

Justice Committee

Oral evidence: [Legislative scrutiny: Courts and Tribunals Bill](#), HC 1754

Tuesday 17 March 2026

Ordered by the House of Commons to be published on 17 March 2026.

[Watch the meeting](#)

Members present: Andy Slaughter (Chair); Matt Bishop; Pam Cox; Warinder Juss; Tessa Munt; Sarah Russell; Dr Neil Shastri-Hurst; Vikki Slade; Tony Vaughan.

Questions 1 - 36

Witnesses

I: Tom Guest, Director of Legal Policy, Crown Prosecution Service; Richard Atkinson, Former President, Law Society; and Keir Monteith, Garden Court Chambers, co-author of the “Racial Bias and the Bench” Report.

Written evidence from witnesses:

[Keir Monteith KC; Professor Eithne Quinn \[CTB0127\]](#)

Examination of witnesses

Witnesses: Tom Guest, Richard Atkinson and Keir Monteith.

Chair: Welcome to this afternoon's session of the Justice Committee. It is the last of our programmed sessions on the Courts and Tribunals Bill, to deal with certain areas that we do not believe we have covered in previous sessions with the Minister, Sir Brian Leveson and other interested parties. We have a very good selection of guests and I will get them to introduce themselves after members of the Committee have given their usual declarations of interest—starting with Tony Vaughan KC.

Tony Vaughan: Hello. I am Tony Vaughan, the MP for Folkestone and Hythe. I am a barrister. I am an associate tenant in Doughty Street Chambers. I also used to be in chambers with Mr Monteith, some years ago.

Keir Monteith: Good to see you again.

Tony Vaughan: Good to see you. I would otherwise draw attention to my entry on the Register of Members' Financial Interests.

Sarah Russell: Hello. My name is Sarah Russell. I am a solicitor. I have practised employment law. I have a current practising certificate. I am the chair of the all-party parliamentary group on access to justice. I am a member of various trade unions, and the rest of my interests are as declared on the register.

Pam Cox: Good afternoon. I am Pam Cox. I am chair of the APPG on penal affairs, and my other interests are as declared on the register.

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

Tessa Munt: Hello. My name is Tessa Munt. I am the Member of Parliament for Wells and Mendip Hills, in Somerset. Everything is as per the Register of Members' Financial Interests, but I would just point out that I am vice-chair of the all-party parliamentary group on penal affairs and a director and vice-chair of WhistleblowersUK, which is a not-for-profit organisation.

Vikki Slade: Hello. I am Vikki Slade, the Member of Parliament for Mid Dorset and North Poole. My interests are as per the register, but there is nothing relevant to this Committee.

Matt Bishop: I am Matt Bishop, Member of Parliament for Forest of Dean. My interests are as declared. My previous occupation was as a serving police officer for three forces.



HOUSE OF COMMONS

Warinder Juss: Good afternoon. I am Warinder Juss, the Member of Parliament for Wolverhampton West. I am a solicitor, but not practising, and I am a member of various APPGs and of the GMB trade union central executive council.

Q1 **Chair:** Thank you very much. In this session, which will last about an hour and a half, we intend to address some of the issues that have come up during the publication of Sir Brian Leveson's reports and, now, the Courts and Tribunals Bill. Specifically, today, we are interested in how significantly the process within the criminal justice system in the magistrates and Crown court will change, once the Bill has passed into law and other changes have been made.

There were two aspects that we do not feel we covered sufficiently, which have come up quite a lot. One is the issue of bias and diversity. Mr Monteith will, I hope, be able to speak to that on the basis of the report he published. Any witness is entitled to answer any of our questions but, equally, do not feel obliged to, if you do not feel that it is your particular specialist area. I am expecting Mr Atkinson and Mr Guest to be able to help us with some of the procedural matters.

We were also hoping—because we have not addressed, centrally, the issue of victims—to have the Victims' Commissioner here. I am sorry to say that at very late notice the Victims' Commissioner has declined to attend, for what we think is no particularly good reason. We are very sorry that the interests of victims will not be represented—certainly not in our oral sessions—although we may take written evidence on that before we produce a report later in the year. Mr Atkinson, Mr Monteith and Mr Guest, would you introduce yourselves?

Richard Atkinson: Thank you very much, Chair. I have a few opening comments, if you are happy to receive those. I am Richard Atkinson, a former president of the Law Society of England and Wales and have been a criminal practitioner for more years than I care to admit.

Keir Monteith: Thank you very much for inviting me to give evidence today. I am Keir Monteith, obviously not to be confused with the other Keir, who is apparently quite busy today. I have been a criminal barrister for over 30 years and am now King's Counsel. I co-authored a report with Professor Quinn of the University of Manchester, "Racial Bias and the Bench". I would like, if at all possible, to make a few opening remarks because, to my great surprise, disappointment and upset, the report is not mentioned by Sir Brian Leveson in either of his reviews, or in his recommendations or concerns. It is not mentioned, either, by Mr Lammy, the Secretary of State for Justice, or in the equalities statement that accompanies the Bill. It is a serious and worrying omission.

Q2 **Chair:** I know that Mr Juss and Mr Vaughan have some questions, but I am happy to allow you to amplify that a little now if you wish to.

Keir Monteith: The opening point—it is a joint one with Professor Quinn—could be summarised in the first page and a half or so of our



written submission. Obviously, that is not something that those who are watching have been able to read. Our central question was about the impact of the Bill. Would a judge-only trial be fair and reliable? If it is not, it should not happen. It has an impact on victims. The last thing that a victim would want is for the wrong person to be convicted. That is not justice for the defendant or the victim.

You will know from the written submissions that there are six sections. The first looks at racial bias in the judiciary and whether there has been sufficient action to deal with it. If it exists—and we say there is an abundance of evidence that it does—has anything been done about it? If not, we come back to the central question: can there be, as a result of the Bill, a fair trial for black and ethnic minority defendants? Our clear conclusion—I imagine it would be yours—is that it is impossible to have a fair trial if it is tainted by racial bias.

