CLSA Submission to the Independent Review of the Criminal Courts

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1. Executive Summary

1.1. The CLSA have considered carefully the initial proposals being considered by the Review. We are concerned that the Review may lead to wholesale and profound constitutional changes and has allowed insufficient time for stakeholders and the public to make their views known given the magnitude of some of the concepts being proposed such as an erosion of the right to a jury trial.

1.2. Having considered the statistical background we believe the case is not made out for the investment needed to constitute an Intermediate Court, and instead what is needed is further investment so that the Crown Court in particular can process cases at a higher level than it currently does, with a 'surge' needed to above 2008 and 2015 levels of disposals. There is an ongoing case for continuing, if not extending, the use of Nightingale Courts. The volume of receipts in the Crown Court has not grown to unprecedented levels, with the issue more one of capacity. We ask, rhetorically, how many new Crown Courts (as in additional, not amalgamated Courts) have been opened nationally in the last 10 years (excluding 'Nightingale Courts) ?

1.3. There is some scope to reclassify some offences, such as assaults against emergency workers, and racially aggravated assaults.

1.4. Magistrates Court sentencing powers have recently been increased (on the 18th November 2024)[1], with the impact on disposals, outcomes and justice yet to be fully assessed. Any consideration of further changes would be wholly premature.

1.5. The current system of allocation for either-way-offences and committal for sentence offers no incentive to defendants to accept summary trial. Restricting committals for sentence to cases which were truly exceptional, or limiting the sentencing power of the Crown Court for a case committed for sentence for example would provide such an incentive and we believe should be examined and consulted upon.

1.6. We further believe there are other measures open to the Government to help tackle the backlog of case, many of which remain a result of the pandemic. We annex to this document one such series of proposals we have previously made, involving holistic changes in Crown Court process and procedure, listing patterns and fee schemes to encourage those who were guilty to plead guilty earlier.

[1] Sentencing Act 2020 (Magistrates' Court Sentencing Powers) (Amendment) Regulations 2024

2. Background to Review

2.1. On 12th December 2024 the Government announced the Independent Review of the Criminal Courts ('the Review') led by Sir Brian Leveson, who said:

> *"I am pleased to contribute to the important task of seeking to address the very real difficulties facing the criminal justice system. A challenge of this scale requires innovative solutions and I look forward to making my recommendations to the Lord Chancellor in due course."*

2.2. In the announcement it was said that the Crown Court caseload has risen substantially over recent years for complex reasons including the pandemic and an increase in the number of cases coming before the courts. 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. Doing so will require bold thinking on the most appropriate and proportionate ways of dealing with cases before the courts, as well as increases in the efficiency of our criminal courts.

2.3. Some of these issues have been considered previously, both in Lord Justice Auld's 2001 review of the criminal courts and Sir Brian Leveson's 2015 report Efficiency in Criminal Proceedings. Most recommendations from the latter were implemented by 2016, but in light of increasing caseloads and the changed context since the pandemic, it is right that these issues are examined afresh.

2.4. The Lord Chancellor has therefore commissioned an independent review of the criminal courts which will consider the merits of longer-term reform and, with agreement of the Lady Chief Justice, review the efficiency and timeliness of processes (including those of partner agencies) in cases through charge to conviction/acquittal.

2.5. The purpose of this review is to produce options and recommendations for a) how the criminal courts could be reformed to ensure cases are dealt with proportionately, in light of the current pressures on the Crown Court; and b) how they could operate as efficiently as possible. This should include consideration of the processes of partner agencies where they impact the criminal courts. The review should lead to a more efficient criminal court system and improved timeliness for victims, witnesses and defendants, without jeopardising the requirement for a fair trial for all involved.

2.6. The review is to consider:

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. This could include:

i) The reclassification of offences from triable-either-way to summary only.

ii) Consideration of magistrates' sentencing powers.

iii) The introduction of an Intermediate Court.

iv) Any other structural changes to the courts or changes to mode of trial that will ensure the most proportionate use of resource.

In relation to these reform options the review should consider:

i) The impacts any changes could have on how demand flows through the criminal courts.

ii) The potential impacts of any structural changes on the fairness of proceedings, particularly the impact on court users such as witnesses and defendants, and how these could be mitigated where necessary.

iii) The necessary enabling processes to ensure the most effective implementation of the options, for example the allocations process.

iv) The implications for appeal routes of the various options.

v) Necessary changes to thresholds and mode of trial within relevant offence types.

vi) The sequencing of any changes – for example, whether they should be brought in via a phased approach.

b) The efficiency and timeliness of processes through charge to conviction/acquittal. This should include:

i) Consideration of how processes through charge to conviction/acquittal could be improved to maximise efficiency. This includes looking at the processes of the courts but also those of partner agencies in the criminal justice system which affect the efficiency of the criminal courts.

ii) 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.

iii) Consideration of previous recommendations within the current context of challenges facing the criminal courts, and how these might be updated or built upon.

iv) Consideration of how new technologies, including Artificial Intelligence, could be used to improve the criminal courts.

2.7. In addition to the above, the review should make any other recommendations to tackle the outstanding caseload that emerge as a result of reviewing the options and evidence. The review should consider what can be learned from best practice in other jurisdictions and international comparators.

