

Justice Committee

Oral evidence: [Reform of the Criminal Court](#), HC 1602

Tuesday 13 January 2026

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Members present: Andy Slaughter (Chair); Pam Cox; Linsey Farnsworth; Sir Ashley Fox; Warinder Juss; Sarah Russell; Vikki Slade; Tony Vaughan.

Questions 1 - 90

Witnesses

[I](#): Kirsty Brimelow KC, Chair, The Bar Council; David Ford JP, National Chair, The Magistrates' Association; Riel Karmy-Jones KC, Chair, The Criminal Bar Association; and Cassia Rowland, Senior Researcher, Institute for Government.

[II](#): Sarah Sackman KC MP, Minister for Courts and Legal Services; Amy Randall, Director for Courts and Victims, Ministry of Justice; and Chris Drane, Director of Analysis, Ministry of Justice.

Examination of witnesses

Witnesses: Kirsty Brimelow KC, David Ford JP, Riel Karmy-Jones KC and Cassia Rowland.

Q1 Chair: Welcome to this afternoon's session of the Justice Select Committee, in which we will talk with a panel of experts and then the Courts Minister about criminal court reform. Before I ask the witnesses to introduce themselves, Committee members will make their declarations of interest.

Sir Ashley Fox: Good afternoon. I am Ashley Fox, the Member for Bridgwater. I am a former solicitor and my interests are on the register.

Vikki Slade: Good afternoon. I am Vikki Slade, the Member of Parliament for Mid Dorset and North Poole. My interests are on the register, but there are none of any relevance to this session.

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

Pam Cox: Good afternoon. I am Pam Cox, a former historian of the criminal justice system. I am chair of the all-party parliamentary group on penal affairs and my other interests are as declared.

Sarah Russell: Hello. I am Sarah Russell and my interests are as declared. I am a solicitor with a current practising certificate, specialising in employment law, although I do not currently practice. I am chair of the all-party parliamentary group on access to justice and a member of the USDAW and Community trade unions.

Linsey Farnsworth: Good afternoon. I am Linsey Farnsworth, the Member of Parliament for Amber Valley and a former Crown prosecutor for over two decades, so I am familiar with magistrates and Crown courts. My interests are as per the register, but those of relevance to today are that I am the co-chair of the APPG on legal and constitutional affairs and a member of the APPG on access to justice.

Warinder Juss: Good afternoon. I am Warinder Juss, the Member of Parliament for Wolverhampton West. I hold a current practising certificate—I am a solicitor but not practising—and I am a member of the GMB trade union executive council, as well as being a member of various APPGs.

Q2 Chair: Will our guests please introduce themselves briefly?

Riel Karmy-Jones: Good afternoon. I am Riel Karmy-Jones, King's Counsel. I am the chair of the Criminal Bar Association of England and Wales and a barrister in the chambers of 18 Red Lion Court. I have practised and specialised in criminal law for over 30 years, and also



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worked in regulatory law. I was lead counsel to the independent inquiry into child sexual abuse for about two years, with responsibility for the Roman Catholic Church investigation and the English Benedictine Congregation. Most of my work has involved vulnerable victims and vulnerable witnesses, so that is very much part of my focus in considering the revised proposals.

David Ford: Good afternoon. I am David Ford, the national chair of the Magistrates' Association. I sit in Cardiff, and I have been sitting for nearly 32 years now. The MA is the membership body for magistrates, with around 11,500 members and over 50 branches across England and Wales. The MA is the only independent voice for the magistracy and works to promote the sound administration of the rule of law. I work very closely with our policy board and five committees to focus on adult, youth and family courts, as well as training, learning and development, and diversity and inclusion. The committees develop policy grounded in the expertise of our members.

Kirsty Brimelow: My name is Kirsty Brimelow and I am the chair of the Bar Council, which represents 18,000 barristers in England and Wales. I was formerly at Doughty Street Chambers, where I practised in crime, and also in international human rights law and public law. I have over 30 years' expertise in criminal law in the courts, in both prosecution and defence. I also have a specialism in justice systems where there has been a focus on complainants accessing justice quickly, and I have carried out training internationally, particularly in India and Tanzania.

Cassia Rowland: Good afternoon. I am Cassia Rowland and I am the senior researcher and criminal justice lead in the public services team at the Institute for Government, which is a non-partisan think tank focusing on Government effectiveness. I have been doing quite a lot of research on the performance and productivity in criminal courts, and on the proposed reforms.

Q3 **Chair:** I will kick off. I think we know the position that the Bar takes—both the Criminal Bar Association and the Bar Council generally—in response to the proposals on jury trials. Could you indicate what differences there are, if any, between the position of the Bar Council and the Criminal Bar Association? That question is to either Ms Karmy-Jones or Ms Brimelow.

Kirsty Brimelow: I am happy to take that. This is probably the occasion when there is not even a nuance in the position between the Criminal Bar Association and the Bar Council, as well as the circuit leaders. We are all at one in relation to the efficiencies that would have a real impact on the backlog and reduce delays, and we are all at one that reducing jury trials in the way that has been suggested, or at all, would not have that impact on reducing delays or the backlog.

Riel Karmy-Jones: I agree with what Ms Brimelow has said. I would add that 90% of the membership of the Criminal Bar Association were against the proposal advanced by Sir Brian to limit the right to jury trial, and that



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is the same now. There is overwhelming support for the Bar Council's suggestions, and against the proposals.

- Q4 **Chair:** What would the Government have to do to persuade you that some change is necessary to the way that jury trials function at the moment?

Riel Karmy-Jones: For my part, significant evidence will need to be produced. There is an absence of evidence. What happens in other jurisdictions is not evidence, and nor is importing piecemeal bits and pieces of what goes on in Canada or New Zealand evidence. It is also important that there is evidence that juries actually do cause delay, and as far as we are concerned that has not been produced. We need to see the modelling, the analysis and the core data, and none of that has been produced.

- Q5 **Chair:** If that evidence were available—clearly what you are talking about goes beyond what is in Sir Brian Leveson's part 1 report—would you be persuadable that changes can be made? I suppose what I am trying to get at is: are you saying that the system is sacrosanct as it is, and that changes cannot be made to the type or volume of cases that go before judge and jury now? Or are you simply saying that you need to know how far that will contribute to the Government's aim of reducing the Crown court backlog?

Kirsty Brimelow: There are two parts to it. Yes, the objection is in principle—you can say "sacrosanct", but we would say "principle". Secondly, it is also pragmatic.

What would be needed to cause a change? Of course, if there was modelling to show that it would have an immediate effect on the backlog of 80,000 cases, that would be considered. That is what we all want—we want to reduce the delays. But we all know—and in fact, the Government have already said—that it will not have an impact on those 80,000 cases, because primary legislation would have to be introduced as it is a constitutional principle. That will take time, and that will then be forward-looking—it cannot look retrospectively on those 80,000 cases. Meanwhile, we have energy and focus diverted away from getting on with the remedies that would actually have an impact now on bringing down the delays.

- Q6 **Chair:** But what if they did produce evidence—we know that there is a lot of documentation to come, including legislation, impact assessments and responses to Brian Leveson's report—that showed there would be the 20% time saving that Sir Brian suggests? If there was greater evidence, you are not opposed to the idea that there could be some redistribution or curtailment of jury trials, if it would achieve that ambition.

Kirsty Brimelow: There is still opposition, because the principle is opposed. Only 1% of cases, in any event, go before a jury. On Brian Leveson's 20%, we know that he is looking ahead to 2028-29. Nobody is suggesting that it will impact the backlog, if we look at this forensically, because no legislation can apply retrospectively. It would not be possible.



Q7 Chair: It sounds to me like you are saying that even if the Government could stand up figures for this being a contributing factor—obviously it is not the only factor—in reducing the backlog, and could show that a change to the mode of trial could mean the backlog reducing over time, or at least not increasing, you would still be opposed to the changes because you believe there is a principle for retaining jury trials.

Kirsty Brimelow: There is still the principle but, respectfully, it is speculation. We all know how the law works, and it is not going to be looking backwards, so we can agree that we will be looking at whether it will impact on the backlog in about three years' time—that would be the earliest. If the Government produces modelling to show that there will be some reduction in the backlog in three years' time, of course we will look at that.

However, the principled objection is that while all this focus is happening now on the juries, we are not getting on with the efficiencies that could be brought in, because people have only so much energy and resources. That is why I am putting it that way around. But of course any new modelling would be looked at. However, the principle is one that we very much adhere to, because there is no reason to pull it up. If the Government were to say that there will be emergency legislation and a sunset clause because it is going to reduce the backlog in 2029 by x%, of course that would have to be looked at, but currently that is not where we are.

Q8 Chair: I totally understand your point that there are other methods—making the courts more efficient, using them better and putting more resources in—that you would like to see not only happen but happen before we look at this idea. Would you have an objection, Ms Karmy-Jones, if it were shown that there would be a reduction in the backlog, or that the process would be more efficient, if some changes were made to where the right to a jury trial exists at the moment? Would you be happy with that?

Riel Karmy-Jones: It is very difficult to speculate about how that might be shown and what the evidence would be. Frankly, I agree with what Kirsty said about principled objections, but this is not about sentimentality. It is not about hanging on to a system because thus it has always been. Over time a number of reforms have been made to the system. Over time there have been differences as to how juries are selected and who can sit on a jury. It is not about that. We can only comment on the proposals we have in front of us, and the evidential base for those proposals. We do not have an evidential base at the moment.

Chair: In the interests of time, I am going to leave it there and pass over to my colleague.

Kirsty Brimelow: Can I add one short point on the principle? We have repeated that this is one of the moments when the public actually engages in the criminal justice system, and we see that in very strong support for retaining jury trials. You have that engagement at voting and within our administration in the criminal justice system. We have that whole aspect



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of trust, which the courts still run on to some degree. It is very problematic as to what would happen if we removed that community input into our criminal justice system.

- Q9 **Chair:** There are lots of important principles here, but we have had a submission for this hearing from the Victims' Commissioner that talks about trial dates being fixed in 2030, and about how "40% of victims withdrew from the justice process before a charging decision was made"—the proportion is higher for sexual offences. Do we not have to balance the rights of victims?

Kirsty Brimelow: Yes, but that is at the investigation stage. We completely agree with looking at the attrition rate, which has always been very high at the investigation stage. That is an answer to another question. This is about what happens when it gets to the court. Obviously we need to look at when sexual offences cases are listed. Sexual offences cases are always prioritised when they get to court; however, there is huge attrition before that, because of the length of time the investigation is taking.

- Q10 **Linsey Farnsworth:** Can I clarify something? Are you suggesting that victims do not withdraw because of waiting through the Crown court list, and that they all withdraw before that point because of the investigation?

Kirsty Brimelow: It probably won't be all. There will be data on this that would be helpful to get from the Crown Prosecution Service and the MOJ. Certainly historically, right up until now, there has been a huge attrition rate before it gets to court. That has been where the focus has to be. As to how much the attrition rate has increased at court, the data must be there to look at.

Linsey Farnsworth: But there are some.

Kirsty Brimelow: Yes, there will be some, I'm sure.

Riel Karmy-Jones: I have heard the higher figure of 60%. One difficulty is that that percentage is not broken down. To take Kirsty's point, we do not know how many are withdrawing immediately after the allegation. What percentage is that? How many are withdrawing because of delays caused through the police investigation, and through mobile phones being interrogated? How many asked for their mobile phones, refuse and then withdraw? How many, at a later stage, have a mental health crisis? That has happened with a case I am dealing with at the moment. I have two complainants who have withdrawn not because of any delays, although of course there have been some, but because mental health issues have arisen and they don't feel they can go through a trial.