In the short summary we say: “The government’s Bill to replace juries with judges would create further unfairness and miscarriages of justice for defendants from Black and minority ethnic groups. Judges are less diverse than juries, they have been found to reach decisions that are more racially disproportionate than juries, and they haven’t properly addressed nor even acknowledged the wide evidence of structural racial bias in their sector. As such replacing juries with judges would breach articles 6 and 14 of the ECHR. At the same time, in a context of rising racism and rising anti-institutional sentiment, it would be dangerous for judges to have greater decision-making burdens imposed upon them.”

I can go on to develop the evidence of racial bias within the judiciary and that lack of action to deal with it, but it can be summed up by the survey that we conducted as the basis of evidence for “Racial Bias and the Bench”. It involved over 350 legal professionals and even included some judges. The results were shocking: 95% of the 350 professionals surveyed said that racial bias played some role in the justice system—the processes and outcomes. Some 63% said it played a significant role, and just under a third, or 29%, said racial bias played a fundamental role.

There was an option in the survey, which went out to busy legal professionals. Tony and other Members here will know that if, as a busy legal professional, you get a survey, it is the last thing you fill in. Yet over 100 people—I think it was 119—took time to provide texture to what they were saying in the survey. Sometimes it was pages’ worth. It is on page 13 of our report, if you have time to read through it in more detail, but here is one quote: “The criminal justice system is fundamentally racist.”

Pam Cox: Chair, may I say something? We are about to embark on questions on the matter, and this is, I think, a rather elaborate opening statement.

Chair: I did tell Mr Monteith that he could make a statement, and I will extend the same privilege to the other guests as well, but you may be covering some of the ground that we are about to cover.



HOUSE OF COMMONS

Keir Monteith: I apologise. I think I am reverting to my closing speech.

Chair: You get one or the other.

Keir Monteith: You are operating like a good judge, so I will pause there.

Q3 **Chair:** Mr Guest, do you want to introduce yourself?

Tom Guest: Yes, my name is Tom Guest. I am a deputy director in the policy directorate of the Crown Prosecution Service, and I am a barrister, and a prosecutor since 2007.

Q4 **Chair:** Mr Atkinson and Mr Guest, do you want to speak on any preliminary matters, or are you happy to wait for questions to come to you?

Richard Atkinson: It might be helpful if I have a few moments. We originally said three minutes and, unlike a lot of lawyers, I really will try to keep it to three minutes. Thank you for inviting the Law Society to give evidence today. When we talk about tackling the backlog in the Crown court, we must start by recognising that these delays are a resource and capacity issue, not just a jury issue. Backlogs are rising in both the Crown court and the magistrates court, but progress in one part of the system means very little if pressure is simply moved elsewhere.

The Government highlight measures intended to reduce Crown court delays, but their own modelling, so far, is far from convincing. There is no clear evidence that these proposals will produce substantial time savings and there is significant risk that they will merely push more pressure on to the magistrates court. The Government are trying to solve one problem by deepening another. That is why Parliament cannot scrutinise this Bill in isolation. We must look at the wider system, resources, capacity and long-term investment needed to make criminal justice function.

Sir Brian Leveson set out a package of proposals to increase capacity and reduce demand. That included 180 recommendations for the criminal justice system. Those recommendations require investment in infrastructure, workforce and technology. We welcome the recent investment, but it is worth noting that only last year the Institute for Fiscal Studies noted that day-to-day spending in 2025-26 was expected to be 14% lower than in 2007-08. If adjusted for population growth, the per-person spend was 24% lower.

Isolated injections of funding alone will not solve this crisis. Instead, the Government have focused on replacing many jury trials with judge-only trials, despite a weak evidence base that this will meaningfully reduce delays. Government figures suggest a 20% time saving. Other models indicate savings of less than 2%, or none at all. Meanwhile, the Government have still not said whether they intend to implement



HOUSE OF COMMONS

Leveson's wider recommendations. They will not respond in full until the summer. Until then, the impact of the Bill cannot be properly assessed.

It is not worth jeopardising the centuries-old right to trial by jury for gains that are unproven and unlikely to materialise. Such extensive change should be backed by more than optimistic assumptions about things like magistrates' recruitment rates, the hope that they can rush through complex cases in hours, or mild assertions that judge-only trials will not, in fact, harm faith in the decision-making process. Any change must form part of a credibly modelled, properly resourced system-wide plan. Without that, it cannot deliver the justice system the public deserve.

Q5 Chair: Thank you very much. Mr Guest, do you want to make any opening remarks?

Tom Guest: Yes, and I promise also to be brief. The Crown Prosecution Service is supportive of legislation to look at structural reform. It is not the only part of the answer, but it is necessary. We consider that we are at a critical juncture. We are looking at listing trials in the Crown court in 2030 and have an open caseload projected to exceed 100,000 cases. This is a generational opportunity for end-to-end reform. Our view is that we have gone far beyond the point where piecemeal or non-legislative solutions will suffice. They are definitely part of the solution, but they will not solve the problem. The status quo is failing victims, witnesses and defendants.

I want to make it clear that, when we reviewed and considered this Bill, we thought about whether it would practically address the backlog—absolutely—but also whether in principle it is the right thing to do to look again at the relationship between the magistrates court and the Crown court, not to affect the summary-only and indictable-only offences, which will continue to have trial by jury, but to look again at either-way offences. In our view, it is right in principle to take a step back, look at that system afresh, and ask whether the balance is right for the administration of justice and the interests of victims, witnesses and defendants. That is all that the CPS has to say by way of introduction for clauses 1 to 7. Clauses 8 to 16 we warmly welcome.