2.8. The review should not consider wider cross-system efficiencies where they do not relate to the efficiency of the courts. Although, as outlined above, the review will consider processes of partner agencies which affect the efficiency of the criminal courts.

2.9. It is important that this review complements other work that is currently ongoing which aims to improve the criminal courts. For example, the work of the Criminal Courts Improvement Group will continue, focusing on short term, operational improvements that can continue to be made whilst the independent review is underway.

2.10. As part of the review, relevant partners across the Criminal Justice System will be consulted and engaged to ensure any subsequent recommendations are both operationally viable and consider other ongoing or planned work to improve efficiency.

2.11. The review will respect the different roles and responsibilities of the executive and the independent judiciary in relation to the criminal courts.

2.12. The options and recommendations provided should take account of the likely operational and financial context at the time that they may be considered and implemented.

2.13. Engagement

2.14. Sir Brian Leveson welcomed views from all who have an interest in this area on any aspect of the Review, as set out in the terms of reference. We would encourage those responding to the call for evidence to be ambitious, and we welcome any ideas which challenge current thinking, are innovative, or which spotlight best practice and how it can be extended.

2.15. Submissions to the Review were requested by the **31st January 2025.**

2.16. This document sets out the position of the Criminal Law Solicitors Association (;CLSA'). The CLSA was formed in 1990 and is the representative body for criminal law solicitors. It runs events and training for criminal lawyers throughout England and Wales. It has particular expertise and insight into the difficulties faced by the criminal justice system in England and Wales.

2.17. We wish to start by saying given the scope of the Review and the possibility of a serious erosion on the 800-year old constitutional right to trial

by jury, we are surprised and disappointed by the short period in which the Review is gathering evidence, which will no doubt severely curtail the number and detail of responses.

3. Trial by Jury

3.1. The Review intends to look at both Magistrates Court sentencing powers and a potential ‘Intermediate Court’, the latter of which has the potential to significantly reduce the number (and no doubt the right to,) jury trials. It is, therefore, important to consider the Constitutional context as it relates to the right to a fair trial and the Rule of Law.

3.2. The historical background is also important because it shows not only how the right to jury trials has evolved, but also the development of the Rule of Law.

3.3. In 1215, Pope Innocent III summoned bishops from across the Catholic Church to meet at the papal headquarters, the Lateran Palace in Rome, to debate several reform proposals. Among the more laudable and lasting items on Innocent’s agenda was the abolition of the now-infamous adjudicatory procedure known as trial by ordeal.

3.4. Before the Fourth Lateran Council, England and many other Catholic countries had for centuries determined a defendant’s culpability through a process called the “judicium Dei,” or the judgment of God. As Kamali explained in an interview in 2019, the “two methods used most typically in England were trial by cold water and trial by hot iron. In trial by cold water, a person would be dunked into a cistern. If they sank, they would be declared innocent, because the water had accepted them. If they floated, they would be declared guilty.”

3.5. In trial by hot iron, “the accused would grasp the hot iron, walk a certain number of paces, and put it back down.” If their burned palms continued to fester after a few days, “they would be pronounced guilty.”

3.6. Both these methods were no doubt expeditious and inexpensive, but there can be little doubt they failed to deliver what would now be considered, justice or a fair trial in any sense of the words.

3.7. When, under Innocent’s guidance, the Fourth Lateran Council decided to prevent priests from presiding at these types of judicial proceedings, nations like England needed new means of assessing criminal culpability.

3.8. A jury of twelve free men were assigned to arbitrate in these disputes. Henry also introduced what is now known as the "grand jury", through his Grand Assize. Under the assize, a jury of free men was charged with reporting any crimes that they knew of in their hundred to a "justice in eyre", a judge who moved between hundreds on a circuit. A criminal accused by this jury was given a trial by ordeal. Under the jury, the chances of being found guilty were much lower, as the king did not choose verdict (or punishment).

3.9. The Church banned participation of clergy in trial by ordeal in 1215. The same year, trial by jury became a fairly explicit right in one of the most

influential clauses of Magna Carta, signed by King John. Article 39 of Magna Carta reads :

> *No free man shall be captured or imprisoned or disseised of his freehold or of his liberties, or of his free customs, or be outlawed or exiled or in any way destroyed, nor will we proceed against him by force or proceed against him by arms, but by the lawful judgment of his peers or by the law of the land.*

3.10. Medieval juries were self-informing, in that individuals were chosen as jurors because they either knew the parties and the facts, or they had the duty to discover them. This spared the government the cost of fact-finding. Over time, English juries became less self-informing and relied more on the trial itself for information on the case. Jurors remained free to investigate cases on their own until the 17th century. Magna Carta being forgotten after a succession of benevolent reigns (or, more probably, reigns limited by the jury and the barons, and only under the rule of laws that the juries and barons found acceptable), the monarchy, through the royal judges, began to extend their control over the jury and the kingdom.

