

Justice Committee

Oral evidence: [Independent Review of the Criminal Courts](#), HC 1469

Tuesday 11 November 2025

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Members present: Andy Slaughter (Chair); Matt Bishop; Pam Cox; Linsey Farnsworth; Sir Ashley Fox; Warinder Juss; Tessa Munt; Mrs Sarah Russell; Dr Neil Shastri-Hurst; Tony Vaughan.

Questions 1 - 39

Witness

[I](#): Rt Hon. Sir Brian Leveson, Chair, Independent Review of the Criminal Courts.

Examination of witness

Witness: Sir Brian Leveson.

Chair: Welcome to this afternoon's session of the Justice Committee, where we have one witness, Sir Brian Leveson. We are very pleased to have Sir Brian before us today, to talk about part 1 of his independent review of the criminal courts. Before we begin the questioning, I will ask members of the Committee to make their declarations of interests, starting with Sir Ashley Fox.

Sir Ashley Fox: Good afternoon, Sir Brian. Ashley Fox, Member for Bridgwater. The Register of Members' Financial Interests contains all my interests.

Dr Shastri-Hurst: Good afternoon, Sir Brian. Neil Shastri-Hurst, Member of Parliament for Solihull West and Shirley. My interests are as declared on the register, but I am also an associate tenant at No5 Chambers, and still have a practising certificate.

Tony Vaughan: Good afternoon, Sir Brian. I am the MP for Folkestone and Hythe. I am an associate tenant at Doughty Street Chambers. My other interests are as declared on the register. I also hold a practising certificate as a member of the Bar.

Sir Brian Leveson: And as a King's Counsel.

Linsey Farnsworth: Good afternoon, Sir Brian Leveson. My name is Linsey Farnsworth. I am the Amber Valley MP. My interests are as per the register, but of note for today's purpose is that I was a Crown prosecutor for 21 years before entering Parliament.

Chair: Andy Slaughter: I am the Chair of the Committee and the MP for Hammersmith and Chiswick. I am a non-practising barrister, a member of the GMB and Unite trade unions, and a trustee of two justice-related charities: Hammersmith & Fulham Law Centre and The Upper Room.

Tessa Munt: Good afternoon, Sir Brian. My name is Tessa Munt. I am the Member for Wells and Mendip Hills. My interests are also on the register, but I will point out two things: one is that I am not a lawyer and the second is that I am a vice-chair of WhistleblowersUK, which is a non-profit organisation.

Pam Cox: Good afternoon: Pam Cox, the Member for Colchester, with interests as declared on the register. In addition, I am the chair of the APPG on penal affairs.

Matt Bishop: Good afternoon, Sir Brian. I am the Member for Forest of Dean, with interests as in the register. In addition, I am a former serving police officer.

Warinder Juss: Good afternoon, Sir Brian. I am Warinder Juss, the MP for Wolverhampton West. I am a solicitor, but not practising. I am also a



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member of the GMB executive council and of various APPGs.

Mrs Russell: Good afternoon, Sir Brian. My name is Sarah Russell. I am the MP for Congleton. I am a solicitor and a member of various APPGs, and I am a member of Community and USDAW trade unions.

Sir Brian Leveson: I am delighted that there is a police officer and there are solicitors, barristers and non-lawyers. It is a wonderful selection.

Q1 **Chair:** We do our best. Thank you very much. Sir Brian, I will ask a general question in opening: if there is anything you want to say at the beginning, please do. Essentially, we know why you are here. Yours is one of two major reports, along with David Gauke's, that the current Government commissioned to deal with crises in the courts and the Prison Service. As a general question, first of all, when are you expecting to get a response to your part 1 report; when do you expect to complete your part 2 report; and have you looked at consequences, between your own work and that of David Gauke, as to whether either affects the other in terms of pressure on the courts or pressure on prisons?

Sir Brian Leveson: That is three questions, so let me see if I can answer them. The timing of a response is not in my hands. I do know that the Ministry is actively considering and preparing an appropriate response, the date of which I have no doubt will be announced in due course. I am keen to see the response because it impacts on the second part of this review, which I am presently conducting.

I have read David Gauke's report. I have talked to a number of those who were members of his commission, including David Gauke himself. I am not sure that it really impacts on the work I am doing, because I am not dealing with sentencing as such; but I am conscious of the prison population and particularly the complexities surrounding PECS and escort duties. The only area where there is a potential overlap is in relation to breaches of non-custodial orders and the risk that that will generate more work for the courts; but I think that we fit together rather than oppose.

Q2 **Chair:** We may come back to that point later, but you have also said in relation to your recommendations that they are not a "pick-n-mix" series of options. How important is that? If the Government respond saying, "We like this; we don't like that," how does it impact on your report overall?

Sir Brian Leveson: You are absolutely right that I said that this was not a pick-n-mix, but by that I meant, and intended to reflect, the need for wholesale systemic reform rather than a requirement that, slavishly, the Government follow everything I have suggested. I have set out certain ideas but I have deliberately provided, in some of the recommendations, a degree of latitude for the Government, and, ultimately, Parliament, to decide what is appropriate and how to approach specific recommendations. But should the broad thrust of my recommendations not be accepted—which is not to say each and every recommendation—I truly believe that we risk the collapse of the system as we presently have



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it. We would then fail in our duty to victims, witnesses and defendants and would diminish public confidence in the rule of law.