We will get into greater detail on what we have reviewed, I am sure, but we have tried to look at the operational and practical input. I just briefly flag two things that the CPS thinks it is particularly important to look at for the Bill. First, we think there is real merit in asking whether the Crown court should have a duty to remit cases to the magistrates court, where it concludes that the magistrates court has sufficient powers of sentence. There is currently a power to do that. That power relies on the defendant's consent. The Bill gets rid of the consent provision, but it does not say when the power should be used, what test the Crown court should apply, and at what stage. The Bill as currently drafted requires the Crown court to ask itself whether there should be a trial by jury or a trial



without jury. In our view, it should also, in keeping with the aims of the Bill, ask itself whether the magistrates court has sufficient powers.

Why do I say that? Some 60% of Crown court cases end up with a sentence that could have been passed in the magistrates court. That is not because of a failure of allocation, but at some point someone has to reconsider the right venue. I should also say that 70% of cases end up in a guilty plea, so they are going to the Crown court not for a trial but to plead guilty. We think the duty to remit has merit.

Then, really briefly, there are special measures. We continue to be of the view, as is the Law Commission, that automatic entitlement to special measures, not automatic eligibility, is right for certain categories of victims and certain special measures. We want to continue that discussion, because we think there is real merit in it: in the right cases, subject to the right safeguards—a fair trial safeguard—is the special measure available? The discussion with victims and witnesses at the outset of an investigation, even before the CPS becomes involved, would be that much better aided if they were automatically entitled.

Chair: Thank you. There are questions from Mr Juss and Mr Vaughan, and primarily these are to Mr Monteith, but if anyone else wants to come in, please do.

Q6 **Warinder Juss:** Mr Monteith, I have an idea what answers you will give to the questions I am about to ask. Do you think that Sir Brian Leveson's independent review, on which the Bill's proposals are based, takes sufficient account of the need for the criminal justice system to reflect the community it serves? Part 1 of the review states that "there is no evidence that professional judges alone making decisions in criminal cases produce decisions with disproportionate outcomes". Do you agree with that?

Keir Monteith: I hope I don't disappoint you in answering as you might expect. The answer to the first question is, quite bluntly, no. If Sir Brian had any real interest in ensuring that the criminal justice system reflects the community it serves, he would keep juries. We all know that judges come from a very select part of society, and when I go to the Court of Appeal to make submissions in relation to miscarriages of justice, it can be guaranteed that I will never see a black judge, ever, because there aren't any. I have been in this profession, as you know, for over 30 years, and that position has remained the same.

What is being suggested—by a judge, Sir Brian Leveson—is that judges can reflect society and make decisions on innocence or guilt. In my respectful submission to you and the Committee, it is much better to have a jury, which reflects society. If Mr Lammy were here in a time machine from about two and a half years ago, he would say exactly the same thing to you, several times over, because it is true.



HOUSE OF COMMONS

It is the same thing in the Supreme Court. If you go there, you will never see a black Supreme Court judge—and, until relatively recently, hardly any women. If you look briefly at the figures for judges elsewhere, in terms of whether the number of black judges has increased, I think from 2014 to this date it has remained at 1%. The equalities statement attached to the Bill says it is below 1%. So it is a big “no” to the first part of your question.

On the second part, what Sir Brian Leveson said—I think we quote it in our response, towards the end—shocked me. He is a very experienced judge indeed, and the idea that he has not seen any evidence of disproportionate decision making by judges is incredible, because he is wrong. Not only is he wrong in the sense of what he should see around him, because, where he works, he would notice what I have just said—there are no black judges with whom he can talk through and discuss these types of issues—but beyond that, if he read the Lammy review of 2017, almost 10 years ago, he would see the evidence of disproportionate decisions from judges in magistrates courts where, underlined, there are significant problems of racial bias. That was underlined by David Lammy himself.

Subsequent reports told the same story. When it comes to “Racial Bias and the Bench”—and you have heard my opening and no doubt read my submissions and, maybe, part of the report—it is absolutely clear, whether from the survey or the written evidence, that there are racially biased decisions made by judges. Most recently—I think it was last month—there was a report called “Cumulative Disadvantage”, which is cited in our submissions. It underlines that, in relation to one of those first decisions about a defendant, if you are black or from an ethnic minority you are between 17% and 35% more likely to be remanded in custody.

Q7 Warinder Juss: Can I please ask you something following on from that? I assume you are therefore suggesting that, if we had more black judges, the risk of disproportionate outcomes would lessen. Why do we have only 1% of Crown court judges who are black? Why have we not increased the diversity there? What would you recommend the Judicial Appointments Commission should do differently, so that we can have a judiciary that is more representative of the community?

Keir Monteith: I will make it very clear: I am not suggesting that having black judges is a silver bullet and that suddenly all decisions will be fair. I am not suggesting that in a million years. I and my co-author Professor Quinn do not suggest that in our “Racial Bias and the Bench” report, and, if you do not mind my saying so, David Lammy is a good example of that. As the first black Justice Secretary, he is pushing through the most regressive piece of legislation. It will have a severely adverse impact on black and ethnic minority people. He has been told that time and time again. It is not a silver bullet; it is a red flag, to mix my metaphors.



HOUSE OF COMMONS

There is something wrong with the justice system if, for decades, it has not increased the percentage of black judges. Those in power and leadership positions—I am talking about the Court of Appeal, and the Supreme Court, our leaders—should see that, but they do not. We say in our report, and so do others, that the reason is that unfortunately the justice system has institutional racism within it. Part of that definition, if you go back to Macpherson, is that people do not see the problem because of institutional racism. That is the first thing that needs to be done.

This is a difficult conversation. I find it difficult talking about it here and in other professional places because, so often, people do not engage in the conversation. They try to silence it. They are embarrassed about it. They find it difficult. We have to talk about it. Rather than Sir Brian talking about disproportionality in decisions—I do not even know what that means—talk about racism. Talk about racial bias. We do not all have to agree in relation to the actual solution—I would be surprised if we did—but let us have a grown-up conversation about it. That is the first recommendation in our report, to acknowledge the existence of institutional racism. Once you do that, you can begin to do something about it.