3.11. David Hume in his 1778 *History of England* tells something of the powers that the kings had accumulated in the times after Magna Carta, the prerogatives of the crown and the sources of great power with which these monarchs counted:

> *"One of the most ancient and most established instruments of power was the court of Star Chamber, which possessed an unlimited discretionary authority of fining, imprisoning, and inflicting corporal punishment, and whose jurisdiction extended to all sorts of offences, contempts, and disorders, that lay not within reach of the common law. The members of this court consisted of the privy council and the judges; men who all of them enjoyed their offices during pleasure: And when the prince himself was present, he was the sole judge, and all the others could only interpose with their advice. There needed but this one court in any government, to put an end to all regular, legal, and exact plans of liberty. For who durst set himself in opposition to the crown and ministry, or aspire to the character of being a patron of freedom, while exposed to so arbitrary a jurisdiction? I much question, whether any of the absolute monarchies in Europe contain, at present, so illegal and despotic a tribunal. While so many terrors hung over the people, no jury durst have acquitted a man, when the court was resolved to have him condemned. The practice also, of not confronting witnesses to the prisoner, gave the crown lawyers all imaginable advantage against him. And, indeed, there scarcely occurs an instance, during all these reigns, that the sovereign, or the ministers, were ever disappointed in the issue of a prosecution. Timid juries, and judges who held their offices during pleasure, never failed to second all the views of the crown. And as the practice was anciently common of fining, imprisoning, or otherwise punishing the jurors, merely at the discretion of the court, for finding a verdict contrary to the direction of*

these dependent judges; it is obvious, that juries were then no manner of security to the liberty of the subject."

3.12. In 1641, the Habeas Corpus Act 1640. abolished the Star Chamber, and repeats the clause on the right of a citizen to be judged by his peers:

> *"*WHEREAS by the great charter many times confirmed in parliament, it is enacted, That no freeman shall be taken or imprisoned, or disseised of his freehold or liberties, or free customs, or be outlawed or exiled or otherwise destroyed, and that the King will not pass upon him, or condemn him; but by lawful judgment of his peers, or by the law of the land ..."

3.13. The right to a Jury trial has therefore been an important pillar of our constitution for over 800 years, and is a hard-won protection for our society against potential state overreach. For those reasons alone we would oppose any attempt to reduce access to Jury trials that would likely follow the introduction of any Intermediate Court. In any event, as is observed above, just because a method of deciding guilt or innocence is quick and inexpensive, that does not make it desirable. Quicker access to *outcomes* does not necessarily mean quicker access to *justice* for defendants, victims, witnesses or wider society.

4. The case for reform

4.1. In announcing the Review, the Government said:

> *"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. Doing so will require bold thinking on the most appropriate and proportionate ways of dealing with cases before the courts, as well as increases in the efficiency of our criminal courts."*

4.2. Notwithstanding that claim, it is important to consider the current position.

4.3. The backlog in our courts has been growing significantly since the pandemic and currently stands at over 73,000 cases, delaying perpetrators having their day in court and victims getting justice.[2]

4.4. This will see courts sit for a total of 108,500 days this year – the highest figure in almost a decade[3]

4.5. The backlog has now been steadily growing and remains stubborn, exacerbated by the pandemic but sitting at 37,000 cases even before the pandemic began. This was largely attributed to a decrease in court sitting days.

4.6. It would be tempting to conclude that the current level of cases entering the Crown Court is unsustainable, but an analysis of the figures[4] suggests that the such a conclusion is overly simplistic, and in error:

4.6.1. The annual criminal court caseload has been steadily declining over the last ten years. In 2020 it fell sharply as a result of the pandemic before rising in 2021 to a slightly lower level than it had been pre-pandemic.

4.6.2. In 2023, magistrates' courts in England and Wales received 1.37 million cases and Crown courts received 105,000 cases.

4.6.3. Both the magistrates' and Crown court have an ongoing backlog of cases. At the end of December 2023, there were 370,700 outstanding

[2] [2] https://www.gov.uk/government/news/2000-extra-sitting-days-to-help-address-courts-crisis
[3] https://www.gov.uk/government/news/2000-extra-sitting-days-to-help-address-courts-crisis
[4] Court Statistics for England and Wales, Georgina Sturge, 13 September 2024, House of Commons Library

cases in magistrates' courts, which was lower than the peak of around 422,000 cases in mid-2020.

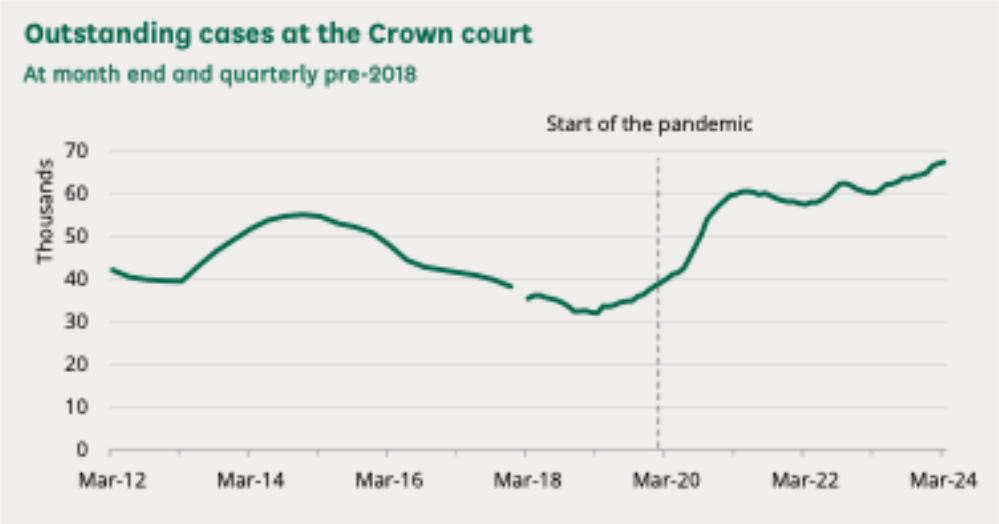
4.6.4. The Crown court had 67,600 outstanding cases at the end of December 2023, which was the highest end-of-quarter total ever recorded.