Of course, there are some at the moment who are withdrawing because they see a trial ahead of them and five years to wait. There are 13-year-olds who look into the future and see that their trial might not take place before they are through their GCSEs or A-levels. We carry those very much at the forefront of our minds. When you look at this issue, those delays are not caused by a jury. Those delays are caused by many other

things within the infrastructure. That is what we suggest the Government should focus their attention on, rather than layering over a whole new Crown court bench division and a whole new system without fixing what is there and dealing with the victims who are in the backlog.

Chair: Okay. I am going to have to move on.

- Q11 Pam Cox:** The Leveson review states: "There exists no such constitutional or common law right to a trial by jury." The context for the report saying that is linked to Lord Justice Auld's work when he looked into the history of jury trials and the rights to jury trials and concluded that "a free man's right to the lawful judgment of his 'peers' did not refer to trial by jury." There is a lot of academic work around that. On that basis, Lord Justice Auld concluded that "there is no legal basis for regarding the claimed 'right' to jury trial as a constitutional entitlement, that is an entrenched right overriding all other legal instruments...or as a right at all." What do you say to that?

Kirsty Brimelow: I defended Glenn Cameron in the case of Twomey, which was the first trial by a judge alone. It was an armed robbery at Heathrow airport in 2004. The jury was discharged under section 46(3) of the Criminal Justice Act 2003, which said that if the court was satisfied that there was a real and present danger of jury tampering, it could be a judge-alone case. So this was a real test case of a judge-alone trial. It went through various appeals, including to the European Court of Human Rights, which looked specifically at whether there is a right to jury trial. Certainly, there is no right under article 6(1) of the European convention, because many jurisdictions do not have juries, and they have different types of juries in those that have.

I hope one observation I noted down from the European Court judgment is helpful. It said: "The jury exists in a variety of forms in different States, reflecting each State's history, tradition and legal culture". We say that is very important, because it recognises that the system grows up out of the legal history of that particular country. To Ms Karmy-Jones's point, it is therefore very crude, and not actually always helpful, to pick pits from other jurisdictions, because their legal history and how they are set up is very different.

- Q12 Pam Cox:** I am talking about our legal history. There is a lot of talk here about there being an ancient right to jury trial. I am looking at that to ask whether there is.

Kirsty Brimelow: In answer to your question, I have never suggested myself, on behalf of the Bar Council, that there is a right to jury trial. I have always put it as a constitutional principle or tradition, which is obviously deeply rooted. However, members of the public probably think that there is a right to jury trial, so they probably perceive that there is. Legally and constitutionally, I would say it is a principle rather than a right.

- Q13 Pam Cox:** It is a principle that has also changed over time, hasn't it?

Kirsty Brimelow: Yes, absolutely.

Pam Cox: The role and remit of juries has changed over time, so the governance of juries has a history. One might argue—whatever one thinks about the rights and wrongs of this—that this is another phase in the transitional governance of juries through democratic processes. Would you agree with that?

Kirsty Brimelow: The reason why it would need primary legislation is because it is a constitutional principle, so it is deeply entrenched. The arguments would have to be made to Parliament as to why that change would be coming through in legislation.

Q14 **Pam Cox:** Thank you. I think that is probably all I need on that; I will move on to the hearing question. The Leveson review and the Government have both stressed that jury trials for the most serious indictable-only offences have more than doubled in hearing time since 2001. Why do you think that has occurred?

Riel Karmy-Jones: I think there are a number of different reasons. There is a great deal to do with the failures of the court infrastructure—there are courtrooms that are not operating, and we do not have sufficient sitting days. There are a number of failures—you know these points—with delivery of prisoners, lack of interpreters and failures of equipment. Those cause incremental delays to every trial.

Cases are getting larger. In our view, there is potentially some overcharging adding to complexity in indictments. There are reams of additional disclosure material now. We now have a completely different form of technology with mobile phones and computers, but we also have medical reports, GP records, psychiatric records and school records all across the country. Frankly, digital disclosure takes a lot longer. For my part, I do not think that juries and the process of having juries has significantly added to the length of trials.

Kirsty Brimelow: I completely agree and will add a few bullet points. Digital evidence is huge, and how it is served can be very problematic—it can be served late. The defence is then under lots of pressure and might also need time, even during the trial itself. With forensic evidence, since forensic services were privatised, it is difficult for the court to have control over the timetable that the forensic labs set themselves. Increasingly, we see forensic evidence coming late during trials or even being served during the trial. That will then cause delay, because it will need further expert input on the defence side.

What we do not get from the figure of the length of time that jury trials are now taking is how much that is caused by delays in a case starting. It is absolutely at a peak of not starting on time at 10 am. A three-day trial, for example, might take six days, because you are only starting at 12 o'clock every day.

Q15 **Sir Ashley Fox:** Chair, can we ask Cassia Rowland to come in? I know the Institute for Government has made some comments on the productivity of



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the court, and I am very keen to hear from some of the other witnesses.

Cassia Rowland: The point I would make is that I do not think 2001 is a very helpful reference point, because that was the year in which committal hearings for indictable-only offences were abolished. If you look at 2002, it is more like a 50% increase since that year, rather than a doubling since 2001. I think 2001 is the wrong reference year to look at. It is not as extreme an increase as it might appear when you first look at it. If we are looking just at the time spent in hearings, rather than at some of the wasted time around hearings, which we know has also gone up, I absolutely agree that digital evidence is going to be part of that.

Some of it is also likely to be due to delays in the system itself—what we think of as failure demand. The failure to act on or appropriately meet demand when it first arises creates more demand later on. Because you are not dealing with a case promptly, that can mean that you have more bail hearings or additional hearings that would not have needed to happen at all if the case had been dealt with efficiently and quickly when it first came before the courts. We can see this in the really big increases in the time that guilty plea cases are taking in hearing hours. Some of that is probably due to similar delays—the fact that it takes longer just because of the delay.

Q16 **Chair:** Now that you have begun, could I ask you to continue with the other side of that coin? How much time do you estimate that the Government's proposed reforms to jury trials would save the Crown court, and what evidence do they need to produce to persuade us of that?

Cassia Rowland: It is helpful to think of it as two separate sets of reforms. There is your swift courts, or your Crown court bench division—the concept of judge-only trials—and then there is keeping more cases in magistrates courts. The Government have suggested that about a third of jury trials would instead happen in magistrates courts, and then you would have only a relatively small number going to the swift courts. I am not sure that they would actually manage to move a third into magistrates courts; maybe a fifth is more likely—at the upper end of that—but you would still have only quite a small number of cases going to those judge-only courts.

I think the impact of the judge-only courts would be marginal. You are looking at saving 1% to 2% of all hearing hours in the Crown court. Even if you accept that 20% reduction in hearing hours per case, the proportion of cases that applies to is so small that the total impact is really quite marginal.

Q17 **Chair:** My question—I think you have answered it, but in a rather strange way—was more about what the Government need to do. There is a lot of criticism that the Government have not produced evidence. You seem to be saying the evidence is not there, so there is not much they can do.

Cassia Rowland: The numbers that we have let us make a reasonable assessment of the likely impact. I know that the review team and HMCTS have more detailed data on what they expect demand to look like in the



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future, which lets them make more detailed assessments, but it is possible to make a rough estimate of the time savings that this reform package would lead to, and I think it is pretty small, particularly for the judge-only trials aspect.

- Q18 **Linsey Farnsworth:** Can I clarify something? You said that you estimate 1% to 2% savings in Crown court time. Are you just talking about how much time is saved in the actual hearings in the courtroom, or are you taking into account other savings within the criminal justice system, like the work undertaken to summons jurors, to deal with jury expenses and so on, which obviously will have been reduced as well?

Cassia Rowland: That is just the court time. There are other aspects. It might well take criminal lawyers less time to prepare for a non-jury trial. That is not factored in. It is just the court time element—the hearing—and it is only for the swift courts aspect of it; it does not factor in moving more cases into magistrates courts.

- Q19 **Chair:** Would that be a more significant reduction?

Cassia Rowland: I think it would be.

- Q20 **Chair:** There is a lot of criticism of the Government for not producing methodology. Do you have methodology that backs up your 1% to 2%?

Cassia Rowland: I do, and I am very happy to take you through it, but we would be here all night.

- Q21 **Chair:** Indeed. Sir Brian has made an estimate, and there has been criticism that it is not well evidenced—it is the same with the Government's estimate. Overall, based on your evidence, what would be the saving from the measures set out in Leveson part 1?

Cassia Rowland: Just looking at the jury trial aspect, so not taking into account appeals, out-of-court disposals and those kinds of changes, you would be looking at 8% to 10% savings—if they are right about how much they save per case, and how many cases they can keep out.

- Q22 **Chair:** But having no jury trials in the swift courts, for however many cases—7,000, or whatever it is—is not going to make an appreciable difference, is it?

Cassia Rowland: No.

Chair: Thank you. I am sorry for interrupting you, Linsey.

Linsey Farnsworth: No, I had finished.

Chair: Pam, had you finished as well?

Pam Cox: I had finished.

Chair: Lovely. We are being very disciplined.

- Q23 **Warinder Juss:** I can understand why the public might think that they would like to be tried by their peers. Brian Leveson proposed that the



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Crown court bench division would constitute a judge sitting alongside two magistrates, without a jury. He said that would “maintain fair trial standards”. He said it would bring in “the community representation and diversity that the magistracy offers”. He also said that “magistrates bring local community values and a measure of local accountability” in a similar way to that provided by a jury.

Instead of having a system whereby trials take place by judge only, if the Government were to adopt a system in which there would be a judge and two magistrates, do you accept that would be a fairer system? Would you be prepared to go along with it?

Riel Karmy-Jones: I wonder why one head, in the current proposal, is better than 12, and why it is thought that three heads are better than 12? One of those heads is automatically going to be in a position of power, authority and experience that well surpasses those of the two magistrates who sit to the side, with the greatest of respect to them. How well, I ask, would the two magistrates stand up to the judge if they disagreed? When there is a jury of 12, there is a safety mechanism because there are 12 individuals who offset and bounce against each other. When there are two magistrates alongside a judge, that bouncing is not going to be the same.

How is it going to work with the magistrates? That may be a question that is more for David Ford. Are they going to be professional or lay magistrates? The proposal includes an increase in seriousness of cases by reference to the increase in seriousness of sentencing. That level of sentencing could include much longer, violent-disorder, multi-handed-type cases. How are magistrates’ dates going to be managed? How is the fairness of the trial going to be affected if it has to break off after a week to get the magistrate back? I have done magistrates court cases in the past, and sometimes, when you have to reconvene the magistrates, it is extremely difficult.

Certainly, you would end up with more of a balance. Certainly, you would have more of a chance of getting diversity within the group of three, but not very much more, frankly. There would still be people who are deemed appropriate to be magistrates—as well as those who are deemed appropriate to be judges—who may not be the kind of people you would find on a jury, who really understand what not just the defendant but also the victim is going through. So it would be a little better, but not good enough.

Kirsty Brimelow: I would focus on—

Chair: I don’t want to interrupt you, but I would love to hear Mr Ford’s view.

David Ford: With regard to having two magistrates in the intermediate court—or the swift court, which we do not think is a helpful phrase because it implies swiftness over efficiency—in Leveson, we certainly called for two magistrates to sit. I do disagree, with all respect. We are both professional and lay. We already sit with judges on appeals. Believe



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you me, having done it, we are more than brave enough to stand up to a judge.

The votes in any retiring room are all equal, whether you have been a magistrate for 32 years or 32 months. All the votes in the retiring room are the same. Of course, the judge would have more experience, but having the two magistrates there will give an element of peers judging their fellow members of society, which is essentially what juries do.

Of course, the added benefit in the magistrates court and presumably in the intermediate court is that we give reasons for our decisions. We are not saying in any shape or form that we are better, but we are different from juries. When we come to a verdict, we explain what that verdict is and how we got to it.