In terms of the JAC—I appreciate I am going on a little bit, and I do not want to hog too much—

Chair: Yes, we are going to move on, just because we have a lot to get through—

Keir Monteith: Absolutely, but you know what lawyers are like, so just give me a minute and then I will, as they say, give way.

Chair: We have Tony, Sarah and Pam who want to come in on this, so you will get your chance to say more.

Q8 **Warinder Juss:** I assume that you agree, then, with what His Honour Nic Madge said to the Committee, that the reforms will have a “significant and disproportionately negative impact on Black and Black British complainants, witnesses and defendants”.

Keir Monteith: I do, and to speed up my answers, I will just say yes. I totally agree, for the reasons I have given already.

Q9 **Warinder Juss:** Do you also believe that the removal of the right to elect to have trial by jury will have a disproportionate effect on black defendants, considering that 26% of black defendants in the past elected for trial in the Crown court, compared with only 15% of white defendants?

Keir Monteith: Indeed, and I think this is a particularly important statistic. I think 26% was given in either the equalities statement, or elsewhere.



Warinder Juss: That is right—in the equalities assessment.

Keir Monteith: So that right being taken away will have a disproportionate impact on black and ethnic minority defendants—people who are innocent until proven guilty. The impact of that is felt beyond just not being able to have a jury. Again, the equalities statement sets out that in the magistrates court—it is headed under “disadvantage”; I think it is paragraph 14—the disadvantage is that fewer people will get legal aid.

If you go on with what I said before, in terms of that “Cumulative Disadvantage” report, which only mirrors the Ministry of Justice and Government figures on remand, you will have a situation where black and ethnic minority people are more likely to get locked up on remand and end up in a magistrates court without a jury. There is every possibility that they will not be eligible for legal aid. They will end up without a jury, in the magistrates court, locked up without a lawyer to assist them, trying to defend themselves. How could anything be much more unfair than that?

That is why we say in our paper that it is a breach of articles 6 and 14 of the European convention on human rights. Decency and fairness is being taken away from the system that, I think we all agree from whatever point of view we are coming at the problem, works. Juries dispense justice, but we are going to end up with something terribly unfair.

Q10 **Tony Vaughan:** Mr Monteith, you explored in your report the concept of merit in judicial selections. You criticised that mechanism as essentially embedding unfairness in the selection process rather than identifying genuine judicial potential. Could you explain to the Committee a bit more about what you mean? I read your criticism of merit as essentially an expression of the racism you described. Can you explain merit a bit more and what you think a truly merit-based selection process might look like?

Keir Monteith: One way of answering that question is to look at what has happened recently with the JAC. A woman called Kate Thomas applied to be a circuit judge in two disciplines—crime and civil—and was accepted in relation to both, but it had to be checked, as these applications do, by a character committee. The character committee does not interview the applicant; it just looks at the various submissions, scores and something called secret soundings. The posh name for it is statutory consultation, but I prefer secret soundings. Despite passing the test to become a circuit judge, this additional committee, having heard evidence which was never mentioned to her and she had no opportunity to deal with, came to the conclusion that she could not become a judge. She did one of the bravest things in the world, which was to take the JAC to court. We all know that, in reality, if you do that, the chances of becoming a judge are zero, but she did it. She battled for four years. In the final hearing, in the summer of last year, the JAC defended itself. Its starting point was that no one should ever see the material, at the same time as saying that it was transparent. It had to backtrack on that



HOUSE OF COMMONS

because the judges made the obvious observations. They never put the secret evidence before the three judges making the decision in relation to Kate Thomas. You would have thought they would do that if it would justify their decision to overrule her becoming a judge.

- Q11 **Tony Vaughan:** Pausing there, I declare that I acted for Kate Thomas in the Court of Appeal before that hearing.

Keir Monteith: This might get complicated.

Tony Vaughan: I want to confirm that, essentially, you are saying that, if the references were made public as a matter of course, there would perhaps be greater discipline on the part of the person providing the reference to ensure everything in it was true.

Keir Monteith: I am not saying that; I am saying you should not do it. You should not have secret soundings as part of the process in relation to someone becoming a judge because, as much as it happened to her, a white woman, it will happen to black applicants. Maybe part of the reason why just 1% of judges are black is the secret sounding and statutory consultation that goes on. It should not occur. This is one of the things that should just be done away with. Again, if you look at racial bias on the bench, one of our recommendations, which was on top of that of the Law Society's previous president, Stephanie Boyce, is to get rid of it.

- Q12 **Tony Vaughan:** So this Committee understands exactly what that means, does it mean not asking judicial referees who are not the ones nominated on the form, essentially?

Keir Monteith: Yes. You do not need to get into hearsay and rumour mills, giving people the opportunity to spike applicants.

- Q13 **Tony Vaughan:** Why is that significant for the issues you are talking about?

Keir Monteith: Coming back to the central point, unfortunately the uncomfortable words are "institutional racism". There is an unfortunate preponderance of the system preventing very good applicants making it to the position I am in, King's Counsel. Two years ago, not one of the applicants who was black was interviewed for King's Counsel. The same applies to becoming a judge. It will create barriers that should not be there. If I want to become a full-time judge, I will demonstrate my ability in what I have done over the years, in the application I make and the referees I present. If that is good enough to fulfil the competencies, I should become a judge. It should not depend on someone outside that door putting in a spike to my application. Let us say that they do not like me saying all this stuff. I imagine a whole load of people do not like me saying it. That has nothing to do with whether I am going to be a good or bad full-time judge.

- Q14 **Sarah Russell:** Mr Monteith, I am going to put some things to you. I quoted your study in my speech in the Chamber recently. I am going to



put forward some stuff, but I start from the position of being very sympathetic to your views. One thing that has been said when these issues are raised is that the Deputy Prime Minister replied, "My previous position was adopted prior to the introduction of judicial training on unconscious bias, and the position now is essentially nothing like as problematic." I have some questions relating to that. There are proposals to increase the amount of judicial training on that. First, do you think that is pertinent? Do you think the position has changed since the Lammy report? I note that your report is much more recent than that. Secondly, do you think the judicial training to date is effective? Thirdly, do you think that enhanced judicial training on unconscious bias could be sufficient, taken at its highest, to resolve the issues you see?