4.6.5. In 2023, magistrates' courts in England and Wales received 1.37 million cases and disposed of 1.34 million. Of the cases received, 82% were for summary offences or breaches, which can be resolved in a magistrates' court without the need for a trial. Most of the remaining cases (224,000 or 16% of the total) were triable-either-way, meaning they could be resolved in either the magistrates' or Crown court. Around 2% (24,000) were initial hearings for indictable offences which can only be resolved by trial at the Crown court.

4.6.6. In the same year, Crown courts received 105,000 cases and disposed of 99,000. Nearly two thirds (62%) of cases received were for trials, 32% were cases sent from the magistrates' court for sentencing, and 6% were cases of appeals against decisions in the magistrates' court.

4.6.7. Both the magistrates' and Crown court have an ongoing backlog of cases, At the end of December 2023, there were 370,000 outstanding cases in magistrates' courts, down from the mid-2020 peak of 422,000 cases but up from 300,000 in December 2019, before the COVID-19 pandemic.

4.7. The backlog with the Crown Court in particular remains stubborn and on the increase:



Source: HMCTS, HMCTS management information (monthly); MoJ, Criminal court statistics quarterly.

4.8. It is perhaps worth noting that around 67,300 sitting days took place in 2020-21, against an allocation of 88,600. In 2015-16, when the Crown court was operating at its 'peak' capacity, 109,300 sitting days were used.

4.9. Industrial action taken by barristers in the summer of 2022 affected the number of cases progressing through the Crown court, which may have had an impact on the progress of efforts to reduce the backlog.

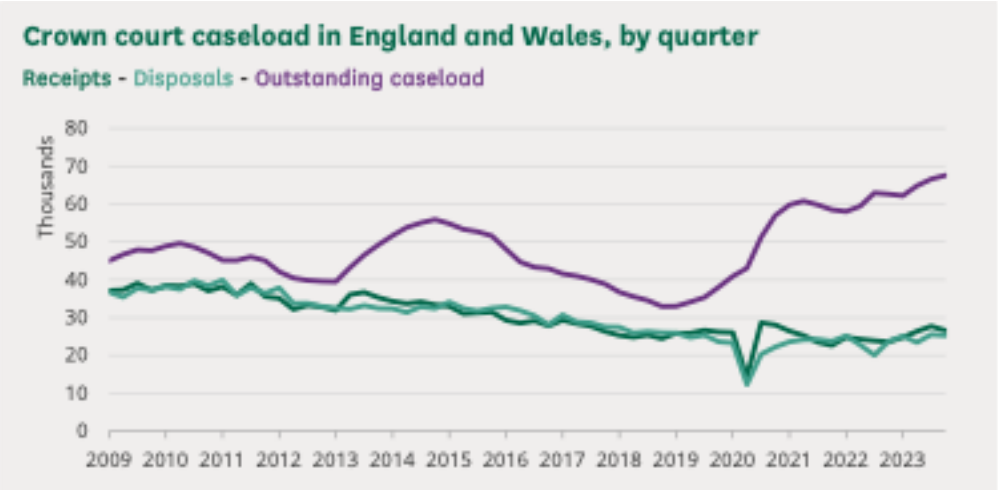
4.10. The table below[5] shows the Crown court case turnover and outstanding caseload at the end of each quarter. Note the large reduction in receipts and disposals in 2020 resulting from the pandemic.

Sum of value				
year	quarter	1. Receipts	2. Disposals	3. Open
2016	Q1	28,679	32,101	48,180
	Q2	27,763	31,042	44,788
	Q3	28,342	29,599	43,385
	Q4	27,219	27,402	43,030
2017	Q1	28,663	29,990	41,629
	Q2	27,754	28,154	41,022
	Q3	27,097	27,933	40,108
	Q4	25,839	26,956	38,887
2018	Q1	24,855	26,972	36,741
	Q2	24,349	25,451	35,534
	Q3	24,902	25,742	34,536
	Q4	23,985	25,461	32,952
2019	Q1	25,287	25,308	33,013
	Q2	25,356	24,179	34,125
	Q3	26,072	24,755	35,310
	Q4	25,679	23,132	38,016
2020	Q1	25,538	22,809	40,862
	Q2	14,001	12,042	43,052
	Q3	28,231	19,918	51,220
	Q4	27,672	21,798	56,954
2021	Q1	25,884	23,074	59,719
	Q2	24,717	23,568	60,748
	Q3	22,932	23,584	59,829
	Q4	21,979	23,152	58,522
2022	Q1	24,050	24,437	58,056
	Q2	23,614	22,203	59,366
	Q3	23,530	19,691	62,963
	Q4	23,524	23,735	62,637