We are very much supportive. While we are broadly supportive of the recommendations overall, we are disappointed that the recommendations have come through without two magistrates sitting alongside a judge.

Warinder Juss: Ninety per cent of criminal cases are dealt with by magistrates. I don't think anybody would say that they are not dealing with those cases properly. I am glad that you have clarified the distinction between a professional magistrate and a lay magistrate. I had a friend who was not happy with that distinction being made. They are professional and they are lay. That is the point I am making: they bring an area of professionalism, but they are also members of the public.

David Ford: And diversity.

Warinder Juss: And diversity, yes. That is why I make that suggestion, but I would like to hear from the rest of the panel.

Q24 **Sarah Russell:** Ms Karmy-Jones, have you appeared in the employment tribunal?

Riel Karmy-Jones: No.

Q25 **Sarah Russell:** It has been the gold standard in the employment tribunal system for a very long time that there is a judge and one member who is drawn from a traditionally employer background and one who is drawn from a traditionally trade union background. They are both lay, but there is absolutely considered to be good-quality decision making in the employment tribunal. I feel this is a very similar system. Do you have any reflections on that?

Riel Karmy-Jones: If I can reflect on regulatory proceedings and the kind of proceedings I have been in, I have very much heard the argument that it is all right in regulatory and civil work for cases to be decided by a judge or a panel. The difference is that in those cases there is not the same degree of legal application, in my experience.

For example, in regulatory proceedings, where you have a hearsay application, hearsay is generally admissible. Bad character does not come up in quite the same way as it does in a criminal case. A judge does not



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have to put aside the defendant's 25 previous convictions that they know about and rule to be irrelevant.

There is not usually as much argument around issues about disclosure, because things that are redacted in the cases that I have dealt with largely deal with mental health issues or personal data. There are not the same kind of issues around disclosure of technical material—mobile phone data or previous psychiatric records.

Those kinds of proceedings also have significant delays. I did a sexual complaint allegation in the SRA a few years ago. There were three on the panel. It took over two months for the judgment to be handed down, while everyone was waiting for it.

Decisions with reasons will need to be very carefully drafted and considered, and they are going to be picked over with a great deal of scrutiny. One thing that a jury does at the moment is that it provides a judge with a level of protection, because when the verdict comes in, you know that 12 people have come to a conclusion. They have spent some time deliberating, and they come to a decision.

When you have a single judge, or a judge and two magistrates, providing a ruling, the detail of that is going to be picked over. In my view, it is likely to lead to further appeals. There is a concern about the impact on the judiciary as a result. We already have a number of cases where judges who are easily identified have been targeted by the media and others as a result of unpopular rulings. That does not happen with a jury. I know I am digressing on to other topics, but—

Q26 Sarah Russell: I do feel you rather are, with the greatest of respect.

Riel Karmy-Jones: That is why I say so. I am not saying that you cannot ever have a form of case where a single judge, or even a panel, can produce a fair result. I am saying that criminal cases are different from employment-type cases. They are different from regulatory hearings and from civil cases. There are different issues that need to be dealt with in those cases.

Sarah Russell: I would beg to disagree, but I will hand over to my colleague.

Q27 Linsey Farnsworth: Is it not the case, though, that there are already examples within the criminal courts system of exactly the two options that we are talking about? The two magistrates and a judge, as Mr Ford said, is exactly the set-up for appeals from the magistrates court in the Crown court. Also, there are excellent, if I may say so, district judges who sit alone in the magistrates court hearing cases every day—usually, the more complex or serious end of the magistrates court remit. There are already good examples of this working in practice. I would be interested in your thoughts on that.

Riel Karmy-Jones: There are good examples of what they are doing working in practice. Those are not the same as examples of the wider



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proposals working in practice. It can work in an appeal case. Equally, if you speak to some of the judges who sit with magistrates, or some of the magistrates who sit with judges, they are not necessarily as satisfied by the process as it may appear on the outside. It very much depends on the circumstances, but we are talking about a different type of thing.

Linsey Farnsworth: I am not sure we are, actually, to be fair.

David Ford: Can I come in there? I do not know where that data comes from that judges and magistrates are not satisfied. I sit on appeals. Colleagues sit on appeals. We all think it is really healthy. We have an added bonus that we get to speak to a judge as well. The judges' feedback to us, when we sit with them, is that they are getting an angle completely different from how they would normally look. We are more diverse and we do add to those discussions, so a judge and two magistrates does work.

Kirsty Brimelow: Can I make one point on this? I take a slightly different approach. Full disclosure—I have sat as a recorder, so I have also dealt with appeals with two magistrates. I do not take the approach of the judge perhaps intimidating in some way or being over-authoritative with the magistrates. I agree that there are always very robust and helpful three-way discussions but, respectfully, I think we are slightly getting away from what we are looking at here, which is the juries and the jeopardy at the end of it, which is potential imprisonment. I do not find those different tribunals, which I have lots of experience of, a good comparator because of the different types of evidence that have to be dealt with. I gently ask that we go back to the experience of when we tried a judge-only trial, and that is really the case of Twomey—there have been a few others. You can look at the issues there.

On the question of the panel, of course it is better having three than having one judge, and having the community element in there. Of course I agree with that, but looking at it from the jury perspective, there is no reason to remove that greater protection of having 12 people. It is because the jeopardy at the end of it is somebody's liberty—not only losing their job and so on, but losing much more than that. That is the protection around the jury, and it separates them as the fact finders, with all their diversity, from the lawyer, who is the judge presiding. I would also say, on the data, that I completely agree that magistrates are a really important part of our system. District judges and lay magistrates do an absolutely fantastic job, but there is this statistic that 41% of appeals from the magistrates courts are successful, so sometimes the justice is not working perhaps as it should within the magistrates courts.

Q28 **Linsey Farnsworth:** Do you know what proportion of those successful appeals are as a result of the victim or witness not wanting to go through, essentially, a retrial?

Kirsty Brimelow: I don't have that data, but I can certainly look into it, and we can communicate it.

Linsey Farnsworth: That would be really useful; thank you.



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David Ford: We should not underestimate how few people appeal. Nobody is going to say that the magistrates court, or any court, is perfect—of course there are going to be variances and mistakes. Invariably, the appeals are on the length of sentence. Very few get appealed, so it is really no surprise that 40% are successful, and I don't think that is a bad thing—I think it is healthy that the appeal process is there.

While we are not specifically speaking about this, if we are going to have extended powers, magistrates are certainly telling me and my colleagues, "We would be a bit uncomfortable if the option for an appeal is taken away, and maybe that is something to explore." We do not have proposals for it, but it is certainly something that we think should be thought about. Is it the wisest thing? When there are so few appeals, what difference will it make? That is an open question, not a closed one.

Q29 **Linsey Farnsworth:** This is a question for all of you. The Government have proposed to remove the right for defendants to elect a jury trial in either-way cases, which goes beyond what Brian Leveson suggested, albeit I think he made some comments that he did not think it was a bad idea, if it was what the Government wanted to do. Do you agree with that proposal to remove the right to elect a Crown court trial?

David Ford: Yes, we certainly do. We do not want gaming going on, which we do see. Where people have what we call the either-way option—we all know that phrase—they will choose to go to a Crown court with the hope that time will send the boat down the river and victims will decide to change their mind, and so on and so forth.

From our point of view, we believe that magistrates, when they are assessing either-way, are probably a better judge of what is appropriate than the individual who may or may not be gaming. Certainly, in the more serious cases, we are of course already trained to do that with allocation. If we believe that it is likely to be beyond our sentencing powers, we will—as we say—send them up. We are certainly supportive of the removal of either-way.

Kirsty Brimelow: If I may, Chair, I really do struggle with the language of gaming; it is not reflective of somebody who is accused of a crime and is pleading not guilty—there is a presumption of innocence there. My experience is certainly that defendants also want the case to be heard as quickly as possible. There might be some raised eyebrows on that, but having worked in this area for over 30 years, representing and speaking to people about what they want, I know that their whole life is just frozen until the matter can be resolved.

Don't forget that many people are also found not guilty, or the prosecution offers no evidence or a lesser plea. I really feel that the language suggesting that it is accepted or proven in some way that defendants are gaming the system is not actually accurate. You are dealing with a vast number of people, and there will undoubtedly be some people, but I have not come across them myself.



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Q30 Pam Cox: The right to elect has also changed over time; it has had different forms in different periods. Does that have any bearing on your thinking on this matter?

Kirsty Brimelow: Of course it has a bearing, in that you always want to look at what reform is there, and the Bar Council and barristers are absolutely not against reform, and we always work with it. Here, the proposal on removing the right to elect for certain low-level offences is one where we would flag caution. It is opposed because the low-level offences are often those where you have someone of good character and they are in jeopardy as to the rest of their lives if they have a conviction. We would place the focus on the offences themselves—on reclassifying those that should in fact be in the magistrates court and not in the Crown court, and on looking at those so that they are debated in Parliament, with the changes made there, rather than looking at changing the system. It would probably have the same effect, but it means that the offences can be looked at properly to consider which ones should be within the magistrates courts.

A clear example of that is the offence of assault on an emergency worker. That was introduced originally to deal with assaults on paramedics. It has been used for assaults on police officers. A practical step there could be to offer no evidence in all those cases and to reintroduce assault on a police officer. There could be legislation around that exceptionally, where that could apply. It would not be retrospectively leading, but it would be just another offence, which would be more appropriate, and it would go straight to the magistrates court. That is an example.

Q31 Linsey Farnsworth: To clarify, Kirsty Brimelow, are you saying that you disagree with the Government removing the right to elect?

Kirsty Brimelow: Yes—with the caveat that we would always look at what exactly is proposed. There is no specific proposal on what it would impact on currently.

Q32 Linsey Farnsworth: Riel Karmy-Jones, may I ask you the same question, please?

Riel Karmy-Jones: The difficulty is that it depends on the clarity of what they are electing for, and we do not have a clear idea of the cut-off point or what it relates to at the moment. Yes, in principle we are opposed to it, but we can see—

Q33 Linsey Farnsworth: Is there anything that is likely to get—

Riel Karmy-Jones: Under three years.

Q34 Linsey Farnsworth: No, no, we are talking about different things here, I think—electing from the magistrates. At the moment, in a mode of trial hearing—as I am sure you know, but just in case anyone does not—the magistrates consider representations and decide whether their sentencing powers are sufficient. If they are sufficient and equipped to deal with the case, the magistrates will say that it is suitable for summary trial, but then the defendant has the opportunity to override. That is the only thing we



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are talking about. We are not talking about the Crown court bench division; we are talking about removing the right for a defendant to override the magistrates court decision and say, "No, my case is going to the Crown court." Specifically, that is what I am asking. Are you in agreement with that or opposed to it?

Riel Karmy-Jones: The Criminal Bar Association is opposed to that for the reasons that Kirsty outlined. It is something that we are conscious may need to be looked at in the future.

- Q35 **Linsey Farnsworth:** Last year, 4,283 cases were in that situation, so only went to the Crown court because the defendant elected Crown court trial. Straightaway, the measure means that 4,283 cases fewer would have gone to the Crown court last year.

Riel Karmy-Jones: It is difficult, because what is the context of each of those cases? There may have been reasons why they were advised to elect.

Chair: I am going to have to move us on a little.

Linsey Farnsworth: Are we moving on to the magistrates?

Chair: Yes. I think Vikki is going to ask some of those questions, but what I would like to do—if you are happy to overrun by a few minutes, as we have one or two further questions to Ms Rowland and to Mr Ford—is to briefly go to Sir Ashley, who wants to ask Ms Rowland a question, and then I will come to Vikki Slade.