Q3 Chair: One final question from me for the time being: you did not publish the individual responses that you had to your consultations. Was there any reason for that, and are you intending to do so at any stage?

Sir Brian Leveson: I did not publish the individual responses. I did not call for evidence in that sense. What I did, rather, was ask people for views. I am not entirely sure that I had appropriate permission to publish what people were saying. If they want to publish what they said to me, that is perfectly in order. I have published some detail of what people said, but then I got permission from them to name them. The people who I spoke to are set out in an appendix to the report, and I have tried to cover every single aspect of criminal justice and all aspects of parliamentary input.

Chair: Let me pass over to you, Pam Cox.

Q4 Pam Cox: Thank you very much, Sir Brian. I would like to talk about the removal of the right to elect, if I may. Your recommendations of removal of the right to elect a Crown court trial and reclassification of certain offences as summary-only would substantially increase the volume of cases going through the magistrates court. Do you think that magistrates courts are currently able to accept that additional workload?

Sir Brian Leveson: That is also a good question. I do recognise that more work would go through the magistrates, who are themselves under pressure. One of the recommendations I make in relation to the present appointment of Deputy District Judge (Magistrates' Courts) is that all those who satisfy the merit test for appointment should be appointed and that, to increase the availability of magistrates' output, there should not be a limit on those. But I recognise that and have made recommendations, I believe, as to the need to increase the number of magistrates from all sectors of the community. Magistrates perform an absolutely invaluable service, representing their communities and giving up their time for little public reward. That is a very important part, in my view, of community engagement in justice. I know that creates a different question, which I am sure I will be asked.

Q5 Pam Cox: Yes, indeed. Can I move on to a question around data for committals for trial in the Crown court, which show that for 2024-25 around 6% of those cases resulted from defendants electing trial, whereas 57% were directed by magistrates. So, are magistrates currently allocating either-way offences to the Crown court when they should be retained in the magistrates court? If so, why, and what can be done about it?

Sir Brian Leveson: There are a number of reasons why this happens. The first may be that the police and CPS are being risk-averse about whether magistrates should be able to retain jurisdiction in a particular case. I am not sure why that should be, because, on conviction, if the sentence would exceed the powers of the magistrates, they can commit



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for sentence; but, also, it may be that a number of defendants who would otherwise elect trial get their legal team to say, "Actually, is this suitable for the Crown court?"

Let us be a little bit fair to magistrates here. They only have the submissions made by the CPS and the defence. They have no external knowledge of the case, and it is quite difficult for them to decide, "Actually, we can retain jurisdiction in this case," if the parties are saying, "No, no, it ought to go to the Crown court." Depending on what is decided about the Crown court and the way in which cases are tried there, I anticipate that there will be a greater willingness to leave cases in the magistrates court rather than to send for trial, but I have no doubt that far too many cases get sent for trial which should be retained in the summary court.

Pam Cox: I think my colleague Linsey was going to come in with a supplementary.

Q6 Linsey Farnsworth: Just on the point of case allocation, obviously in the magistrates court, as you have said, the prosecutor and defence will make representations; but the magistrates make the assessment of whether it is suitable for summary trial or not, based on their sentencing powers. That is taken on the prosecution's case at its highest. I am just wondering whether, in cases where the magistrates say they feel it is suitable for summary trial because their sentencing powers are sufficient, there is an argument to stop Crown court election for defendants altogether. You took that view in your 2015 review.

Sir Brian Leveson: It is not just me. Go back to Sir Robin Auld in 2001. I debated long and hard whether to pursue what I had said in 2015—you are quite right: that courts, not defendants, should decide where defendants are tried. It happens in family law. You do not get to decide whether it is magistrates or a district, circuit or High Court judge; the court decides. The reason I did not go with that suggestion here goes back to the question about community engagement; but if the Government chose to decide to remove the right to elect entirely, that is entirely consistent with what has been said by more than just Sir Robin Auld—Narey, and others, before him. It is a matter for Government and ultimately for Parliament.

Q7 Linsey Farnsworth: In your review you said that you have changed your view on that. Have you?

Sir Brian Leveson: I have changed my view because of the balance between community engagement and no community engagement. Also, talking to a number of people, including those who serve in your House and the other place, I was encouraged to take a slower line, on the basis that it would be easier as a mechanism for Parliament to adopt—and I need this to work. I really do need it to work.

I talked earlier about the risk to criminal justice, and it is not hyperbole. You might think, making a slightly different point, that since the end of last year, when I was set up, everybody—police, CPS, defence lawyers,



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courts—would be doing everything they could to try to speed up the rate at which cases are being resolved, to demonstrate that you do not need systemic reform. Yet the backlog has increased and continues to increase. That might be for a number of reasons, but it is the case.

Some Crown courts are doing very well, but in at least one Crown court in London they are listing cases at the end of 2029. That is a complete denial of justice. I have tempered my view rather than changed it.

Q8 Linsey Farnsworth: Because of the constraints that have been put to you.

Sir Brian Leveson: Yes.