[5] https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024

2023	Q1	24,816	25,402	61,992
	Q2	26,905	23,991	64,624
	Q3	28,372	26,369	66,426
	Q4	27,341	26,259	67,284
2024	Q1	29,990	28,187	69,054
	Q2	30,359	28,152	71,042
	Q3	31,683	29,502	73,105

4.11. As can be seen, although receipts are higher at 31,683, disposals remain lower than in 2016. Put simply, the Crown Court is finishing fewer cases than it receives, but is running at a lower capacity than for example early 2016. If the Court were to be disposing of cases at the same rate as in 2016 it would be reducing the backlog, instead the backlog is increasing by about 5000 cases per year.

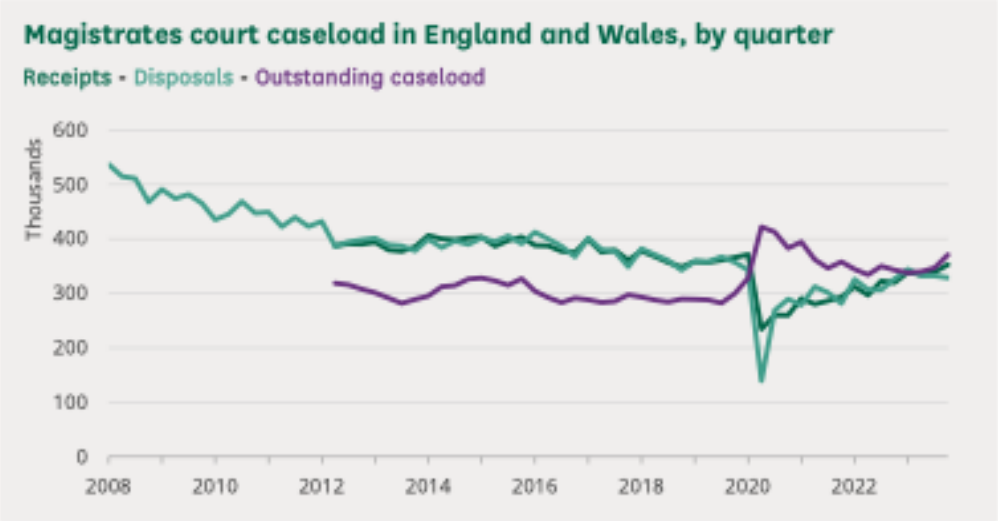


Source: Ministry of Justice, Criminal court statistics quarterly, table C1

4.12. The above table[6] shows that although the backlog continues to increase, the volume of receipts and disposals are lower than in 2009. Again, if the Crown Court were able to return to 2009-2012 levels of disposals, even with current levels or recoups it would be making massive inroads into the backlog, clearing over 10,000 from the backlog each year. The Crown court remains short of its 'peak' sitting day allocation in 2015-2016, which was necessary even before the significant backlog caused by the once in a generation pandemic. By returning sitting days to 108,500 it still therefore remains short of 2015-2016 levels, and some way short of the levels of emergency response needed to respond to the crisis caused by the pandemic.

[6] Court Statistics for England and Wales, Georgina Sturge, 13 September 2024, House of Commons Library

4.13. It is also worth noting that in a similar period Magistrates Court volume has continued to fall[7]:



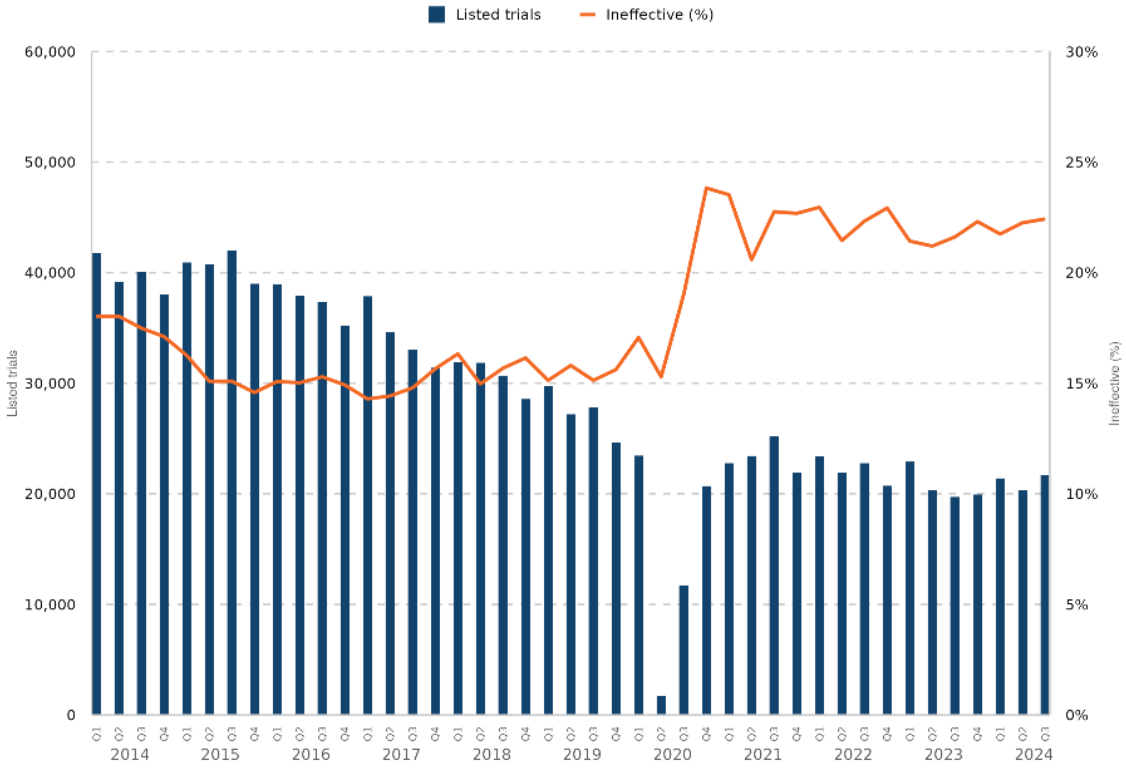
Source: Ministry of Justice, Criminal court statistics quarterly, table M1