- Q36 **Sir Ashley Fox:** Ms Rowland, tell us your views on how productivity in the Crown court system might be improved. I am conscious that the Institute for Government has said that productivity of the Crown court has declined, and that the number of cases being dealt with each day is down 10% since 2016. Putting aside talk about scrapping jury trials and other stuff, how do we make our public servants more efficient?

Cassia Rowland: The productivity problems in the Crown court have a number of sources. One is a shortage of criminal lawyers—that is a real problem. A significant proportion of all scheduled trials get rescheduled on the day, because either the prosecution or the defence lawyer is not there. That results in so much wasted time, and obviously negative consequences for the defendant, the victim and so on. That is one major source of problems. The Government are taking positive steps on that issue with things such as match funding for criminal pupillages. The Crown Prosecution Service got a significant boost in the spending review last year, which will hopefully help to reduce some of those workforce problems. The Government need to monitor those steps quite closely and see whether they are having the desired impact.

Workforce is definitely a big source of problems; the physical and technical infrastructure in courts is another. We hear constantly about leaking roofs, broken radiators, jurors wandering around trying to find a room to sit in because half of them are closed. Those kinds of things make courts really inefficient. There have been big declines in the number of court staff—that



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is down 20% since 2011, roughly—and even bigger declines in the number of permanent staff, so you have a lot of temp agency staff.

We hear that there are a lot of administrative problems in courts: people do not know what is going on, where they are supposed to be and where defendants are; maybe the trial is waiting for a defendant to be delivered from prison, then it turns out the defendant is in the cells downstairs and there has just been a communication problem—these are all real examples. Those kinds of administrative problems, we think, are creating big delays. The fundamental problem is that fewer hours are being sat for every sitting day, and that just means that the courts are getting through far less than they should be in any given year.

Q37 Sir Ashley Fox: And in your view, addressing those matters would have far more of an effect than scrapping jury trials?

Cassia Rowland: Yes, I think so. Once you adjust for complexity, the type of case, the offence and so on, there is about a 20% fall in complexity-adjusted cases dealt with every day that the courts are sitting. Even partially reversing that fall would have a much bigger impact on productivity, efficiency and the size of the backlog than some of the reforms that we are discussing.

Q38 Vikki Slade: These questions are primarily to Mr Ford. We know that the Magistrates' Association has come out in support of the extension of the ability to sentence for longer in the magistrates court. We have already seen the move from six months to 12 months; obviously there is now a proposal to go to 18 months, or potentially 24 months. With that in mind as your starting position, what has the impact been of that, and what additional skills or considerations would need to be taken into account to enable magistrates to deal with cases that will presumably be longer, potentially have more emotional effect and require a different skillset?

David Ford: It was November 2024, I think, when the powers were there. You asked what it was like. The training was an update for us. There were a couple of different types of sentences and cases that we started to hear then, but I do not think that that is going to be the case for the next step. For the last two years we have coped quite well, I would like to think. We can talk about delays and what have you in a moment perhaps, but we have coped quite well with the additional sentencing. Yes, it is more complex. Yes, it is longer. And yes, there are emotional commitments to it; at the Magistrates' Association, we really do try to look after our members with things like support lines and so on.

With regard to the 18 months, or potentially 24 months, we are not aware yet of any new types of offences that would then be embraced. They would be more serious cases, of the type that we are already hearing. There would, no doubt, be an expectation for a top-up of training. We do not think that that would be problematic in any shape or form. Of course, we rely on the Judicial College for such training, but magistrates would welcome it. Already in youth court—I am a youth magistrate as well—we can sentence up to two years. Transferred to an adult court, that would be



equivalent to three or four years-worth of sentence. So it is not something we are not used to, and it is something we would embrace.

Ultimately, as magistrates, if we can help the Crown court backlog, we are more than pleased to do so, which is why we were talking about some of the issues about either way and other things. We're there. I think a lot of the proposals are a vote of confidence in magistrates, which is pleasing to see.

- Q39 Vikki Slade:** If you are going to take a case that would have a sentence of potentially two years, it presumably is going to be a trial over multiple days. If you are dealing with people who are volunteers and who are potentially volunteering for only a small number of days during the year, what do you think the impact on working patterns will be? We will need to be able to find magistrates who are willing to sit day after day after day. Presumably, they are doing this alongside a day job or they are retired people who are not planning on doing a full working week.

David Ford: There is no suggestion that we are going to be completely overwhelmed by multi-day cases with an 18 to 24-month sentence. As I said, as far as we can see at the moment, there are no different types of charges coming before us, so the charges we will see will be the same. The evidence may take longer. We already know before a trial starts, when it is listed, whether it is likely to be for more than one or two days. Of course, we then will need volunteers, but we have people working for themselves. We have teachers. We have lots and lots of diversity of people, who at different times of the year can help on more than one or two days. You are absolutely right: there is less diversity if you are sitting in the intermediate court and on a longer case, because not everybody can.

- Q40 Vikki Slade:** Can I just give you an example? I was recently due to be a witness in a case of harassment, and the expectation was that this chap might get a year to 18 months. He had previously offended and got a suspended sentence. It was listed for an eight-day trial. As a witness, I was expected to hold open eight days. It might be all very well for the magistrates to say, "Well, I can handle this," but I want to ask about the lawyers. If you are a defence lawyer and your client is likely to be seeing two years behind bars, you are surely going to be seeking to provide a lot more evidence, aren't you, if it's a longer sentence? I am worried that how long the case lasts is not necessarily within your influence as a magistrate, but is more likely to be about the lawyers saying, "Well, this is a two-year case. We are going to put a lot more into this," and we are going to see elongation of cases. I am just not sure how that is going to work in a volunteer system.

David Ford: We review cases, as a matter of course, going through the process. We have pre-trial review, so we estimate, with all parties involved, how long a case will take. Obviously, each case is considered on its own merits, and some things you cannot second-guess, but by and large it is fairly accurate. Time is reserved for the trial—a certain amount of trial time—and you would not put in a magistrate who could not make



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that commitment. If it is a long commitment, you are absolutely right that it is going to be a limited number of people who can do multiple days. But on how much that will happen, we are guessing a little bit, because we don't know.

- Q41 **Vikki Slade:** No, I get that; you're right. The final thing I want to ask plays a little bit into the diversity piece. We know there is currently a recruitment drive. There was a recruitment drive in 2022 to attempt to recruit an extra 4,000 magistrates. To date, it has recruited only 2,000. What do you think the impact on the diversity of your magistrates will be if magistrates are going to need to sit longer? As you say, you are not going to expect schools to give up teachers for weeks on end.

David Ford: I was thinking of summer holidays in that reference.

- Q42 **Vikki Slade:** Yes, but it is only the summer holidays—let's be honest—and then you do not have witnesses or other people available. So my instinct is to say that the diversity of magistrates is going to shrink back to the traditional older person, and therefore the whole point of having lay people from the community who are more diverse might be lost. What is your thinking about that? I am getting some indication from others that that may be the case.

David Ford: I am not surprised. I think you are absolutely right: there is going to be a challenge to recruit more people. What has changed, certainly from our point of view, is that we are now a lot more involved, working alongside and with the MOJ and HMCTS, so we are having a lot more input. We totally agree with you: even though the magistracy is already the most diverse section of the judiciary, we want it to be more diverse and particularly for there to be younger employed magistrates. We want to bring the magistracy into being even more representative of society, but that come with challenges. It needs employers to be willing. There is an awful lot that is needed there. It is not just about recruiting people; it is about shortening the process, because it has taken up to two years from the time you register an interest to the time you are sitting. That is reducing massively. I know that the MOJ have a lot of plans in place to really shorten the process, and are already starting on that with pathfinders, which is a type of recruitment process they are using.

It is recruit and retain—it is a double-edged sword. I totally agree with the panel members: we need the infrastructure, we need the legal advisers, we need the ushers and we need probation—we need everything. This will only work if everything is concurrent; it will not work if we just go and get 4,000 magistrates tomorrow.

- Q43 **Vikki Slade:** Final question, then: if you were handed your 4,000 magistrates tomorrow and this came in, would the magistrates system be able to cope? We know that there is a modest increase in the number of legal advisers coming through, but with everything else we know, do you think this change could work, if it came in, with all else being the same? I know you want it to, and I understand that position, although it is different from the position of others.



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David Ford: If your question is about tomorrow, absolutely not. In reality, we have been talking about a two or three-year lead. When it is phased in—which is what is going to happen, if it happens; whatever happens will be phased in—then yes, I think it can work. We really do believe that, but only if the other elements I have just mentioned happen at the same time. We need the courtrooms, and we need everything else as well, as panel members have said.

Cassia Rowland: Just quickly, a lot of the points I was making about productivity in the Crown court also apply to magistrates courts. It is important to make that clear. We have seen activity in magistrates courts dropping off quite significantly—fewer trials happening and so on. There is a risk that you will end up just moving the problem from one part of the system to another. I am not making any claims about value for money or anything like that; I am just saying that the level of cases being dealt with in magistrates courts, and things like that, has not kept up.

David Ford: Can I just—

Chair: One sentence.

David Ford: The delays in the magistrates court—not in numbers, but in time—are probably about six months; in 2010, it was about four months, when we had double the number of magistrates. I agree that a lot of the efficiencies are based around legal advisers, or the lack thereof. But I think it is fair to say that, if you look at the delays in the Crown court, a percentage there is not the same percentage when you move into the magistrates court. If you took 10% of the work at the moment from the Crown court, that would equate to 1% or 2% perhaps in the magistrates court. It is about proportion. So the magistrates court—

Cassia Rowland indicated assent.

Chair: We have agreement from Ms Rowland, so I think—

David Ford: There we are: we are all in agreement. You've got your evidence.

Chair: We will wind up this first session. We have overrun, and I am not surprised, because we have four very expert witnesses. We will take a two-minute break to allow the panels to change over and the Minister to take her seat. Of course, if you wish, you are very welcome to stay and listen to us attempt to put your points to the Minister; but if you wish to go, please do. Thank you very much for your attendance today.

Examination of witnesses

Witnesses: Sarah Sackman KC MP, Amy Randall and Chris Drane

Q44 **Chair:** We resume this afternoon's meeting of the Justice Committee, and we are delighted to be joined by the Minister of State. Can the new panel of witnesses introduce themselves, starting with Sarah Sackman?

Sarah Sackman: I am Sarah Sackman KC MP, and I am the Minister for Courts and Legal Services in the Justice Department.

Chris Drane: I am Chris Drane, the director of analysis at the Ministry of Justice.

Amy Randall: I am Amy Randall, the policy director for courts and victims at the Ministry of Justice.

Q45 **Chair:** Thank you very much. Apologies for starting late, but I think you were here to hear the previous panel, and it was all good stuff that they were saying. Let's get straight into our questions to you.

If I have understood your position, Minister, from the debate in the Commons last week, and from what the Lord Chancellor told the Committee on 16 December, you believe that the proposed changes to mode of trial and specifically jury trials—in part 1 of Leveson, and what you have subsequently indicated you would like to do—have merit in themselves, and you would be going ahead even if there were no issues with a Crown court backlog. Would you just like to confirm that?

Sarah Sackman: I do believe that. I believe in the idea that decisions about mode of trial should rest with the court, not the defendant, as is currently the case. These proposals, which are born out of the independent review of criminal courts led by Sir Brian Leveson, support that proposition, which we will bring forward in proposals to remove the right to elect.

The analogy I often use is the healthcare one: it is the approach to triage. If you present yourself in a healthcare setting, it is the healthcare professional—the doctor or the nurse—who decides where you need to be seen, whether by the GP, urgent care or in A&E. Similarly here, where we have finite resource, including one of our most important resources—access to jury trial—the allocation of that resource and the mode of trial should be determined by the court, expert in matters of criminal justice, rather than by allowing the defendant to insist on that choice.