Keir Monteith: I can easily answer the last one. Training by itself is completely and utterly inefficient. It will not change anything significantly by itself. There has to be a multi-pronged approach. If you do not mind my quoting myself and Professor Quinn, it is exactly what we said in our report. It is not one thing alone; it is many things together. On occasion, unfortunately, just as we are experiencing now with Mr Lammy, having some training is often used as an Elastoplast to try to suggest everything is okay when it is not, so it can be dangerous.

As you know, we sent our report to David Lammy. I will quote him in a minute, accurately I hope. In 2023, I and Professor Quinn had a meeting with David Lammy, somewhere not too far away from here. He agreed with the contents of our report, that there was institutional racism and something had to be done. A few weeks later, he was quoted in the *Law Society Gazette*. The quote is important in terms of the type of training we are looking at. For the record, he said: "My review recognised the need for action to combat racism and racial bias in the criminal justice system, but action is well overdue." You can imagine how he is saying this, in his very idiosyncratic manner. "Having met with academics and co-authors from The University of Manchester, I welcome their latest report which adds further evidence and provides feedback directly from members of the legal profession and judiciary. Action to embed compulsory anti-racist and racial bias training for all judicial office-holders, which is a key recommendation of the report, would encourage a culture shift towards anti-racist practice."

That has never happened; there has been nothing along those lines provided to the judiciary. It is what he said had to happen, and I and many other people in the training areas would agree with him, but it has not happened. You have to ask yourselves—I am sure you know the answer to this question—what training the judiciary has had. It is something called inclusion training. I do not know what inclusion training is, other than it is not anti-racist and it does not deal with racial bias. It is another example of one of those words they use instead of speaking the truth. A good test to see whether inclusion training has enabled a lot of people to become part of the judiciary, or feel part of the judiciary, is to look at further reports since 2023. Mr Lammy's colleague, Harriet



HOUSE OF COMMONS

Harman, Baroness Harman KC as she is now, conducted an extensive investigation—I think it is paragraph 8 of our submission—on bullying and discrimination within the Bar and judiciary.

Sarah Russell: I quoted extensively from that, too, in my speech. It is very worrying.

Keir Monteith: The point is that the judges have had inclusion training, so when Baroness Harman did a report—it came out last year—one would have hoped it would say that everything is fine with the judiciary because they have had their training and they are representative of society. I have one or two quotes for the record, and I will stop after that. She said, “It is imperative that the judiciary now publicly acknowledge that there is a problem of judges bullying barristers and that they make it clear that it will be taking action to address it...During the course of the Review I received abundant, disturbing and compelling accounts of judicial bullying.” I will not go on. The point is simple: the training has not worked.

Q15 **Pam Cox:** Mr Monteith. I am sure we all agree that we need much more research into questions of ethnicity and criminal justice data. To achieve it has been difficult, more difficult than it needed to be. I just wonder whether you are aware of data from the Administrative Data Research UK project for the MOJ, which offers insights using new data linkage techniques that have not been previously available and shines new light on things like remand, conviction and sentencing rates by ethnicity and other multivariate factors. Have you and Professor Quinn taken that into account?

Keir Monteith: We quote the “Cumulative Disadvantage” report, which came out on 26 February and mirrors Ministry of Justice data using, I think, the same approach you are talking about in relation to a new way of analysing it. That is where I get the figures for remand. Black and ethnic minority defendants are between 17% and 35% more likely to be remanded in custody, and there is analysis thereafter in relation to the cumulative disadvantage, hence the title of the paper, resulting in sentences that are disproportionately longer for black and ethnic minority defendants compared with white ones.

Pam Cox: All I would suggest is that the ADR UK data has given rise to lots of more recent studies that are coming to very different conclusions and there is a range of opinions on this matter.

Chair: We now have some questions primarily for Mr Atkinson and Mr Guest from Matt Bishop, initially.

Q16 **Matt Bishop:** The impact assessment indicates that the changes in the Bill to move cases out of the Crown court and into the magistrates court will result in 24,000 fewer sittings per year in the Crown court and will require 8,500 more sitting days in the magistrates court. Does that seem like a fair assessment to you both?



HOUSE OF COMMONS

Richard Atkinson: No. The assumptions within the impact assessment show that they are based on the idea that magistrate trials will take four hours on average. Four hours is quite optimistic now, but if you are to move more serious cases into the magistrates court, they will not be those that make that average go down. They will be the longer cases; they will take more time. You will see, for example, more serious assaults, more serious controlling and coercive behaviours, more serious stalking and more serious harassment. Anyone who has had any dealings with those sorts of matters will appreciate that they are often accompanied by a mass of evidence, not infrequently thousands—tens of thousands is not unknown—of text messages sent from one to the other that need analysing and putting before the court. If this Bill is passed, these are not short cases that will go into the court; they will be longer. The assumption that they will take four hours, with half an hour for sentencing, simply does not resonate with my experience.

It is not clear from the analysis how they arrive at the number of days and whether they are simply adding up the total number of hours in a week and dividing them by four to say it will give us this many days. We know that, although a magistrates trial may be listed at 10 o'clock, it is very unlikely to start at that time for a whole range of reasons. Therefore, even if the trial lasts for four hours it will not finish four hours after 10 o'clock, so you will not have that extra bit of day. That is a full day gone. That is one trial, but it probably will not be four hours; it will be a day and a bit. I do not think that the assumptions are valid. I also think they are hugely optimistic, even on those assumptions, so I revert to my original answer: no.