4.14. It follows that there if the Magistrates Court could deal with cases at a similar level to 2008-2010 it would have ample capacity to help process new receipts, even if some presently destined for the Crown Court were to remain in the Magistrates Court. In that regard, the recent changes to Magistrates Court sentencing powers are to be noted. Given how recent this is there is no data yet on whether they will assist in diverting some cases otherwise destined for the Crown Court to the Magistrates Court.

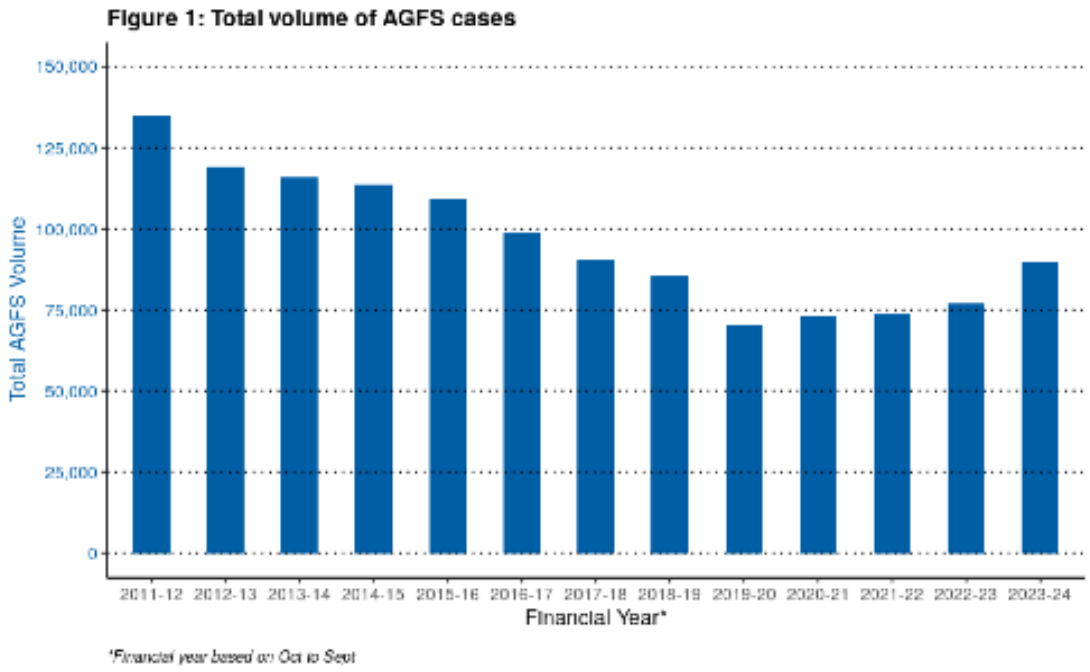
4.15. There also remains significant issues with a huge rise in ineffective trials, wasting precious Court time.[8]

[7] Court Statistics for England and Wales, Georgina Sturge, 13 September 2024, House of Commons Library

[8] **Magistrates' courts caseload, Q1 2019 – Q3 2024 (Source: Table M1),** https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024



4.16. Perhaps unsurprisingly given the above the volume for AGFS cases (the fee scheme covering the majority of Crown Court cases) has fallen markedly.[9]



[9] [9] https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024

4.17. Our inescapable conclusion from the above is that the case is simply not made out for an Intermediate Court. What is instead needed is for Courts, and the Crown Court in particular, to return to 'normal' service at a level seen prior to the austerity measures in 2010-2015.

5. Capacity in the system and the economic context

5.1. Any reform of the system, particularly one which requires the creation of a new Intermediate Court, requires a careful analysis of the system.