Q9 Linsey Farnsworth: From Government.

Sir Brian Leveson: Not just Government. I have seen and met politicians of every single political persuasion—no, that is not true; of the main political persuasions. I have seen the Bar, the Law Society and CILEX—every single body that is involved in criminal justice. I have tried to find something that is not only workable but doable.

Removing the right to elect entirely, which is the question you asked me, does away with the need to reclassify and the need to remove the right to elect in certain cases. In some senses it is a cleaner solution. That, with great respect, is a matter for you, not me.

Q10 Linsey Farnsworth: I think, in 2024-25, 4,283 defendants elected Crown court trial, so that would be 4,283 cases that would have stayed out of the Crown court last year, in an instant.

Sir Brian Leveson: Yes, because in each case the magistrates had accepted summary jurisdiction. I also suggested that if they want to keep the right to elect you should reverse it and let the defendant elect first, so we know who is not prepared to be tried in the magistrates court, rather than allowing that card to be played only after summary jurisdiction has been accepted.

Q11 Linsey Farnsworth: What is the thinking there? It would save a tiny bit of time on each of those allocation hearings, would it not, but it does not change the result?

Sir Brian Leveson: No, it does not change it at all, except that you then know in how many cases defendants are truly electing trial, rather than the possibility that I mentioned before, that a defence lawyer might say, "Well, actually, this really should be tried on indictment," for whatever reasons, so the prosecution agrees and the submission is made to the magistrates. They of course have their own decision, but it is quite difficult for them to second-guess both prosecution and defence. By reversing the decision, you find out immediately who is prepared to be tried in the magistrates and who wants to go to the Crown court.

I think that it is not unimportant that we have a true number of people who, whatever happens, are going to go to the Crown court. That is why



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I suggested it. It does save some time, because once somebody has elected you do not need to decide whether you would accept summary jurisdiction. But it was not a time thing; it was trying to get the system right and proportionate. I have not just been driven here by money. I have not been driven by money, particularly. I have set out the principles in the review, which I am sure you have seen.

- Q12 **Linsey Farnsworth:** Let us go on to some of those principles, staying on the right to elect. You recommend removing the right to elect trial for offences with a maximum sentence of two years, describing them as the least serious of the either-way cases, but you have identified a pool of additional offences that could also be removed from the right to elect. You have based that on the average sentence length, but in that list there are some offences that I think some people would class as not in the least serious category, such as possession of prohibited images of children. How would you respond to concerns that some may have raised about taking the right to elect away from people in those sorts of cases? There have been suggestions in some quarters that that is disproportionate.

This is the opposite of what I was saying a moment ago; I understand that.

Sir Brian Leveson: Yes, it is. I have taken average custodial sentence lengths. Even allowing for outliers, the number of people sentenced outside that range is very small indeed. The point to be made is, if you take images of children, depending on the number and type of images, all sorts of other offences may be committed as well. I do not think that I am depriving the criminal justice system of the mechanism for dealing appropriately with that sort of offence. It is not my intention to deprive the system of an appropriate sentence in those cases.

- Q13 **Linsey Farnsworth:** Of course, the magistrates will have looked at the facts of those cases, as outlined, and decided that their sentencing powers were sufficient; but, if it turned out that it was more serious when the evidence was heard, presumably they would still have the option of committing for sentence to the Crown court, if they felt they needed to. Is my understanding correct?

Sir Brian Leveson: In relation to certain offences, certainly. A lot depends on what decision is made about the overall right to elect. All this works only if you are restricting, but not removing, the right to elect—which I have not suggested, as you know.

- Q14 **Linsey Farnsworth:** There is no suggestion anywhere in the review that magistrates' ability to commit for sentence is going, is there?

Sir Brian Leveson: Now I have got to go back to the language.

Linsey Farnsworth: I do not think there is. Thank you.

Chair: Varying the order slightly, Neil, did you want to come in with your questions now?



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- Q15 **Dr Shastri-Hurst:** Yes, keeping on the same theme, if we may, Chair. Sir Brian, staying on the theme of the right to trial by jury, the Bar Council and the Criminal Bar Association have warned against some of the proposals set out in your report.

Sir Brian Leveson: I know.

- Q16 **Dr Shastri-Hurst:** I would be interested to hear your response to their concerns and why you perhaps feel that their views, or their warnings, are not justified.

Sir Brian Leveson: First of all, everybody has a right to a fair trial. I think some of our continental partners would be shocked if they believed that their systems of justice, which do not involve jurors, were considered unfair; and 90-something per cent of cases are tried by magistrates without being considered unfair. My problem with the Bar Council's response, and the professional response, which I understand, and which I think I might have been able to visualise—I am a barrister by training and have spent 55 years as a criminal lawyer—is that I believe in the system but the system cannot survive as it presently is. What I have said to the Bar, the Law Society and to others who say, "Well, a bit more money and more sitting days will solve it," is that it will not—as I have just tried to illustrate by what has happened over the last year.

If you look just at increasing sitting days, which is what the Bar Council has suggested, there are far too many ineffective cases, because there is not a prosecutor or defence lawyer in court. So, if you increase the number of sitting days, you are going to increase the number of cases when there is not a barrister or solicitor in court available to prosecute or defend the case. Just increasing the number of sitting days does not get you over the problem.