Now, let me say one more thing: I am not going to pretend that we would be having this Committee hearing if there were not a crisis. It is a crisis that you explored in the previous session—one that, if we do nothing, will see the Crown court backlog hit 100,000 cases by 2028. The impact that that is having on confidence in the criminal justice system, on victims and, indeed, on those accused of crimes is appalling and intolerable. Doing nothing is not an option, but this is about turning a crisis into an opportunity. That is why we commissioned the independent review of the criminal courts to look at the whole criminal court system and propose once-in-a-generation reform. When I said, "Would we be doing this anyway?" there is a principle underpinning it, which is that notion that decisions about mode of trial and how we approach and rebuild a sustainable justice system for the 21st century should be determined by the court and not the defendant.

Q46 **Chair:** We have just heard evidence from the Institute for Government



that the changes to mode of trial, in the sense that perhaps half the cases currently tried before a judge and jury will now be before a judge or even a judge and two magistrates, might save 1% of time in the Crown court. The other controversial point—you mentioned mode of trial, but I am mentioning more controversial measures—is the increase to 18 or 24 months in terms of magistrates' sentencing. That might save some more time—I think the figure we heard was 8%—but these are not, to quote the Institute for Government, the most significant changes, are they? The other measures—greater efficiency and more resources—are what really is going to bring down the backlog. Are you detaching the changes to mode of trial from the backlog, and if you are, what is the inherent merit of not having a jury or magistrates doing the majority of the sentencing?

Sarah Sackman: I am trying to do the opposite. I do not think we should detach any one of these measures from the overall objective here, which is about building a criminal justice system fit for the 21st century. I say that because the last time any Government looked at reform of the criminal justice system in any significant way was back in the 1970s, when the Crown court was established. As you heard from the previous panel, the landscape of criminal justice has changed considerably since then. The example was given of the advent of digital evidence and the way in which that is transforming criminal trials. If you take cases brought by the Serious Fraud Office, back in 2010, the average number of documents in an SFO case was about 2 million. The largest case that the SFO currently holds contains 48 million documents. That is obviously an extreme example in the context of fraud and serious financial crime, but it is illustrative of the way in which criminal justice has changed.

You asked me whether I am detaching certain measures—far from it. Sir Brian Leveson and his team were very clear that their proposals amount to a package, not a pick 'n' mix. It is the interaction of the different reforms that we are proposing that achieves the pragmatic aim of bringing down the backlog.

Chair: I totally understand that. Sir Brian said that to us.

Sarah Sackman: Critically—if you will allow me to finish one more sentence—it will also ensure that what we end up with is not just the backlog back down to sustainable levels, but being able to sustain that in the face of growing demand. The MOJ data shows that demand coming into the system is not only high but growing. There are more arrests, trials are taking longer because of the changing nature of forensic and digital evidence, and the supply and demand under the current system is out of kilter. It is that that we have to correct, and it is the interaction of the reform package with the efficiencies and the necessary investment that is going to realise the objective here, which is a modernised, reformed justice system.

Q47 **Chair:** I do not quite understand the methodology of that. Perhaps we will come on to that in other questions. The second part of my question was this. You want a justice system fit for the 21st century. Why is that? Putting the backlog to one side, why is that a justice system with more



power in the hands of magistrates and less use of juries?

Sarah Sackman: I suppose there are two principles underlying that. One is how you proportionately allocate the limited resources within any justice system. We know that currently magistrates process and hear 90% of criminal cases. After the proposals, they will hear a good deal more, but it is about where you draw the line. We have heard about the way in which those cases are dealt with robustly and fairly.

It is important that, when we talk about the changes to jury trial, part of the purpose of this is to ensure that jury trial is preserved for the most serious cases and that those jury trials can happen in a timely fashion. Swift justice is an integral ingredient of fairness, and what we are proposing is aimed at achieving just that. We already put our confidence in magistrates, and as we heard from the previous panel, the Ministry of Justice and the Government have confidence in that system.

This is about a bold, but relatively modest redrawing of the line, to calibrate the system so that it can absorb the increased demand, deal with complex and more serious cases at the appropriate level, and achieve something that we are currently very far from. I think there is a consensus here—I actually heard it on the previous panel. We may disagree about the solution, but I did not hear anyone disagree with the diagnosis of the independent review, which is that the current criminal justice system is broken. I will not sit idly by and allow it to run completely out of control.

Q48 **Chair:** We are expecting—if you can give us a date, or rough date, that would be great—a lot more information on this. We are expecting to get Sir Brian's part 2 report and your response to it. We are expecting a Bill and an impact assessment. When can we expect that? Will it include the evidence that shows how far all the measures currently proposed by the Government or Sir Brian will impact the backlog?

Sarah Sackman: It will do all those things, Chair. It is important that it does, and it is important that Parliament gets the opportunity to scrutinise this. While I stand by the point that it is right that we rebalance the interests of justice when it comes to the determination of mode of trial—so that that rests with the court rather than the defendant—we must ultimately bring down the backlog.

I can assure the Committee that we would not be bringing forward this package of proposals if we did not think, and had not tested and modelled, that they could work to achieve the objective of bringing down the backlog in relatively short order. My objective is that we see the backlog coming down by the end of this Parliament, because we owe it to victims that they get swift justice.

Q49 **Chair:** Will you allow this Committee to undertake pre-legislative scrutiny of the Bill?

Sarah Sackman: We will, as is usual practice, provide Parliament with the impact assessment, which will include modelling, and an equality impact assessment. It will include our formal response to Brian Leveson's



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reports. As part of that, this Committee will no doubt be able to scrutinise what the Government are putting forward, and will no doubt give its view on whether it thinks these proposals pass muster.

Chair: I didn't quite hear a yes, but I will pause there.

Q50 **Sir Ashley Fox:** Minister, the Institute for Government has said, "Proposed restrictions to jury trials are not necessary to turn around performance in criminal courts". I saw you at the back of the room when Cassia Rowland was giving her evidence. She detailed numerous other things that should be done, and to that extent your proposals to restrict jury trial are largely irrelevant to the backlog. What is your evidence that the Institute for Government is wrong?

Sarah Sackman: First, I have not seen the Institute for Government's paper. I have huge respect for the Institute for Government, but I think what Cassia Rowland said was that, in her view, on her evidence—I have not seen what she has based it on—the savings that would be realised through the legislative reforms amount to 10% in terms of hearing times and sitting days; I am not quite sure which she was referring to. Even on her own case, that is not insignificant, but her contention is that that is less significant than the savings one can achieve through efficiency and productivity savings. That contradicts the conclusion of the independent review, which I have considered and have to take very seriously, because the conclusion that Sir Brian Leveson, David Ormerod and their team reached is that we are not going to bring down the backlog without structural reform. You need to do the efficiency part too, and you need significant investment in additional sitting days and in other parts of the criminal justice system, but Sir Brian's clear conclusion is that that alone will not achieve the outcome that we all want to see.

Where I actually agree with the Institute for Government is on their insights into the declining productivity of our criminal justice system, which are well observed. It is a function of a system that is broken that it becomes less productive; it becomes a vicious cycle, if you like. The sorts of things that she pointed to—investment in the workforce, and the amount of time lost because there are not enough lawyers to prosecute or defend—are, as she fairly acknowledged, things the Government are doing something about, with the match funding of pupillages and significant investment in legal aid for both solicitors and barristers, to make a sustainable pipeline, to give one example. But of course, that takes time, and time is probably the one thing that—

Q51 **Sir Ashley Fox:** Your proposal is going to take time, because the Lord Chancellor has confirmed that these proposals will not have retrospective effect. Some parts of the country are booking trials in four years' time. If you take a year to present your legislation—I think the Lord Chancellor said it would be in autumn 2026—and it takes a year to get through Parliament, assuming you do not U-turn, which I imagine you will do, this new system will not even start until 2028. So the idea that restricting trial by jury is going to have a meaningful impact on the backlog in this Parliament is simply not true, is it?



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Sarah Sackman: Let me answer that in stages. First of all, we are dealing with an acute crisis, which is a systemic challenge. The Government's position is that the only way to address that is from multiple angles that comprise structural reform and productivity savings of the sort the IfG outlined, in addition to record investment in sitting days and workforce. It is the interaction of the three things.

Q52 **Sir Ashley Fox:** On that, nobody disagrees. It is trial by juries that we are talking about. My view, and I suspect the view of most people here, is that that is just not relevant, and it is not going to take effect until 2028 anyway.

Sarah Sackman: I will address that point in a moment, because it is an important one. It is the interaction of the major reforms that are proposed here—the increase in sentencing power, the removal of the right to elect, the introduction of a permission stage to appeals and the existence of the Crown court bench division. As parliamentarians, we like to isolate and home in on the CCBD, but it is the interaction of how those work. In addition to the time that that can save, which the independent review and our own model will support, it is the behavioural effect that that has on participants in the system.

One of the things that was mentioned earlier was the declining rate in early guilty pleas. If you know that your case is going to come on quicker within a Crown court bench division, it is possible to anticipate that that will alter behaviour and therefore bring down the backlog quicker by encouraging early guilty pleas. Obviously, no one should plead guilty if they are not in fact guilty, but we do want those who are guilty to plead at an earlier stage, without the need for multiple hearings, which adds to that delay.

In terms of when the changes will kick in, you are right that in the context of the crisis—I do not use that word lightly—we are in, we cannot delay the introduction of the measures. You make a good point, which is that, having established these proposals, assuming the Bill goes through Parliament, it will be important that the changes are applied to cases where the trial has not yet commenced within the Crown court but they may already be within the system. That means that the implementation of these measures will take effect sooner than I think your question to me suggested. It is not as if every case in the backlog—

Q53 **Sir Ashley Fox:** So you will relook at cases that have been committed for trial at the Crown court and push some of them through the swift court—that is what you are telling me.

Sarah Sackman: I think that is something we have to look at.

Q54 **Sir Ashley Fox:** So when the Lord Chancellor said it will not be retrospective, that was not a wholly accurate answer.

Sarah Sackman: I think the answer he was giving was in the context of a question around the impact on remand hearings; I think that was the context in which he may have addressed that.



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Q55 Sir Ashley Fox: No, he said the changes would not be retrospective, and now you are giving me a slightly different answer. If someone elects to go to the Crown court at the moment, it is on the assumption that there will be a trial by jury. What you are saying is that it might not be; they might be diverted to the swift court.

Sarah Sackman: That is right, yes.

Q56 Sir Ashley Fox: That, I think, is fundamentally different to what the Lord Chancellor said a few weeks ago.

Sarah Sackman: That is the position, because that is the mechanism for pursuing what was needed, which was the urgent implementation of these changes.

Sir Ashley Fox: Let me move on, because the Lord Chancellor might well have been confused.

Q57 Vikki Slade: Can I seek some clarity before you move on? During the last session, our witnesses made it very clear that these changes would not apply retrospectively, and therefore they would have absolutely no impact on the backlog and would not start to make any difference until 2029. I may have missed that being said previously, but that was very strongly said, so if there is any ambiguity about whether or not these measures are retrospective, that needs to be resolved. Is it possible for us to have a follow-up letter to confirm that?

Sarah Sackman: I can certainly provide a follow-up letter, but just to be clear, I do not know that I regard retrospective as quite the right term here. No one is suggesting that a trial that has commenced or that has gone past PTPH—

Q58 Sir Ashley Fox: Minister, if you have been committed to trial in the Crown court at the moment, you are expecting to have a jury trial, and what you are telling me is that once these changes take effect, you will divert those people committed but whose trial has not started into the swift court.

Sarah Sackman: Yes—

Sir Ashley Fox: That is not what the Lord Chancellor said before Christmas.

Sarah Sackman: If they meet the eligibility criteria, then that is the case.