Solicitor numbers

5.2. The ongoing trend for legal aid solicitors offering criminal defence work is deeply concerning. This was well-explored by Lord Bellamy in the Criminal Legal Aid Review in 2021 whereby he described the position of solicitors firms as 'parlous' and recommended a bare minimum increase of 15% pending wider reform, after which further investment would be necessary.[10]

5.3. The previous Government did not deliver on that investment in full, investing around 11% leading to Judicial Review proceedings by the Law Society, CLSA and LCCSA.

5.4. In December 2024, the present Government announced an intent to invest a further 12% over the life of this Parliament, meaning a total of 24% since Lord Bellamy's recommendation. Given the high level of inflation in 2021-2023 this amounts to a real terms cut since Lord Bellamy recommendation.

5.5. Solicitors continue to vote with their feet. The number of duty solicitous has fallen by around a third in a decade, with similar numbers of providers also leaving the profession. Since 2017 alone the number of Duty Solicitors has fallen from 5240 to 3923. According to the most recent data, in December 2024 there was a further 3% fall in the number of solicitors firms, and 4% fall in a 2% fall in the number of Duty Solicitors[11].

5.6. Our members report struggling with workloads, and having insufficient capacity to cover all cases. Many report an inability to instruct counsel, which again is unsurprising given the fall in the number of practising criminal barristers compared with 2015-2016.[12]

5.7. Many members report declining new cases and 'triaging' new cases.

5.8. In many areas courts 'brigade' cases so that once solicitor from firm can cover as many cases as possible – this us unlikely to be possible if they are required to split time between the 2 existing Courts and a new intermediate Court.

5.9. There is simply no capacity in the system for solicitors to split their time to allow them to attend a different Court.

[10] https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid
[11] MOJ data, January 2025
[12] MOJ data, January 2025

Other constrains on the system

5.10. Providers continue to report issues securing Counsel for serious matters. The issue of RASSO cases is now well-known, with defence practitioners declining such work and the Crown Prosecution Service struggling to secure prosecutors, to the degree that in many areas they are now instructing, last-minute, Kings Counsel in cases which otherwise do not merit it, simply because there are no available junior counsel to prosecute.

5.11. In many areas across the country it is not unknown for trials in the Magistrates Court to be ineffective due to a lack of available prosecutors.

5.12. In one area it was reported 1in 9 trials was ineffective for want of a prosecutor.

5.13. Any new court will also require administration, security and cleaning staff, in addition to prosecutors, defence, judges, clerks, list callers, cell staff, and will likely serve simply as siphon away from other areas.

The economic context

5.14. The Government has announced a £22billion shortfall in the public accounts, and despite a serious of tax increases and cuts Ministers continue to speak of 'difficult' discussions with the Treasury as part of the multi-year Spending Review. Given the urgent need for investment elsewhere including in criminal defence, and Legal Aid Agency digital technology, it is suggested that any new court would require significant investment which on a costs:benefit basis reflects a very poor investment for taxpayers.

6. Funding the Intermediate Court and Legal Aid

6.1. In addition to set-up costs, any new Intermediate Court will need to have fee schemes in place for publicly funded work.

6.2. There are presently 3 principle schemes covering the Magistrates and Crown Courts, the Magistrates Court scheme, Litigators Graduated Fee Scheme ('LGFS') and the Advocates Graduated Fee Scheme.

6.3. In his 2021 Report Lord Bellamy recommended reform to the LGFS, suggesting at adopted similar scheme to that of the Magistrates Court (which relies on time spend, but pays fixed fees in bands), rather than the Pages of Prosecution Evidence ('PPE') proxy.

6.4. Attempts to reform LGFS have proved difficult, with there being insufficient data to allow the recommended reform. The Criminal Legal Aid Advisory Board has reported on its work in this regard[13]. Lord Bellamy also expressed concerns about the 'perverse incentives' in LGFS, including an incentive to drag a case to trial rather than an early plea of guilty.

6.5. The AGFS is presently in the process of further reform. The most recent reform caused widespread industrial action by the Bar.

6.6. Given the above any new court will need to have a fee scheme (or schemes) in place. There is no data to allow the adoption of the Bellamy recommendations, and the alternative is to use the Crown Court schemes despite their issues discussed above.

6.7. It is also of note that the new Criminal Legal Aid contracts, commencing October and being verified this month, operating for 10 years, has no provision for such a Court or fee scheme. The effect is that the Government may face tough negotiations with the defence community (and indeed, the prosecution) before they agree to cover such work, with the Government in danger of being forced to write a 'blank cheque' to find willing participants

6.8. For the reasons given in this section we do not consider an Intermediate Court to be viable.

[13] https://www.gov.uk/government/publications/criminal-legal-aid-advisory-board-claab-annual-report-2024/criminal-legal-aid-advisory-board-claab-annual-report-2024

7. Tackling the Backlog

7.1. It is agreed that significant progress must be made to tackle the case backlog. Forcing defendants, witnesses and victims to wait is an afront to justice.

7.2. We have previously prepared a paper making various suggestions, which taken together we believe will ensure that the backlog is tackled, and the number of ineffective rials reduced. A copy of that paper is attached as Annex A.