Equally, there is a limit to the number of days that we have for judges. I know that there are complaints that courts are not sitting, although I believe, and certainly the Government have said, that they have now allocated more sitting days than ever before. The fact is that cases have become more complex. They take longer. I remember when I started at the Bar, which I am afraid was in 1970, I could do two cases a day. I vividly remember starting a third, with two juries out considering them. Now, nothing takes less than a day, a day and a half or two days—nothing—because of complexity, for good reason.

The second question that I would ask the Bar and the Law Society is, "If not this, then what?" How are you going to cope? The present system, which deprives victims, witnesses and defendants of a trial within years, is simply not sustainable, in my view. It is no good saying, "Just give us more days and some more money, and it will all work out." I do not believe for one moment that it will.

I have grown up with juries. I am not in any sense averse to juries. As I say, I have had 55 years as a barrister and a judge. If not this, what? I do not have an answer to that question, and nobody really gives me an answer. They just say, "More money, and more days."



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Q17 Dr Shastri-Hurst: Just picking up on a couple of things in your answer, at the beginning you used the comparator of how European systems hear trials, but, of course, it has been a cornerstone of the British justice system to have trial by jury for 1,000 years or so. Do you think there is a risk that changing that system will undermine public trust and confidence in the criminal justice system in this country?

Sir Brian Leveson: I will give two answers. First of all, it has not been 1,000 years. If you go back 1,000 years, the jury system was very different. Trial by your peers from Magna Carta was actually barons trying barons. It was not serfs trying serfs, as it were. Secondly, it then developed into a jury system where they specifically wanted jurors who knew defendants, because they would know whether the defendant had done it. This is all medieval history, which I have long since forgotten. But I take your point about confidence and I understand the challenge of persuading the public that they can have confidence in a system that is different.

There are a number of arguments, I suggest, that really deal with it. First, the defence, the prosecutor and the public will get a reasoned decision. In other words, they will understand why a particular decision has been reached by the fact finder. Secondly, how much confidence, truly, can there be in a system if a defendant is not going to be tried for four years? How many victims abandon their cases because they need to move on with their lives? How many witnesses lose interest in remaining involved, or are even prepared to remember what happened four years previously? How much confidence can there be in a system where trials are delayed for that period of time?

I take your point. I understand it. It will be a job for many to try to demonstrate that this works. Interestingly enough, Diplock courts in Northern Ireland do not achieve public opprobrium because they do not have jurors. There have been a few trials in this country without a jury. If there has been jury interference, the judge can discharge the jury and carry on himself. There have been a number of such cases—not many—with reasoned decisions. That has not caused public outcry. Of course, you may say there have been only two or three cases, which is a fair point, but—I am sorry to repeat for the third time—if not this, then what?

Q18 Dr Shastri-Hurst: Hopefully, you will not repeat it again with my final question. You raise the complexity of cases. The Institute for Government have set out that they think a number of the growing backlogs of cases are to do with productivity gaps: transferring prisoners from prison to court—administrative challenges, if I can put it that way. How do you respond to their suggestion that if you address that you would not have to reduce the number of jury trials that need to take place?

Sir Brian Leveson: With great respect, I do not agree with them. I think they are right, but the efficiency and effectiveness of the court has been diminished for all sorts of reasons: the reduction of resources for the court system; complexity of trials; covid. All these are important features that have contributed to the backlog, but we are not talking about



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modest change moving the dial. I do not believe that modest change will move the dial. I have not discussed with the Institute for Government how they reached their conclusion. I would be very happy to discuss it with them, but my view, which I come to with reluctance—as I have said, my background speaks for itself—is that nothing short of real systemic change will allow us to deal with cases within a reasonable time.

There is no doubt there are problems with the escort system. I do not blame them entirely. The prisons are, as everybody knows, running very hot. There is a real capacity problem; people cannot necessarily be accommodated in their local prisons, which means their travel time to court dramatically increases. One thing I will suggest in the efficiency review—I give you forewarning—is more by way of video hearings, not trials but all the other ancillary hearings. I understand what the Institute for Government have said. I just do not think they are right.

- Q19 **Mrs Russell:** Sir Brian, you referred to the fact that, even if we had more sitting days, there are regularly problems with no barristers or CPS representatives being in court. Do you think these suggestions solve those problems—because people will still need to be defended—and what needs to be done around that? What do you think needs to happen to legal aid rates?

Sir Brian Leveson: I do talk a little bit about legal aid and the way that system operates, which I believe needs review. I have made that clear. The number of barristers will not necessarily increase, although I have made recommendations in this report, for example, in relation to matched fund pupillages, and looking for ways to encourage young lawyers who have a real interest in the criminal law to pursue that interest.

The other important feature is that, if the other recommendations are made, for example if there is a bench division, the work will be done much more quickly, so you will get through much more work in time. I would hope in that way you would be able to bring cases forward and thereby in part manage a slightly different problem. At the moment, if somebody knows their trial will not be until 2028, what is the incentive for them to plead guilty, even though the evidence is there? I vividly remember advising clients in the '70s, "Well, if you've done it, you're much better off saying you've done it. You can explain it, which always contains some mitigation; you can express remorse, and there is a pragmatic discount for pleading guilty." More than one client would say to me, "Mr Leveson, I tell you now I will plead guilty, but I want to spend Christmas with my kids." Now they can say, "I want to spend Christmas 2028 with my kids," and I just don't think that is acceptable.

