 Official Secrets Act 1920 (interfering with police officer)

S.1 Official Secrets Act 1989 (disclosing information)

Ss.3-6 Official Secrets Act 1989 (unauthorised disclosure)

S.1A Perjury Act 1911 (false statement for foreign proceeding)

S.40C Prison Act 1962 (bringing etc. list B article into prison)

S.40CB Prison Act 1962 (throwing article into prison)

S.40D Prison Act 1962 (transmitting recordings in and out of prison)

S.2 Public Order Act 1936 (unlawful organisation)

S.60 Representation of the People Act 1983 (personation)

S.2 Road Traffic Act 1988 (dangerous driving, no death or serious injury caused)

S.64 Sexual Offences Act 2003 (sexual penetration of adult relative)

S.65 Sexual Offences Act 2003 (consenting to sexual penetration by adult relative)

S.66 Sexual Offences Act 2003 (intentional exposure)

S.67 Sexual Offences Act 2003 (observing private act)

S.69 Sexual Offences Act 2003 (sexual act with animal)

S.70 Sexual Offences Act 2003 (sexual penetration of corpse)

S.12A Theft Act 1968 (aggravated vehicle taking not resulting in death)

S.3 Theft Act 1978 (making off without payment)

NB: S.14 Contempt of Court Act 1981 (contempt of superior court) and S.6 Bail Act 1976 (failing to surrender) also have a maximum penalty of two years but should in any event normally be dealt with by the court to which the offending relates.

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