Tom Guest: I am afraid I must give a counterpoint. I am all for testing the assumptions as the legislation passes through, but there are some counterpoints I would make. For instance, some of the estimates seem very conservative to us. The estimate that a judge-only trial would take 20% less time than a judge with a jury—I can talk you through a practical example—seems to us to be very much on the conservative side. It is also important to remember that the magistrates court does deal with very technical cases. A day's listing would be quite exceptional, but it deals with complicated things like excess alcohol and road traffic; it deals with complicated harassment allegations that remain in the magistrates court. Either-way offences, by definition, can be tried in the magistrates court. ABH is arguably no more complicated than battery. I very much respect Mr Atkinson's experience and the testing of those assumptions, but it seems to us that every time someone comes forward with one proposal, which is that judges will spend all of their time writing up their reasons in a judge-only trial, we think, sure, but there are several savings being ignored to the counterbalance. I think it is a debate to be had, but those figures and the potential savings seem sound to us.

Q17 **Matt Bishop:** I want to return to Mr Atkinson's point about the number of files and documents available to be landed in court, given the technology we now have. For example, in domestic assault cases, the



police can use domestic assault apps to record all the documents quite simply, streamline them and send them quickly back into the court system. Would that affect your answer in any way, or do you still stand by what you said?

Richard Atkinson: It is a very valid point. To an extent, it is speculating on the advances that technology can make, but it cuts both ways. If that will shorten trial times and bring them closer to the four hours, the argument that cases are becoming more complex in the Crown court and taking up time, which is why we have the backlogs, would be met by that very same argument. If that is right, it will also be operative in the Crown court and will reduce demand there. One of our key issues is that the evidence base is very weak. Without the evidence I would not like to put my money on which side of that point it falls: whether or not technology will save us and, therefore, the time of all trials comes down, or whether we just talk about the position as it is today on the availability of technology and its impact on the volume of evidence. Sir Brian's position, as you will be well familiar, is that it is a key driver in extending the length of trials. With my optimistic hat on, I think that is the case, but that will also mean the same in the Crown court.

Q18 Matt Bishop: We heard questions in previous evidence sessions about whether we are just moving the problem from one court to another. In your opinion, will the magistrates court be able to cope with the additional caseload that the Bill would transfer from the Crown court?

Richard Atkinson: No, and quite startlingly not. We know that the volume in the magistrates court at the moment is about 380,000 cases. The impact assessment says that within a few years—it is no more specific than that, although it puts dates on all sorts of Crown court projections—the caseload in the magistrates court will double. Double! That is what is said in the impact assessment. That is huge. What does that mean in reality? My practice was in Kent. I still very much know what is going on there. Trials in Kent are being listed in the magistrates court at the moment for March 2027, a year ahead, without extra work. I understand that in Essex it is about 14 months to go to a trial; in Manchester it is even longer. We already have a substantial backlog of cases in certain parts of the magistrates court system, possibly more widely. I do not have all the data. We are going to double the amount of work going in there. The capacity just is not there.

When we look at capacity, it is in human resources and buildings. In human resources, we all know there is a serious issue around the retention of legal advisers. It is a retention issue. I am afraid that the supportive line in the impact assessment of 108 magistrates clerks being recruited recently is of no comfort whatever. They do not have a problem recruiting; they have a problem retaining them. How does that materialise? Yesterday, a magistrates court in Kent did not have a legal adviser. As an emergency measure, they had to beam in by video a legal adviser from a different part of the country. I am told it was a disaster, as anyone who has been in a court might expect. There are not enough



HOUSE OF COMMONS

legal advisers. Those newly qualified legal advisers left to go to—yes—the CPS.

The capacity in human numbers is a problem. As for solicitors, there are now 32% fewer duty solicitors than there were in 2017. Therefore, there are fewer advocates in the magistrates court because, primarily, it is solicitors who are there. The human numbers do not support a doubling of the workload. In my career, the number of magistrates courts—again, this is dear to you because you are in Kent—has reduced by two thirds or, in absolute numbers, from 16 down to five dealing with criminal cases. Double the workload?

Those backlogs are really important because, although the focus at the moment is very much on the Crown court and lots of talk about serious crime, an awful lot of crime is serious if you are involved in it, and an awfully large proportion of the work that magistrates courts deal with is already domestic violence cases. When you increase the sentencing threshold, as the Government plan to do, you will bring in more of those cases. Currently, those cases that are so serious that they are charged as ABH rather than common assault will be retained. As I said earlier, stalking cases that deserve a longer sentence than magistrates can give at the moment are retained; harassment is retained. All of those cases make up a significant proportion of a magistrate's work, and they will add to the backlog. How do you tell those people that their cases are taking two, three or four years to come to fruition, but they should not worry because we have the Crown court numbers down a bit? That is why we are keen on looking at the package as a whole, not just focusing on one area. The risk is that you are effectively squeezing the balloon at one end; you are moving air from one end to the other. You are not resolving the problem; you are just moving it.

Tom Guest: I certainly agree that that is where the key issue lies. We must put every resource into ensuring that the backlog of the magistrates court does not increase. The magistrates court is able in an agile way, more than the Crown court, to deal with things like that. For instance, blitz courts are a lot easier to run in magistrates courts than in Crown courts. But I entirely agree with what was said. I make no apology for recruiting talented legal advisers, but there is a very serious point about resourcing in the magistrates court that I do not think is lost on this Committee at all.

I just cite an argument acknowledged by Cassia Rowland, the author of the Institute for Government's reports on this Bill and the proposals that led to it. She recognised that, in a time of crisis, there is in principle an argument, if we are listing cases in 2034, to focus on the most serious cases, such as those that involve death, rape or serious assault. A year's backlog is more than undesirable in the magistrates court, but that is nothing like the most serious end of offending. She acknowledged that some clear-minded focus on that was legitimate. As you appreciate, she has not been backward in coming forward with potential concerns about



HOUSE OF COMMONS

the proposals, but it is something she acknowledged. That and the question of prioritisation very much chimed with us, but none of that takes away from what the CPS and every part of the criminal justice system need to do to support the magistrates court if it is to have a significant increase in workload.

Q19 Matt Bishop: On that, can you talk about the operational consequences for the CPS that will arise from a significant proportion of Crown court cases transferring to magistrates courts?