- Q20 **Tessa Munt:** To check my understanding, I think juries are used in only 1% of criminal trials. I just wonder how much difference it would really make to cut back on those. My sense is that the problem with the criminal justice system is not necessarily having too many juries. So, if replacing jury trials makes up only 1% of all criminal cases, would that have a financial impact substantial enough truly to improve the criminal



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justice system? Am I right?

Sir Brian Leveson: I am not sure about the 1% figure. I know that it is a small, single-digit percentage, but I anticipate that you have excluded those cases which plead guilty on the day of the trial; it has been planned and is ready to go, and then the defendant pleads guilty and it becomes a cracked trial. But you only need to look at the number of days the magistrates courts and Crown courts sit to deal with their work to realise that, however small the percentage, they are taking an unbelievable number of days to try the work they are doing. Cases have become more complex; they take longer; and they are costly for jurors, witnesses and everybody. I recognise that it is only a small number of cases, and I am not suggesting for a moment that all jury trials should be abandoned. Indictable-only offences should always be tried by a jury, except in certain circumstances which I discuss in the report, but I have no doubt that it would make a real difference.

I recognise the percentage, whatever number it is, but, if you consider the comparative costs of magistrates courts and Crown courts, I think you will find they are in substantial imbalance and not in proportion to the figures you have identified.

- Q21 **Warinder Juss:** My question is linked to the one Sarah asked. You said that increasing the number of sitting days would not make much difference because we do not have enough prosecutors and defence counsel. I assume that we will have a similar problem in not having enough judges. I just want to know whether you have a particular opinion as to why we do not have enough prosecutors, defence counsel and perhaps judges as well.

Sir Brian Leveson: You are now foreshadowing something that I will spend a chapter discussing in part 2, but I think it is clear from part 1 that the criminal law has become less attractive for legal professionals, although for undergraduates this is the fascinating area. Let me make it abundantly clear from my own experience. Being involved in criminal cases as a prosecutor, defence lawyer and judge, and having that window on human experience, trying to understand what has happened when the client, if you are defending, barely understands how he or she has come into the position they are in, and being allowed to be involved in the system has been a real privilege and, I say, honour—I do mean that.

But we need to encourage youngsters to become barristers and solicitors. If you look at the statistics for the number of criminal legal aid solicitors, there are some who start young and there are some very old ones. The old are dropping off and the young are moving on and doing other work. They are getting involved in public inquiries and regulatory work, both of which are rather better paid than crime, so we certainly need to look at the way in which crime and criminal work is remunerated, because it is a critical part of our system.

I have said before that one of the challenges has been the way justice has been the subject of austerity measures, substantially reducing the



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amount of money that goes into the system. You will have your own understanding of the reasons for that, but the impact is that it is not as attractive a field of work and it damages our democracy if we do not have a mechanism promptly and fairly to ensure that people are tried and their complaints of criminal misbehaviour are addressed, whether that is a RASSO victim, a victim of fraud, or whatever crime you want to identify. That is the lawyers.

That works in regard to judges, too, because you need experienced criminal judges. Some of these cases are exceptionally complex and difficult. We need to look at how we are appointing judges and allocating their work, which has its own problems, and we have to be aware of their mental wellbeing as well. I vividly remember when I was president of the Queen's Bench Division dealing with a circuit judge who tried 14 rape cases on the trot. That is not terribly helpful or healthy, and causes stress, anxiety and mental ill health. I am not suggesting that that judge was mentally ill, but you understand precisely what I mean. We need to look at the system holistically—as a whole—which is why I say this is not a pick-n-mix. I go back to the very beginning.

Q22 Warinder Juss: If I can ask a question on reclassification of offences, your proposal is to reclassify some offences to summary-only, and that would include, say, breach of a restraining order or an offence of disclosure of private sexual photographs and films with intent to cause distress. Both of those offences can cause a lot of distress to victims. The other point is that a breach of a restraining order currently carries a maximum sentence of five years, but the proposal would be to reduce it to 12 months. First, do you think that having this reclassification diminishes the harm experienced by victims? Secondly, does it remove the deterrent effect of having sentences?

Sir Brian Leveson: This fits into a question I was asked earlier. We go back to the average length of a custodial sentence. I think you will find that the average length of a custodial sentence is well within the sentencing powers of magistrates. As regards deterrence, I am not sure I would like to go to prison even for a day—well, actually, I wouldn't. For those who commit offences, it is not so much that they will get nine months as opposed to 18 months; it is that they will be caught and be brought swiftly to justice, and will be answerable for what they have done immediately. That is what is critically important about breach of orders and other offences; you diminish the prospect of avoidance of guilt and increase the prospect of being brought to account.