Q59 Sir Ashley Fox: Most people would regard that as a retrospective change.

Sarah Sackman: It is a change in relation to the procedure that applies to those cases. They are still getting a Crown court trial under the new proposals.

Q60 Sir Ashley Fox: All right. Given Leveson's admission that incomplete modelling was undertaken, what independent analysis has your Ministry conducted to validate that judge-only trials will deliver net time savings once written judgments and appeals are factored in?



Sarah Sackman: We take as our starting point the model set out in the IRCC review and the conclusion reached by Sir Brian Leveson, albeit with the caveat you have given, that in his view, the CCBD would achieve at least 20% time savings; he actually says that his personal view is that it would save substantially more time. I can bring in colleagues here if it would assist, but we have looked at international comparisons and evidence from comparable jurisdictions like New South Wales and the Canadian jurisdiction. Officials and I have spoken to judges and those who operate the court systems in those places.

Taking a step back for a moment, it is important that we are not over-optimistic about the time savings that can be realised here, and of course, we are not pursuing time savings for time savings' sake. Fair justice is essential, and we do not want summary justice for one second.

I had an exchange the other day in the Chamber with Karl Turner MP, which you may have heard, Sir Ashley. As you know, he is deeply opposed to these proposals, but he said, "Look, I have got no doubt that you will save some time." Although we disagree on the approach that the Government is taking, Mr Turner said that because of things like the absence of the need for the jury to deliberate and the fact that the judge does not need to give directions to jurors, which can often be lengthy. There are time savings involved in deliberations and empanelling a jury—all that taken together. I grant you that it was the source of criticism by the previous panel, but if you compare decision making by 12 people—if everybody on this Committee had to decide on the facts of a case, or on anything, in fact—with reaching an individual view, it stands to reason that significant time can be saved.

What I can say to the Committee is that when we come to present the modelling that we have undertaken—Chris, you may wish to come in here—we will do so on a conservative basis. Although the judges, the court staff and the Attorney General in Canada presented us with evidence of a 50% saving—they have judge-only and jury trials running parallel to each other, and they say it saves them about half the time—we are cognisant of the fact that that is in a different jurisdiction, so we do not want to overstate what the time saving will be when we present the modelling to Parliament.

Chris Drane: Just to add to that, it is obviously difficult to know with certainty in the modelling exactly what the efficiency saving will be from a reform before it is implemented. Sir Brian and his team had quite a structured way of coming up with a modelling assumption that you can use. They spoke to court staff, panels of experts and external stakeholders, and they came up with a 20% view, which is broadly consistent with the international literature. There is obviously uncertainty around that, and one of the things that we will want to do in our impact assessment is show the sensitivity of the results to varying that assumption slightly.

Q61 **Sir Ashley Fox:** May I suggest that you publish this as soon as possible? Making such a dramatic change to what many of my constituents regard



as an ancient constitutional right to save time, and then presenting no evidence as to the saving of that time, is a grave error by the Government. That is entirely up to you, but I think you are harming your own case by not publishing this modelling and evidence.

Sarah Sackman: As I have said this repeatedly to Parliament and this Committee—I will say it again—of course we will publish the modelling, as is usual practice. The reason we have not done that so far is quite simple: what we need to present to Parliament and the public is a clear, holistic view of how the reforms will work in the light of the actual funding commitment and sitting day envelope that the Government is committed to. We do not want to publish the modelling in isolation from that, because it has to interact with the amount of resource that is being allocated at the same time.

Of course, the concordat process, which as you know takes place between the Government and the judiciary, is yet to be finalised. At the point that that is finalised, Parliament will see the full picture, and of course will be able to interrogate it. I just want to push back on one thing—

Sir Ashley Fox: I think the idea that the resources and the concordat are anything to do with the publishing of the modelling is a complete red herring. You could just decide to publish it if you chose to. You have chosen not to, but that is your choice.

Chair: I should just indicate that we may have votes shortly. That being the case, we will adjourn for however long it takes, but hopefully it will be only one or two Divisions, so we should still be okay for time, with your indulgence.

Q62 **Warinder Juss:** Ms Sackman, in the previous panel, Riel Karmy-Jones KC appeared to accept the Leveson review's claim that jury trials for the most serious indictable offences have more than doubled in hearing time since 2001, but her response was that that was not because of having a jury. Do you agree with that? If not, why not?

Sarah Sackman: It is the case that trials are taking significantly longer. I appreciate that the point was made about where you take the starting point. Sir Brian Leveson's insight is that trials are taking twice as long as they were taking in 2000. Even if one were to take the IfG's assessment of a 50% increase, that in itself is significant. Look, it is not so much about whether juries are themselves the driver of the delay, although I have set out why a jury trial might take more time than, say, judge-only for those less serious offences.

Your question, and the way you phrase it, is a useful opportunity to make the point that, notwithstanding the comment that Sir Ashley just made to me, all those indictable-only offences will continue to have a jury trial. This is about, as I have said, calibrating the system in such a way that we can ensure that the availability of a jury trial is there for those indictable-only offences, however long they need to take, because they are the most serious offences.



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I do not need to establish, for my case as to whether this is a good policy, both in terms of its potential for bringing down the backlog and indeed reforming our justice system, that the jury itself is—no one is saying the jury is the problem. We want to preserve juries for those most serious cases, but at the moment, our system is simply overwhelmed. The different way that we get it back to a proportional, sustainable, workable and, critically, swift model of justice is by redrawing the line, as previous Governments have done—like a Conservative Government did under the Criminal Justice Act 1988, when they recalibrated.

We have to get that calibration right, in the light of the very changes that you described in the previous panel—a totally transformed evidential landscape, and a totally different demand profile when it comes to the number of arrests and charging decisions. It is unsurprising that a system that was designed in 1971, for all intents and purposes, is not up to the task of coping with the nature of the cases coming before it in 2025.

Q63 Warinder Juss: We will not have a jury where the sentence is expected to be three years or less—that is going to be the cut-off point. Do you anticipate any problems with that three-year period?

Sarah Sackman: Do you mean in terms of the determination of that?

Warinder Juss: Yes.

Sarah Sackman: No, I don't. We anticipate a process whereby, at the PTPH, judges are looking at the case management decisions and therefore need to read into the case to understand its nature and gravity and the factual matrix they are dealing with—albeit they are not determining the verdict at that point—to make the sort of assessment that gets routinely made in the magistrates court to allocate cases to a Crown court bench division. That is something that judges are well used to and, as Sir Brian Leveson observes in his report, can be done in a fairly straightforward fashion as part of that PTPH exercise.

Q64 Warinder Juss: I am not trying to oversimplify the situation, but for cases where we currently have a jury trial, the jury decides the facts of the case and the judge advises on points of law. If these cases go to the Crown court bench division, how do you think that will change the role of the judge? Do you think we are moving away from an adversarial position to a more inquisitorial position?

Sarah Sackman: No, I don't think that we are moving away from an adversarial position. Under the new process, as Sir Brian and others have articulated, you will have a Crown court trial—because we are in the Crown court, after all—in the usual fashion, where the prosecution will present its case and the evidence will be tested by the defence and so forth.

What changes will be that, whereas at the moment, as you say, the judge is responsible for giving directions to the jury, that will no longer happen. But in the same way that a judge sums up the facts that have been heard and provides a route to verdict, what you will now have is a judge doing



all of that, but then giving the verdict themselves, as part of a reasoned judgment.

One of the points that was put to me in Parliament the other day, and one of the criticisms, is: "Well, it's going to take an awfully long time because you've got judges having to do something that at the moment they don't currently do in the Crown court," which is give reasons. I push back on that a bit, first for a normative reason, which is that one thing you do not get with a jury is reasons. You do not know how the jury arrived at that decision, but you will where you have a judge sitting in the Crown court bench division.

Secondly, just from an efficiency point of view, the judge already has to sum up the case and present the route to verdict for the jury—not to guide them in any way, but to say, "This is what we've heard." A judge does that anyway and sets out the law and goes through all the structure and the sorts of elements that you would expect to see in a reasoned judgment. The difference here from the trial that you are describing—it is the only difference that I anticipate—is that at the end of it, you will know why the judge decided what they decided, and if they got it wrong and took into account something that they were not lawfully permitted to, that in itself can be the subject of an appeal.

Q65 Warinder Juss: So you do not anticipate the judge having any significant additional burden in performing that role?

Sarah Sackman: No. I think perhaps politicians are guilty here; we recognise the significance of these reforms, because something significant is required to address the crisis that we are in, but their radicalism can be overstated. This is not a scrapping of all jury trials—far from it. We expect that at least three quarters of the trials that currently have a jury will continue to have one. Similarly, the model that was recommended to us by the Independent Review of Criminal Courts is a version, or an evolution if you like, of the Crown court. It is not a separate, stand-alone, intermediate court, governed by different rules and procedures and something wholly different; it will be something that is wholly familiar, not just to the legal community, but to other participants in the system, too.

I grant you, the fact that there will not be a jury there is different, and views have been expressed about that, but in terms of the process that will be gone through and the nature of the trial, it will look very similar to, or essentially the same as, a Crown court trial conducted today. It is just a division of the Crown court.

Chair: Before I bring in Sarah Russell, Tony Vaughan has a question.

Tony Vaughan: Ms Sackman, I wanted to pick up on Mr Juss's point about—*[Interruption.]*

Chair: Let's suspend. I think we have two votes, which usually means 25 minutes, but if Tony, Sarah, the Minister and I can get back here before then, we can start sooner, and everybody else will have to make their own way. We will suspend now for the votes and resume as soon as we can,



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probably in about 20 minutes or so.

Sitting suspended for Divisions in the House.

On resuming—

Chair: Following the votes, we resume this afternoon's session of the Justice Committee on criminal court reform. We were just about to hear a question to the Minister, Sarah Sackman, from Tony Vaughan KC.

Q66 Tony Vaughan: I wanted to come back to a question raised by Mr Juss, who referred to the evidence from a previous witness, who said that jury trial times have doubled since 2001, but that that is not because of having a jury. That increase shows there are structural issues that I assume you are saying justify some of these changes. You have mentioned things like the complexity of evidence, but could you elaborate on the other factors that are causing the structural problems that you argue are part of the basis for these reforms?

Sarah Sackman: One of the fundamental things that we have been seeing for some time now is increased demand. The backlogs really began to run out of control from covid onwards, but they were already beginning to rise before then, due to the increased police numbers, as well as more proactive policing and more proactive charging decisions. It is about the sheer demand coming into the system—

Q67 Tony Vaughan: Forgive me; I am talking about the length of the trials, or the time that cases are taking to be resolved, which is perhaps not about the volume of cases. Taking individual cases, each case is taking longer to resolve. What are the factors behind that?

Sarah Sackman: There are a number of things. We have explored the evidence and the amount of disclosure, so it is the quantum or volume of evidence, as well as the nature of that evidence and its complexity. There will be some of what have been dubbed "inefficiencies", which were referred to in the previous panel. I do not want the Committee to think for one second that the Government are not cognisant of the effect of those inefficiencies and their cumulative impact on the diminution in the amount of hearing time in your average sitting day. That could be something that does come from the jury—for example, a juror could be running late or is off sick, and that could lead to delay.

Q68 Tony Vaughan: Does your model attribute delay, or a portion of these increasing trial times, to each of those elements?

Sarah Sackman: Just to complete that point, that is not the only source of inefficiency. We heard from the previous panel that a major constraint and source of inefficiency is lost time and lost sitting days due to the lack of availability in the workforce. That is a major driver, which is why that has been an area of focus for the Government from day one.

Reference has been made in other quarters to delays in prisoner transfer and bringing prisoners up to court. While those individually make a modest impact, and therefore would not, if resolved, reduce the backlog in and of



themselves, they are cumulatively contributing to the increased time that it is taking to dispose of cases. There are a number of factors at play.