Tom Guest: It will mean pivoting and thinking about our resourcing of the magistrates court. We are already looking at different role profiles, not simply Crown prosecutors and senior Crown prosecutors but also the paralegal support they have. We are looking at those roles anyway, and that would feed into looking at how we could best support the effort in the magistrates court. Clearly, it is a cross-criminal justice system question. Are more courts going to be opened, and so on? That is probably the key piece of preparation that is already under way.

Q20 Matt Bishop: My last question is to Mr Atkinson. I think you touched on this previously. A “yes” or “no” answer might suffice. Are there enough duty solicitors to cope with the increase in cases in the magistrates court?

Richard Atkinson: No, and the direction of travel is getting worse. The age profile of duty solicitors is such that there are very few young duty solicitors. Less than 7% are under 35. It is an ageing workforce where the average is now about 51 or 52 years of age. In five years’ time, a big chunk will have left and will not have been replaced. That is the issue. There are clear problems. One example is in west Wales, where the summer before last, or last summer, the court had to decide whether it would adjourn for the afternoon to allow the duty solicitor in the area to go and represent someone at the police station who was on a PACE clock and the police needed to interview, or continue to have the court sitting that afternoon. They chose to rise. Cases were put off. That adds to the backlog and the waste of money, but those are the choices that have to be made when there are insufficient duty solicitors to do the work that is necessary. As I say, it is not a steady state; it is a worsening position.

Q21 Warinder Juss: Mr Atkinson, following on from what you said, the Government are undertaking a programme to recruit many more magistrates. Do you think that will have some impact? They have also increased legal aid rates to encourage more criminal law advocates to enter the profession. What impact do you think that will have, if any?

Richard Atkinson: Taking the two separately, the recruitment of magistrates is clearly going to assist in increasing capacity, but what we know and what is a key feature of the report is that so much is interlinked within our justice system. More magistrates are needed, but so are more legal advisers and more advocates, and you cannot just increase one if you do not have the requisite numbers in the other areas as well. I welcome greater recruitment of magistrates—it is really



HOUSE OF COMMONS

important—but as we saw from my example of yesterday in court, the court nearly could not sit because it did not have a legal adviser, not because of a lack of magistrates. You need all the component parts, otherwise it cannot function.

The money that the Government have put in is extremely welcome. It is the first increase that we have seen for about 30 years, so I do not in any way diminish the significance of that. However, we know that the money is to be phased in through the course of this Parliament, and by the time it has been delivered the cost of living will have exceeded the amount of money that has gone in. On one side, I do not want to sound ungrateful that there is extra money. There is extra cash, and you cannot ignore that, but equally you cannot ignore the fact that solicitors are businesses and practices. If the cost of practice is now higher than the extra money, in fact, the reality is that we are in a worse real-terms position than that reported on by Lord Bellamy. I acknowledge the increased cash, but I am afraid it is not enough because the costs of business and of living have exceeded it over the time that it is introduced, so we will still face the crisis that was set out.

Q22 Vikki Slade: I want to ask a few things about the sentencing powers, but before that, I have been really quite agitated by some things that have been said. Throughout this whole process, I have really focused on the role of the magistrates court. There was a suggestion earlier that it will be quite easy for these cases to transfer from the Crown court to the magistrates court and it would not take very long, but the sorts of cases that will move from the Crown court to the magistrates court, according to the paperwork that we have here and the research that I have done, are those that would normally take three to four days, maybe up to a week, in a Crown court. They are not going to magically take half a day. If it will take three to four days in a Crown court, how much of that is because there is a jury, and how much because it is more complicated, someone's liberty is at stake, and there are more defendants, more witnesses and more complexity? You cannot just transfer and say, "Well, it's half a day in a magistrates court." I am slightly concerned, Mr Guest, that it seemed an oversimplistic suggestion. I cannot get that out of my head.

Tom Guest: Thank you for the opportunity to address it. I just wanted to make the case for the magistrates court and the fact that it deals with really serious cases. Think about the youth court. Everything has to be retained other than murder. Rape and serious stabbings are dealt with in the youth court, and if the powers of sentence are insufficient it could be committed to the Crown court, but it is dealt with in the youth court. Of course, it is ticketed, with judges and magistrates and so on. I am not saying there are no checks and balances to put in place. I have done two-day trials in the magistrates court on very complicated matters with specialist defences in excess alcohol and so on. I just wanted to make the case.



Q23 Vikki Slade: I am not talking about excess alcohol. We are talking about robberies. We are talking about burglaries. People can get two years. You referred to excess alcohol twice. Burglaries and serious drug offences are very different from excess alcohol. I worry that David Lammy has said that these are minor cases. These are not minor offences; they are serious offences.

Tom Guest: I do not doubt the matter of seriousness, but I am talking about the complexity. When I say complexity, to have live, contested, expert evidence in some magistrates court cases can be distinguished from a burglary case, which can be very simple. It can come down to the fingerprint that is inside the window and the explanation for that. I do not underestimate the seriousness, but, in terms of complexity and whether magistrates need further training, whether it is outside their field of expertise or whether it is for district judges, I would say the magistrates court is able to deal with the complexity.

Can I explain some of the savings that might come about without a jury? Thinking about the case from beginning to end, you do not have empanelment and jury selection at the beginning, but, probably more importantly, you can get straight into the evidence. There were many judicial eyebrows raised when I proposed making a speech to the magistrates court, because they would say, "I'm about to hear the evidence. Why are you going to make a speech to me?", or, "I've just heard the evidence. Why are you going to tell me about that?" The speech can be very much condensed in a way that it cannot be for a jury who are new to the case. During the course of the case, a judge can be very much more directive with advocates and can say, "Do I need to hear this evidence? Is this a real issue in the case? Could this be reduced to an admission? Does this witness need to give evidence, or can I read their statement?" That can be done in a way it should not be in front of the jury. Also, the jury needs to understand the evidence far more fully so that the judge can be very much more direct. My personal experience was of judges saying, "I don't really want to hear live evidence unless you have a very good reason on this point." Then we come to the conclusion—

Q24 Vikki Slade: I would not want to be a defendant in that case. I would want to know that it had been said out loud and heard. The idea that the judge was going to take it away and look at it would not fill me with confidence, if I was a defendant.