I am conscious of the impact of this, but if nobody is receiving anything like that sort of sentence for this sort of offence, you have to decide whether that is the right sentence. Is the maximum correct? I am not second-guessing Parliament—far be it from me to do that—but I am concerned that we should try to get cases tried and disposed of at the right level and we should not push cases into pigeonholes. Parliament decided that an assault on an emergency worker should have a maximum of two years' imprisonment. The result is that what was common assault, or assault of a police officer, which could be dealt with summarily very



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quickly, now results in many elections for trial, going off for years and years. That means there is not robust, critical and immediate accountability, and it is that I am really aiming at.

- Q23 **Warinder Juss:** To clarify, if I have understood your answer, what you are saying, Sir Brian, is that for somebody who commits a crime the danger of being caught and locked up quicker is more of a deterrent than thinking they will get five years instead of 12 months' imprisonment.

Sir Brian Leveson: You are right, but they won't get five years. I am not suggesting that they study the sentencing guidelines, although they are online for anybody to read if they want to, but, to make a more general philosophical, jurisprudential point, I believe that deterrence is rather overrated, and being caught and brought to justice is a far more effective deterrent than whether you get three, four or five years. The truth is that people who commit crime do not say, "Well, I won't do this because I'll get five years"; they will say, "I won't get caught." The trouble is that at the moment they might not or, alternatively, they will be able to delay it for years and years.

- Q24 **Linsey Farnsworth:** You have talked a lot about deterrence and in terms of the sentencing range you have based this on average sentence lengths, but there are occasions when a much more serious offence within that definition of the offence has been committed. Do you accept that you would be reducing the possibility of somebody who has committed a much more serious version of that offence from getting what the sentencing guidelines would provide—that is, a higher sentence than would be allowed?

Sir Brian Leveson: Maybe they will, but if they get caught and sentenced quickly enough that is the deterrent.

- Q25 **Linsey Farnsworth:** It is not just about deterrence, is it? It is about appropriate levels of punishment. The sentencing guidelines at the moment have been drawn up based on consultation with people within the criminal justice system, the public, outside agencies, charities, etc. Those guidelines have taken into account a lot of evidence, and we are suddenly saying that for the most serious offences, where the guidelines might say four years, it will now be only 12 months. Do you accept there is a big disconnect there?

Sir Brian Leveson: Of course there is, but the maximum was decided by Parliament and, therefore, the sentencing guidelines, speaking as a former chair of the Sentencing Council, will reflect the will of Parliament. I understand that. It may be that the consequence of this conversation is that members of this Committee will say, actually, it is better to remove the right of election and then not be concerned with this at all. I leave it to you.

- Q26 **Tony Vaughan:** Sir Brian, I want to talk about appeals from the magistrates court. Your recommendation is that, essentially, we move towards a test as if you were appealing from the Crown court to the Court of Appeal, but since appeals make up only about 4% of the open caseload



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yet they are succeeding in 40% to 50% of cases, is it really justified to reduce substantially the right of appeal?

Sir Brian Leveson: You have to look at the whole thing. I am suggesting that magistrates courts should be recorded and potentially transcripts prepared. I think that will alter the way in which magistrates court proceedings are undertaken. At the moment, magistrates have to give reasons for their decisions. I see no reason why, if there is a transcript, there should not be a better system of appeal from the magistrates to the Crown court than from the Crown court to the Court of Appeal Criminal Division.

On top of that point, one of the persons to whom I spoke referred to the number of appeals from youth courts in sexual offences to the Crown court on the basis that the victim, having been through it all once, would not want to go through it again, and many did not. I find that a rather disturbing analysis of the position.

Is it a critical part? Could you do it without that? Yes, of course you could, but I have tried to look across the system to be proportionate, balanced and fair to everybody. I think that recording magistrates court proceedings is a real plus and a significant contributor to improving the quality of justice that we receive.

Q27 **Tony Vaughan:** What is your analysis about why so many appeals are successful? You have just referred to one example where the victim does not want to go through it all again at a full rehearing, but are there any other factors here that we need to be aware of?

Sir Brian Leveson: I have not done the analysis on this, but, judged by my own experience in a fair number of appeals, people were not prepared to do it a second time and the engagement and involvement had gone. I think there are other cases which appeal which could have gone back to the magistrates. I have not suggested removing the statutory declaration that you were not served with the papers to go back to the magistrates, and I have not suggested repealing the provision—I cannot remember whether it is section 142, but you are King's Counsel—that allows you to apply to the magistrates for a rehearing. I have not suggested amending that. That might be a better way of seeking to explain why you feel things have gone wrong and there ought to be another hearing.

Q28 **Tony Vaughan:** What do you think are the practicalities of recording? There is a lot of audio to store. There are practical factors relating to storage, cost and things like that. Is there a ready-made solution that you have in mind?

Sir Brian Leveson: Now, on your telephone, you can record every single conversation you have. Teams will not only record your video but transcribe it for you. AI has a phenomenally important place. I am not suggesting using stenographers; I am suggesting using comparatively straightforward recording mechanisms. You would not need 20 recording microphones; you would need one for the judge, one for the witness and one for the advocate. If it needs to be transcribed, it needs to be



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transcribed. If not, after a month or so, the time having expired, you can destroy it; it has just gone. If it is required to be transcribed, AI will now do that in a very effective way, in the same way that I am keen to encourage the use of AI for translation purposes. I vividly remember being involved in a trial in Liverpool in the '70s where, after four days, we realised that the interpreter did not really understand what the witness was saying. We had to discharge the jury and start again. It is an anecdote. Although people say that AI translation is not very effective, how effective is human translation?