The other point to make—I will bring in Amy Randall in a moment—is that there is a vicious cycle. As the system reaches a tipping point where the whole system gets gummed up—I am putting it in lay terms, rather than statistical terms—that itself leads to a reduction in productivity. It leads to a reduction in things like the early guilty plea that lead to greater court productivity in being able to dispose of cases.

- Q69 **Tony Vaughan:** You have not mentioned juries in your list of factors that are structural problems. To what extent does your model attribute any responsibility for increased trial time to juries? The earlier witness said that she does not think that the increased trial time is because of juries. I was trying to establish the extent to which you say that it is or is not.

Sarah Sackman: As I said in an earlier answer, I do not say—and I do not need to say—that jury trials per se are the primary driver of delay. But within that structure, if you take equivalent cases that could be tried either way—that is the easiest comparator—so they could be addressed in the magistrates court before a district judge or lay magistrates, or in the Crown court, those cases are processed four times faster on average than they are in the Crown court before a jury. I do not necessarily need to establish that the jury trial per se is a driver of inefficiency—

- Q70 **Tony Vaughan:** I am just trying to understand the extent to which it is part of your case—whether you need to or not is not my question. It is about whether you do say that it is, and it sounds like you are saying that it does to an extent. Is that your position?

Sarah Sackman: It does to some extent, and I will bring in Amy here.

Amy Randall: To clarify, we are saying two things. We accept, as Sir Brian has set out, that jury trials take longer than we think a judge alone deciding the case would, but we do not think that juries are what has led to the rise in how long trials are taking. We do not think that somehow juror behaviour is different now from in 2000, which I think was the year quoted. Our statistics show that, looking back to 2019, cases are taking 70% longer in the Crown court. We are not saying that is because juries' behaviour has changed in any way. We are attributing that to crime mix and, exactly as the Minister has said, increased disclosure, digital disclosure, more forensics—

- Q71 **Tony Vaughan:** Is the ability of juries to deal with the evidence being presented to them part of the cause of the increased timeframes? Is that part of your case?

Amy Randall: No, I do not think we are saying that the deliberation time or the amount of time for the complexity to be set out to the jury is the driver. Whether it is a jury or a judge alone, the number of, for example, mobile phone downloads that need to be provided in a sexual offences case at the moment are so, so much greater than you would have had in, for example, 2000.



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Sarah Sackman: Chris, you have been responsible for developing the modelling that parliamentarians will see. I wonder if it is worth you explaining that that is based on historical data from actual individual cases. Obviously people will want to unpack that when they see the modelling.

Chris Drane: If it is helpful for the Committee, I will set out how we are doing the modelling that will be in the impact assessment. In terms of what we model, we will be looking at the major structural reforms that the Government have already announced—extending magistrates' sentencing powers, removing the right to elect, the Crown court bench division, appeals and judge-only trials.

There are two elements of the modelling that I will talk through, and both are quite important in different ways. One is specific court simulation modelling, and the other is dynamic whole-system impacts modelling. Each of those has a role in understanding the impacts.

On the specific court modelling, the idea is to help understand what a new policy regime would mean for workload in the Crown court. To model that, we take a big dataset looking at all the individual cases in the Crown court pulled from 2018 to 2024. It is individual-level data, and it has a lot of detail in there, such as details of the offences associated with each case, the pleas involved, custody status, hearing time and so on—a whole range of individual data about each case.

What we then do to understand the impact of reform is simulate proposed policies on that dataset. For example, you take the 2024 receipts cohort, and you apply to that what the new rules around magistrates' sentencing powers might imply in terms of cases not reaching the Crown court, or for the Crown court bench division, you identify the cases that are likely to go down that route and apply the assumption around how much more quickly they will go through the court. What that gives you in terms of outputs is effectively a measure of how individual policies or combinations of policies might reduce the number of sitting days required in the Crown court. We adjust that data for the future and for what we think the world will look like in 2028-29.

The second element of the modelling is the whole-system impacts. That is really important, and it builds on some quite well-established models that the Department already has, which some of you may well have seen before because they are the basis of the prison population projections that we produce. These are essentially whole-system models that look at flow through the system from courts to prisons to probation.

The reasons we use this suite of models are twofold. One is that it is integrated, so it allows us to look at the impact of reforms on the whole of the criminal justice system. The other is that it is dynamic, so it takes account of the fact that we know that the world in the future will look quite different from the world today in terms of the number and composition of cases coming into the system.



We take the outputs of our specific court modelling and effectively feed them in as inputs into that bigger modelling infrastructure, which gives us that dynamic and whole-system view. The sorts of outputs that will come out from that are that we have a view of the impact of various reforms on the workloads in the magistrates and Crown courts in terms of the number of sitting days they are likely to save. We also have a view of caseloads, including how the Crown court's outstanding caseload is likely to evolve and, crucially, what that would mean for the prison population and probation caseloads as well.

Q72 Tony Vaughan: Will you make that entire model transparently public so that Sir Ashley can put his sitting days into it, which he says are irrelevant but would actually show what the outputs would be?

Chris Drane: Sadly, we cannot just publish the model and put it out there because it is based on individual-level personal data, so it is not as simple as just putting it out there. We will be as transparent as we can in the impact assessment about what we have assumed going through it, and we are very happy to talk to stakeholders about the detail of how we have done it.

Amy Randall: We will of course in the impact assessment make clear what our modelling shows will be the sitting day saving from the package of measures. I understand how important that is to the Committee, and we will make that clear.

Sarah Sackman: Sir Ashley is no longer here, but I have been very clear in how we have directed officials not to overclaim for the modelling. I do not want to overclaim for the modelling. We need the modelling, because it is what tells us whether this is going to work or not. I am very concerned with that, because that is why we are all here. But what we are not going to do is overstate the individual savings of individual measures in order to justify them. I am very clear that it is the interaction and the whole package of reforms, as I said earlier, that delivers the reform and the outcome that we want to see, which is bringing down the backlog by the end of this Parliament. If people are expecting the model to be the entirety of the answer or the justification for this policy, they are going to be disappointed. It is a component in making the case for these reforms. Equally, it has to be and should be looked at as a whole in terms of the cumulative time savings and the systemic behavioural changes that flow.

Q73 Tony Vaughan: But is the systemic change not factored into the model? Does the model not need to assume behaviour change?

Sarah Sackman: It would be great if it did, but I would rather that we present a conservative estimate of what we can achieve, than that we guess and hope for the best and that all of a sudden, because one no longer has the right to elect, that is going to generate loads of early guilty pleas because that suits my case. I am not going to do that. I am going to argue from what we know—the individual case data—about projected demands and caseload, in both the magistrates and the Crown, to present

as transparently as possible to Parliament the basis for why this is a good, workable set of reforms to fix a broken system.

Chair: We have less than half an hour and I have—

Sarah Sackman: I will endeavour to keep my answers short.

Chair: We will have to be much tighter if we are going to get through what we want to get through.

Q74 **Warinder Juss:** Just so that I am clear in my own mind, there is no issue about jury trials taking longer because juries are taking more time to consider and deliberate, with cases becoming more complex and additional disclosure to consider as well, and therefore there would be a time saving from just having a judge-only trial.

Sarah Sackman: That is not an assumption that we have made, although when it comes to—

Warinder Juss: So it is not an issue for you.

Sarah Sackman: No.

Q75 **Linsey Farnsworth:** Sticking with modelling, but from a slightly different angle, there has been a lot of focus on the length of time that a jury trial takes and the consequence, or lack of consequence, for the backlog. Has there been any modelling or consideration of other factors of jury trials and the impact on the backlog?

One example is the comparative flexibility between a Crown court judge sitting alone and a jury trial. Perhaps a tummy bug sweeps through the jury and the jury has to be discharged entirely; if a judge gets a tummy bug, he might be able to return to the case in a week's time and pick it up and not have to start the trial again from scratch. Similarly, if a key witness became unavailable because they suddenly had to have a routine operation and were going to be out of action, the jury would have to be discharged entirely, and the trial relisted and started from scratch on another day, probably in months or years to come. Has there been any modelling to look at that more flexible approach?

Sarah Sackman: Chris will correct me if I am wrong, but that is not something that we have factored into the modelling. It might be part of the time saving that is realised. For example, going back to the previous question, it is possible to imagine that in a world where, as here, we pick up on the IRCC's recommendation to move to judge-only trials for complex fraud, part of the time saving comes not simply from having one decision maker rather than a jury of 12, but from the fact that complex material can be marshalled in a more time-effective way and imposes less of a jury burden. I do not think we have got down to that level of granularity in the modelling, but I will be corrected if I am wrong.

Chris Drane: No, we do not go to that level of granularity. In Sir Brian Leveson's work, when he was looking at how much the district bench, for example, might save in efficiency terms—that 20% figure is a sort of

broadbrush, all-encompassing figure that is trying to capture all the different factors that might contribute to greater efficiency, so it is implicit in that, but we have not looked at that specific factor.

Q76 Linsey Farnsworth: That could be a bonus time saving, then.

Sarah Sackman: Indeed it could.

Q77 Pam Cox: What is the difference between the modelling the MOJ is currently doing on this and the modelling that Leveson's team did, in a nutshell?

Chris Drane: It is very similar in approach. There are a few differences. One is that the MOJ's analysis is going to be based on an updated set of underlying projections for the criminal justice system. This is not the modelling of reform, but the modelling of what would happen in the absence of reform. Since Sir Brian reported, we have published a new set of projections, so we will re-baseline to that work. Since he did his report, we have continued to refine the modelling that we do of the court system and the kind of court modelling I talked through earlier to use more granular data and use more of that micro-data to get a finer picture of the impact of reforms. Obviously, in some cases, we are also modelling slight variance on the policies that he recommended, but it is very similar in the way it is constructed.

Q78 Pam Cox: If this is public data—the model that you are using—why can't it be anonymised and shared?

Chris Drane: In terms of the model, it is detailed, individual court-level data. I do not think we can just anonymise it.

Pam Cox: You can.

Chris Drane: We would need to make sure that you cannot identify individual cases within that data, but we can get back to you on that, if that is helpful.

Q79 Sarah Russell: Surely, you could take out the identification of the court-level stuff, aggregate it all together, and then that would be inherently more anonymising.

Amy Randall: We totally understand the Committee's desire to see the data. If we publish the impact assessment ahead of the Bill, then we will be more than happy to come for follow-up questions, and if there are datasets that you think it would be useful for you to dig into, then we can discuss that once you have seen what it is that we are proposing to put out.

Q80 Sarah Russell: Leveson recommended that the Crown court bench division should be constituted as a judge sitting alongside two magistrates. The Government's position is that the new Crown court bench division will be a single judge only. Leveson said that magistrates would "bring local community values and a measure of local accountability...in a similar way to that provided by juries."



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Historically, and on an ongoing basis, there have been very significant concerns that the judiciary produces racially differentiated outcomes for different groups. The Lammy review was very concerned that black defendants appeared to be getting longer sentences than their white peers. The Sentencing Council's very contentious recommendations last year were an attempt to deal with that problem—whether or not people agreed with them, that was what they were looking to remedy. Subsequent to the Lammy report, there was another piece of academic research, from the University of Manchester, in which, in response to a professional survey of 373 legal professionals, 56% stated that they had witnessed at least one judge acting in a racially biased way towards a defendant and 52% stated that they had witnessed discrimination in judicial decision making.

There is significant long-term evidence of discrimination in judicial decision making. In view of that, why does the Government propose to go ahead with a version of these reforms that does not involve the additional protection of magistrates?

Sarah Sackman: You are right to draw attention to disproportionality and racial disparity right across the criminal justice system. When I set out plans for comprehensive reform of the criminal justice system, it is one of the areas that I think we should be looking for every opportunity to address. It is not just in courts, of course; the CPS recently published its own report and findings of disproportionality in charging decisions.