A Proposal for a Pilot Scheme to Tackle the Crown Court backlog

7.3. The attached paper analyses various schemes which are being used in Crown Courts and elsewhere and seeks to identify whether there are areas of good practice or tried and tested solutions which might help reduce the backlog.

7.4. We identify a number of schemes, and are of the view, that ensuring early guilty pleas where appropriate is the key to reducing the backlog. We assess that there are a number of barriers to early guilty pleas:

(a) Procedural issues including:

a. Lack of disclosure of sufficient evidence at an early enough stage;

b. Unhelpful timescales including BCM timescales which do not provide sufficient time for an assessment of the papers, and advice in conference especially on serious and complex matters

c. A lack of Court involvement in the management of cases beyond initial directions at PTPH

d. Poor uptake, and ineffective use of Goodyear indications as to likely sentence

(b) Practical issues including:

a. fee schemes which focus resources at the wrong stage, and create perverse incentives for matters to proceed to trial

b. Lack of defence resources to engage in cases at an early stage.

7.5. We proposed a time-limited pilot which would have a twin approach of tackling the procedural bars as well as some straightforward amendments to LGFS to better reflect the wider policy aim of early guilty pleas where appropriate:

(a) Service of Stage 1 at an early stage:

a. By the first appearance in cases which have been subject to the full code test

(c. 85% of all CC cases) so that the equivalent of 'Stage 1' will be received before the first hearing in the MC in accordance with the TSJ timescales.

b. The use of 'standard directions' at the first appearance where a not-guilty plea is entered. Standard directions could be made for the provision of Stage 1 and Stage 2 before the PTPH. This would ensure a more effective PTPH, better focussed on the true issues.

c. Where standard directions are not made, we would suggest a return to the use of Preliminary Hearings where stage dates can be set. New funding will need to be in place for this hearing (see below).

(b) Ensuring PTPHs are more effective by delaying them to at least 12 weeks after the 1st appearance where there has been no Preliminary Hearing.

(c) Introducing a new hearing post PTPH and before trial where the parties are expected to be able to identify to a Judge seized of the matter the true issues, ensure the matter is trial ready, and if need be allow the Court to express views on the parties' position and likely sentence.

(d) Amendments to LGFS to allow solicitors to front load their work to ensure they are in a position to advise earlier in proceedings, and also to attend court and take part in the post PTPH hearing.

Incentives and Summary Jurisdiction

7.6. Although we have indicated we believe the issues with the backlog is not an issue of increased volume, but rather reduced capacity and disposals, we also believe it would assist the efforts to reduce the backlog if some either way offences where a defendant elects were actually resolved in the Magistrates Court. The difficulty with either-way offences as matters stand is that there is very little incentive for a defendant to elect summary trial. To the defendant, faced with the general consensus of higher conviction rates in the Magistrates Court it is difficult to persuade a defendant of the virtues of a summary trial, principally because in reality there are very few, with speed of listing and cost being the most obvious. Choosing a summary trial is more likely to result in no access to counsel (who are increasing difficult to brief in the Magistrates Court

due to a lack of counsel undertaking legal aid defence work, and the volume of more lucrative Crown Court work available to them). It is also likely to increase their prospects of conviction (although the distinction is increasingly less stark at around 83.6% in the Magistrates Court and 77.9% in the Crown Court. There are two possible solutions which we would propose warrant further investigation and discussion, both of which incentivise a defendant to choose summary trial:

(a) Restrictions on the right to commit for sentence; and
(b) Restrictions on the sentencing powers in the Crown Court on a committal for sentence

7.7. We believe both options are self-explanatory, although our preference is the former.

7.8. The Courts are already well-versed in incentivising desirable behaviour from defendants, for example with credit for an early guilty plea.

7.9. What we are proposing warrants consideration is whether in the event of a defendant facing either-way charges choosing summary jurisdiction, the Court should have restrictions on the ability to commit for sentence on conviction, such that committals for sentence only occur in the most exceptional of cases for example where information not known to the Court or prosecution becomes apparent during the trial process which means the Court would not have accepted jurisdiction. At present, particularly with the increased sentencing powers of the Magistrates, and the less recent approach to allocation, the Court will often be accepting jurisdiction knowing it is highly likely it will be committing the defendant to the Crown Court for sentence. If instead the ability to commit for sentence was reserved for truly exceptional cases, we believe defendants would be more likely to take advantage of the offer of summary trial.

7.10. Our second proposal speaks for itself, as an alternative to the above option, whereby where a defendant accepts summary jurisdiction and is convicted and committed for sentence, the sentencing options open to the Crown Court judge could be limited to less than what the Court might otherwise impose (but more than the Magistrates Court powers). In effect, this would amount to a reduced sentencing power for either way offences in the Crown Court that have been committed (compared with elected trial on indictment). We prefer the former option as this would be more complex to apply, and given the recent increase in sentencing powers in the summary jurisdiction it is likely to be more restricted in scope.

Reclassification of some either way offences

7.11. We agree that there are some offences which could be reviewed and reclassified as summary only. It is difficult to respond without seeing those which are proposed, and we would certainly oppose wholesale reclassification, but for example many lower level assaults including assaults on emergency workers and racially aggravated assaults could comfortably be dealt with summarily and need not trouble the Crown Court.

8. Annex A