I am not suggesting we just march into this area, but I do believe these are very significant and important developments which the court should be using, trying, piloting and developing so that we can make the system as effective as possible.

Q29 Tony Vaughan: Is the proposal to change the appeal test dependent on recording? Will it be viable only if we have a transcript?

Sir Brian Leveson: Yes; otherwise, how would you ever discover whether there was a point of law? I am not suggesting removal of the right to appeal by way of case stated because I think that is quite valuable as a way of challenging a pure question of law, but you could do it either way.

Q30 Matt Bishop: Sir Brian, my questions relate to your recommendation 27 where you recommend a 40% reduction in sentences for an early guilty plea. Do you think there is a risk that increasing the maximum reduction in sentence length for an early plea may place pressure on defendants to plead guilty inappropriately? If so, how would this be mitigated in those circumstances?

Sir Brian Leveson: I hope not. At the moment, the discount for an early guilty plea is one third, so I am suggesting increasing it by only 7%. My practice is always to say that under no circumstances should you plead guilty if you did not do it, but, if you did do it, we need to cut out of the system cases where defendants are gaming, playing, the system. There needs to be an adequate incentive to do so before everybody has done the work and the case actually has to come to court.

A corollary of my 40% is that I have suggested—of course it will be for the Sentencing Council to decide—that there should be a wider discretion after the first opportunity. I will tell you what I mean by that. To say that somebody who is caught red-handed in somebody else's house with his hand on granny's teapot should have a 25% reduction after the first stage when lots of work has had to be done is not necessary. Equally, if somebody pleads guilty on the day before a nine-month trial, which will cost the state an unbelievable amount of money, and that is restricted to 10%, the judge needs discretion to be able to reward appropriately having regard to all the circumstances of the case. I would hope nobody would plead guilty because a discount of 40% was available; I hope nobody pleads guilty because a discount of a third is available. But I am encouraging the court to be much more prepared to discuss this sort of



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question—you will know the reference to Goodyear and the case of Redding, which adds to Goodyear—to try to ensure that only those cases which require a trial go forward to a trial.

- Q31 Matt Bishop:** The independent sentencing review recommended legislating to ensure that short custodial sentences be used only in exceptional circumstances. With your recommendation of a 40% reduction, how can the Government ensure that those recommendations work together to solve the prison and court capacity crisis?

Sir Brian Leveson: I do not see why they don't work together. "Exceptional" is a very difficult word. We had to construe what it meant in connection with IPPs, which are a terrible stain on our criminal justice system. It won't mean that people do not go to prison for short terms or for offences that you might not otherwise think. You do not send anybody to prison for shoplifting but you do send people to prison for shoplifting 27 times before lunchtime on Tuesday while on bail and on a suspended sentence for shoplifting. That is critical for our retail society, which is losing millions. I still think it is the fact of going to prison rather than whether it is eight months or nine months or 14 months. It needs to be done.

- Q32 Sir Ashley Fox:** Sir Brian, in relation to your recommendation 27, the increase of the maximum discount to 40%, did you speak to any groups representing victims of crime before you came to that conclusion?

Sir Brian Leveson: Yes, I spoke to several Victims' Commissioners. There is a nuanced area here. If a victim understands that somebody has pleaded guilty—in other words, they have admitted it early and promptly—to save them the stress of preparing for trial and of getting themselves into an emotional state to give evidence in court, that is quite important. I certainly spoke to Baroness Newlove and to Claire Waxman, who is going to be the next Victims' Commissioner, to discuss their perspectives.

- Q33 Sir Ashley Fox:** I asked that because constituents of mine are concerned already that a one-third discount is too generous and leads to unduly lenient sentences to criminals, particularly when they are caught red-handed. Why should someone have a one-third or even 40% discount if they have been caught red-handed and there is in fact no realistic prospect of them being acquitted? Does this not lead to a fall in trust and confidence that victims have in the criminal justice system?

Sir Brian Leveson: It is a fair point. You are replaying an argument that I had when I was chair of the Sentencing Council about discounts for guilty plea, which I wanted to deal with slightly differently, but the committee took a different view. What I say is twofold.

First, sentences have dramatically increased over the time that I have been in practice. The amount of time people serve of the sentence has dramatically increased. For a six-year sentence when I started at the Bar, you had to serve two years. You were eligible for parole after two years, when you were on licence for two years, but then the last two years was



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remission for good conduct. Now, if it is an offence of violence, you have to do four years—two thirds—and you are on licence for the remaining two years. Sentences have dramatically increased. The system has to operate. If there is no discount or appropriate discount for people pleading guilty in very good time, the system will collapse. If you look at the plea bargaining that takes place in the United States, the differences are even more dramatic.

I recognise the concern expressed. I would welcome the opportunity to discuss with your constituents what the priority is here and what they need from their criminal justice system by way of speedy outcome and accountability for the harm that has been caused. That is a difficult question. Thinking about the discount on its own, I understand entirely.