One of the things that the Lord Chancellor said in his Lammy review, and that he has said more recently, is that transparency is the best disinfectant when it comes to racial disparity. In that regard, one of the things we are looking to take the opportunity to do in this reform, as well as the equalities impact assessment, which we will present to Parliament, is to embed monitoring of outcomes. That in itself will assess whether there is racial disparity.

The second thing I would say is that I have confidence in our judges, and the fact that they need to give reasons for their verdict is another source of transparency. If you have to justify your decision and explain how you got there, that sheds light on how the result has been reached, in a way that one does not currently have with a jury.

The other factor is that we know that in other jurisdictions where the judge-alone model operates—the Canadian one is the one I have researched to the greatest extent—fairness is maintained, notwithstanding the fact that it is judge-alone. They have the alternative systems running in parallel, and the view there is that fairness is maintained. Of course, we have judge-alone for other sorts of very serious cases, whether in our youth courts or our family courts, and we trust them to do a good and independent job, but I think that things like monitoring and a requirement to give a reasoned judgment will assist.

Q81 **Sarah Russell:** With the greatest respect, judges currently have to give reasons for their sentencing decisions. None the less, we see



disproportionality in sentencing decisions, which would suggest that having to give reasons alone is not going to solve this problem. David Lammy found in his review that the best thing for solving this problem is juries.

Sarah Sackman: I think giving reasons, not just in judicial decision making but in public decision making—having to justify why you have reached the conclusion or decision you have reached, albeit that people may not like the decision—is a really important component of open justice and transparency. Of course, it is also open to challenge via appeal. I think that monitoring will assist and, as I said, we trust our judges to take decisions. It is hard to think of a more serious decision than depriving someone of their liberty, but removing children from an individual's care is also a draconian and serious thing. These are the sorts of decisions that we entrust our judges to take on a daily basis, and that is where ongoing monitoring and equality impact assessment, as part of these reforms, will shine a light in a way that does not happen to quite the same extent at the moment.

I think it is a great question, because racial disparity in our criminal justice system is a very serious issue, but the other thing that is a serious issue is racial disparity in crime. The fact that black people and Asian people in this country are disproportionately the victims of crime—the fact that you are four times more likely to be a victim of a homicide if you are black than if you are white—obviously troubles all of us. Obtaining swift justice for those victims is a crucial objective of these proposals too.

Q82 **Sarah Russell:** I absolutely agree with that point, but defendants from ethnic and religious minority backgrounds should not have their entitlement to a fair trial sacrificed because they are also from groups that happen to be disproportionately more likely to experience crime. They must be protected in both respects, not one or the other.

Sarah Sackman: I absolutely take that point. I suppose my contention is that the trial they receive in the CCBD, as with the trial they would receive in a magistrates court or before a jury, should be fair regardless, and it can be fair under the CCBD. What we want to do is look at fairness right across the criminal justice system.

Q83 **Warinder Juss:** Do you accept that, because magistrates are chosen from a wider pool of people, they will bring a level of diversity and community experience that judges alone will not, and that this is probably why Brian Leveson suggested that the bench division should be a judge and two magistrates?

Sarah Sackman: That is why he suggested it, and it is set out in his report. I was pleased to hear the speaker from the Magistrates' Association say on the earlier panel that these proposals, taken as a whole, are a vote of confidence in our magistracy. You are right: our magistrates provide that lay element and connection to local justice, and they do provide diversity. It struck me when looking into the figures that when you look at the educational background of magistrates, north of



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60% are state-educated. In London, 31% of magistrates are black or minority ethnic. Those are positives.

It is why we are trusting the magistracy to take on not just a greater volume of cases but cases of greater complexity under these reforms, taken as a whole. We are asking them to do a lot under the proposals, with the increased sentencing powers and the removal of the right to elect. But following the Canadian judge-only model, this very narrow cohort of cases—cases with a likely three-year sentence, exceeding that which can be dealt with by the magistrates—can be dealt with fairly by a judge who is monitored and provides reasons and transparency.

Chair: I want to deal with magistrates' powers briefly before we end.

Q84 Linsey Farnsworth: I will focus on the magistrates court aspect of the changes. The Leveson report talked about removing the right to elect a Crown court trial for certain low-level offences, but the Government have decided to go further than that. Can you explain the rationale for that decision?

Sarah Sackman: We looked at the modelling of the impact of the IRCC's proposed reforms. Part of the reason was that they did not achieve in full the aim we have, which is to bring down the delays and waiting lists to a sustainable level and keep them there. The other reason—I know Sir Brian Leveson has expressed support for this view, albeit it was not in the report—is the principle that I outlined earlier about putting the determination of mode of trial in the hands of the court rather than the defendant.

That is not just a principle, but a simpler and clearer way of doing it, rather than entering a situation where you are trying to re-categorise certain offences, which was being suggested by, I think, the chair of the Bar Council. Where do you draw the line on certain offences? Why some and not others? What is the principled basis for that? What we have here is a key measure that will enable this package of reforms to work, and it is principled in terms of balancing the system, and the election and mode of trial, in the interests of justice—away from the defendant and more towards justice itself, and the interests of victims as well.

Q85 Tony Vaughan: I want to ask about appeals from a magistrates court to the Crown court. Is it the proposal that a judge alone will hear both the permission to appeal and the appeal itself? Does your modelling factor in the time those stages would take?

Amy Randall: Sir Brian's report provides an excellent flow chart on the appeals process in chapter 6. His model is the one that we are following—the difference being, as you said, that he suggests a judge and two magistrates, while we are suggesting a judge. We are trying to make it so that there is not unfettered access to the Crown court. We are introducing a permission stage, so that there have to be grounds for appeal. The test is whether the appeal is reasonably arguable. To answer your question, it will be a judge alone who decides that point on the papers, and then they will have a hearing—again, as a lone judge—where that specific point is



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considered. It is then obviously up for the judge alone to decide on the course of action, be that dismissing the appeal or permitting a retrial in the magistrates.

Q86 Tony Vaughan: That all presupposes that you have transcripts of the proceedings below. Are you confident that you have the technology in place to be able to do that quite easily?

Sarah Sackman: We have committed to that. Talking about the investment piece, clearly, that is predicated on the ability to do that—on having the audiovisual equipment to make recordings of the magistrates hearings, and transcription where needed. We have committed that investment. Of course, I am determined that these reforms come forward through legislation. To give them their due, the Institute for Government recognised this in the earlier panel—we are not waiting for the forthcoming Bill to grip the crisis in our courts. We are already making that investment. The appeals model that follows from the IRCC recommendation has to have those recordings. We are ensuring that the necessary kit is already there in every magistrates court, right across the land, so that we can do this properly.

Q87 Tony Vaughan: Will legal aid cover permission to appeal? There are some jurisdictions where you do not get paid unless you get permission to appeal. Will you ensure that they do, in any event, so as to mitigate any concerns about the reduction in rights from changing appeal rights?

Sarah Sackman: That is something we will have to take away and look at to make sure there is no barrier to access to justice. I am not going to commit to it right away, but I will take away that point.

Amy Randall: On the modelling around this measure, I would not consider it a big-ticket item in terms of sitting day savings. There is something, and we will show that in our modelling.

To our earlier discussion on how you reform the system to triage where cases are dealt with—and on this not being a pick-and-mix, as Sir Brian talks about—it would seem incoherent, in a world in which you are removing the right to elect, to maintain the same appeal route so that you can automatically go to the Crown court. It is worth being clear that, in our modelling, even though the proportion of appeals from the magistrates is pleasingly very low—showing that, as a witness on the previous panel said, people are confident in the justice they receive there—a little under half of those are upheld. Our modelling does not presuppose that the proportion changes. The appeals upheld under the current system will still be upheld.

Sarah Sackman: I have one further brief point on this. This was an IRCC recommendation, and we think it is a good idea. We are not claiming that it makes a huge time saving, but it fits with the principle of proper triage. Of course, where a mistake has been made, a right of appeal should be available, and we see the success rate there. We also know—this is an observation of the IRCC—that there is a proportion of cases where the appeal is upheld partly because, at the moment, there is an automatic



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rehearing, and victims and witnesses do not want to go through it again. They withdraw, so the appeal is upheld. You talk about creating a better system on a principled basis, and part of this is about reducing the burden on victims and witnesses. That observation has been made by the Victims' Commissioner, and she is right.

Tony Vaughan: The earlier witnesses were not able to provide an answer to this question. It would be really useful for us to have information, in due course, on the number of these kinds of appeals that end up being resolved in the appellant's favour because witnesses do not turn up.

Q88 Chair: This is perhaps an unintended consequence, but I think it is an important question. The previous Government reduced magistrates' sentencing powers to six months from 12 months, because they said that the data indicated that increased sentencing powers for magistrates have a negative short-term impact on the prison population. You intend to double it again, perhaps, up to 24 months. What have you factored in for the increase in prison population?

Sarah Sackman: I might defer to those either side of me to give a precise answer about what has been factored in, but I would say two things. First, the evidence shows that the timeliness gain from the overall reduction in the backlog as a result of extending magistrates court sentencing powers makes it a useful tool. That is why we are pursuing it. Secondly, this is a really good question, because you have to look at what the impact will be, particularly at a time when these reform measures are interacting with the reforms in the Sentencing Bill. It is that interaction that we have had to look at. I will turn to Chris to illuminate that.

Chris Drane: Further to what I said earlier, this is one of the reasons why we want to look at this in a whole-system way, and why we plug the impact of court reforms into a whole-system suite of models. It is so you can see, if you divert a certain number of cases currently in the Crown court to the magistrates court and they progress through at a different pace, what that would mean for the prison population. We do look at that as we look at the effects of policy.

Q89 Chair: Before we conclude, I will throw one final curveball at you. We got a long-awaited, lengthy reply from the Home Secretary—it has been published this afternoon—in relation to the reforms of the first-tier immigration tribunal. They are very significant changes. It begs as many questions as it answers. This is a Home Office lead, clearly. It is a switch from a judicial to an administrative process for determining appeals, at least in the first instance. What is your role going to be, as the Minister for courts and tribunals, in what is, leaving aside the Home Office's intentions in speeding up immigration processes, a significant change for an important part of the judiciary? What is your role here?

Sarah Sackman: As the Home Secretary has confirmed to you, there is an intention for there to be a transition from the first-tier tribunal and the IAC to a new independent adjudicator and a phased approach. No doubt the Home Secretary will share more detail with the Committee in due



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course. I understand that there are plans for the Home Office to introduce legislation later this year.

Our role in this will be to ensure that there is a smooth transition, particularly where you have dual running with the existing system. I commend the role that our immigration judges play. I had the good fortune fairly recently to visit the tribunal on Rosebery Avenue. I am well aware, particularly at the current time, of the climate in which our immigration judges and practitioners are operating. They do a great job. They are also innovative in terms of using transcription services and other elements to attempt to get through the backlog of cases in their jurisdiction. Our job in this will be to support the Home Office in ensuring that the implementation of the plans is done fairly, promptly and efficiently, working hand in hand with the judiciary to achieve the changes that will come forward.

Q90 **Chair:** Are you and the MOJ comfortable with a reduction in judicial powers and judicial role here?

Sarah Sackman: I am not going to comment further without having the detail in front of me, but it is an alternative model, and one with merit. It is about an immigration and asylum system that works. I do not see it through the lens of a reduction of judicial powers. You will always have the High Court and the upper tribunal as a backstop, but this new model that the Home Secretary is bringing forward is one that we stand ready to support.

Chair: Minister, thank you very much. Thank you for your time. Thanks to all our witnesses, some of whom have stayed for the duration. I end the session there.