- Q34 **Sir Ashley Fox:** The harm caused was that their daughter was killed by a dangerous driver and a 15-year sentence was reduced to 10 years—a one-third discount. Then, of course, that person will be released from prison even earlier for good behaviour. What started off as a 15-year sentence ends up with the criminal being released perhaps after five or six years. Under the Government's early release scheme it may be even less, and that seems an unduly lenient sentence for someone who has taken a life.

Sir Brian Leveson: Causing death is an incredibly complicated and difficult subject, and I empathise 110% with your constituent. I really do understand it. You only need to look at the way in which we have adjusted sentences for causing death by dangerous driving. It started out—I am sorry if I am going back into history—as five years, then 10 years, then 14 years, and now life. Society has increased dramatically the penalty for causing death. There is a balance. I am not in any sense diminishing the hurt that your constituent might well feel. I have said it when I have sentenced defendants: the damage they have caused, the destruction of life to the family of the person, and the way they have destroyed their own lives and damaged the lives of people who love them. I am not diminishing that, but the system has to operate, and at the moment it just isn't. So I take your point about that particular example.

Sir Ashley Fox: Thank you.

Sir Brian Leveson: I really do. I express my enormous sympathy to your constituent who lost a loved one. I am sorry.

Chair: Sir Brian, time is against us. We are going to finish in about five minutes. We have the excuse of your part 2 report to invite you back soon, I hope. I will turn to Tessa Munt to ask one last section. If I have time, I will come in briefly at the end.

- Q35 **Tessa Munt:** I have loads of questions that I wanted to ask you, but I will ask the Chair to submit them to you in writing so that you have the luxury of looking at them.

Sir Brian Leveson: If you put something in writing, I will deal with it.



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Tessa Munt: Thank you.

Sir Brian Leveson: The people behind me will groan, but I will make sure it is dealt with.

Q36 **Tessa Munt:** That is cool. I have some that I would like to ask you now none the less, bearing in mind the time. They will be fairly quick. I am talking about your recommendation that we should establish a Crown court bench division. I wanted to ask, particularly, how that division would affect the regime for the trial of youth offenders; and in what circumstances, if any, a youth defendant would retain the right to a jury trial under the new proposals.

Sir Brian Leveson: Youths only go to the Crown court if it is a grave and serious crime, so it is unlikely to be indictable-only. Indictable-only would not come within a bench division. Youths are tried for rape and other serious sexual offences in the youth court. If they are tried in the youth court, that is usually by a district judge sitting on his or her own. If they are taken up to the Crown court because there is an adult with them and it is within the parameters of a bench division, they will get a bench division, but that is what they would have got in the youth court anyway.

Q37 **Tessa Munt:** Thank you. My next question is one about the magistracy and including magistrates in the Crown court bench division. One might suggest that the magistracy does not always reflect the age and the socioeconomic diversity that one would seek. Is it realistic to expect a huge improvement in the diversity of the magistracy when the role is still unpaid and it is really only accessible to those who can afford to volunteer, which is moderately few?

Mrs Russell: Hear, hear.

Sir Brian Leveson: This is a real problem. I recognise it as a problem. I know that the Ministry of Justice is conscious of it. I have identified the need to recruit more widely if possible. I have encouraged some examination of the allowances paid to magistrates—or I will encourage it if I have not encouraged it. It will be in the next part. I take your point. Getting people to be prepared to take time out of their other lives to sit is a challenge, but there are those who are prepared to give up their time for community service, and I would encourage them to continue to do so. But I understand the problem.

Q38 **Tessa Munt:** Thank you. Can I ask you one very specific question? A defendant knows the sentence they are likely to get on a guilty plea at the first Crown court hearing. The judge gives that indication. Would he or she reserve that judgment to themselves, or would the indication be binding on the judge who does the sentencing?

Sir Brian Leveson: The only time you give an indication is if you are giving an indication for that moment. In other words, it is that moment. Let us assume you ask for a Goodyear indication. The defendant asks for, and Goodyear permits, the judge to provide an indication. The judge would then be bound by the indication he or she had given. I am not sure



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that I visualise a circumstance in which the case would then go off, because if the defendant does not take up the indication there is no undertaking for the future.

Q39 **Chair:** The reason why we are doing this, Sir Brian, is that we have the statement on wrongful releases from custody starting in a few moments. I do hope we will have the pleasure of your attendance again.

Can I end by saying one thing? You may know already that a week ago we had the Second Reading of the Public Office (Accountability) Bill, also known as the Hillsborough Law. There were 17 references to your report on culture, practice and ethics of the press by 12 MPs.

Sir Brian Leveson: I am pleased that it is still being thought about.

Chair: As is Leveson 2; as is the cost-shifting model that you recommended; as is the appropriate type of regulator.

Sir Brian Leveson: Mr Slaughter, you give me great pleasure.

Chair: Thank you very much.

Linsey Farnsworth: Could we write to Sir Brian about that?

Chair: I am sure that we could. It is probably beyond our remit; it is for the Culture, Media and Sport Committee, but I am sure we could do that in an individual capacity. Thank you very much.

Sir Brian Leveson: You are very welcome.