Tom Guest: Entirely understood on open justice, but bear in mind this is all challenged to me as a prosecutor saying, "Why are you attempting to take an hour to present a case that, in my view, I can hear from the witness? They're here. I'm going to hear their live evidence." Moving on, there is no need for summing up to take place from a judge to a jury. Time is saved when the judge is making notes of the evidence as they are going along. Yes, they will need to take time to produce a written judgment, but a jury also needs time to consider its verdict. Cumulatively, there are opportunities there. I certainly experienced far



HOUSE OF COMMONS

more pressure to get on with the prosecution case than I ever saw a defence advocate come under.

Richard Atkinson: Sorry, can I come back on one point?

Vikki Slade: Yes.

Richard Atkinson: I recognise what I might characterise as shortcuts that took place, particularly in front of district judges. I ask this as a genuine question. We know, because Sir Brian called for it and the Government said they are going to do it, that they are now going to record the magistrates court. It will be a court of record. I wonder whether some of the more questionable shortcuts will in fact no longer take place. It is one thing in a closed court, but when it is going to be recorded and subject to potential appeal those matters may well disappear, thereby lengthening the time it takes. I completely agree with you about the idea that you can collapse a four-day Crown court trial into four hours.

Keir Monteith: Can I briefly add my experience? Decent judges in the Crown court will speak to the advocates before the trial starts about agreed facts and about saving time in relation to witnesses. Very often, there is a pause before the trial starts where that is sorted out. There will be no advantage in sending all that back down to the magistrates court and trying to replicate it there. The idea that you will have slower cases in the Crown court where you have an experienced judge dealing with it and quicker cases in the magistrates court is nonsense. As soon as those magistrates retire, they cannot be used, so there are going to be further delays in the magistrates court, not these so-called swifter cases. I see that day in and day out in the Crown court.

Q25 **Vikki Slade:** I will ask the first of some further questions, though sadly I have to leave. I feel much more worried than I did before we started. We have already seen a shift of sentencing powers from six months to a year. Can I get your reflections on what the impact of that change has been with regard to the CPS and the courts?

Tom Guest: The evidence is that magistrates are not necessarily making full use of their existing powers. These changes were introduced, then reversed, then reintroduced. There has to be an opportunity to look at the sentencing powers of the magistrates court and to bed those in.

Vikki Slade: The report I have in front of me says that only 3% of the work in magistrates courts results in a custodial sentence. They may have the ability to do six or 12 months, but in reality they are not experienced in it. We are committing people to this. It is what it says in the report we were given: 3% of cases result in custodial sentence. I am sorry, Chair, I have to be—

Chair: I think we have dealt with the second part of that already. Thank you very much, Vikki.



Q26 Tessa Munt: I was going to ask the two of you about this. Sorry, Keir, you are not in this one, I do not think. You might have something to say. I do not know, but we will see. Richard and Tom, could you set out your respective positions on the reform to appeals from the magistrates court, please?

Richard Atkinson: The starting point is that we oppose the proposals that have been put forward. The appeal process that presently exists from the magistrates court to the Crown court is by way of rehearing, as you know. When we look at the impact, in 2024 there were over 1,000 defendants who successfully appealed a finding by the magistrates court. It is a rehearing. They have a chance to hear the evidence again, and that is a really important protection. If you are going to give the magistrates greater powers to hear more serious cases, that safeguard is all the more important for those individuals. A thousand people is a lot of people. It is not proportionately a lot of cases in the Crown court. This was looked at by the Law Commission, as to whether there should be a basis of grounds for moving the appeal. The Law Commission very recently said, "It's not necessary. We don't think that there are sufficient numbers to warrant it. We think it's an important safeguard, and we don't think it's an appropriate way forward." That is a really important body that the Government appear to be ignoring in saying, "Well, actually, we don't agree with your findings. We're going to move on." We are deeply concerned about this.

We have touched on this and may come back to it, so I will not over-labour the point, but the right to legal aid in the magistrates court is significantly reduced to that in the Crown court, such that if you are a full-time worker over the age of 21 on the minimum wage, you cannot qualify for legal aid in the magistrates court. If you are under 21, the vast majority will not, but some may just. If you are going to have to draft your grounds of appeal because they got it wrong—four and a bit out of 10 of those who appeal are found to be correct and were not guilty—it will be very difficult. They will potentially be denied justice and be subjects of miscarriages of justice. That is 1,000 people before the sentencing threshold is increased. That is extremely worrying in changing the provisions for appeal. We do not believe that the saving in Crown court time is sufficiently large to justify that risk to justice.

Tom Guest: On behalf of the CPS, we strongly support this provision in clause 7. We do so—I will address efficiency—because we think it is the right thing to do, and it strikes the right balance between the interests of victims, witnesses and defendants. In terms of efficiency, yes, it is correct to say it is about 5% to 6% of Crown court receipts. On its own, it certainly is not going to address the backlog. It is not an insubstantial amount. That is why we also have said previously, far before the review let alone the legislation, that we do not think the balance is right between victims and witnesses.



HOUSE OF COMMONS

I have explained to more than one domestic abuse victim, "You will have to give evidence again. Yes, it took great courage to give evidence. No, there wasn't anything wrong with the original trial." It is that combination of the defendant not having to provide even a reasonably arguable ground, which is the low threshold that the legislation proposes, with, "You have to come and give evidence again. We're not going to examine whether there was a mistake. We're not even going to examine the transcripts. You come and give live evidence again." We do not think that is the right human balance.

I will give another example, if I may. A taxi driver who was racially abused said that if he reported every crime that happened in the back of his cab, he would constantly be coming to court. That was completely beyond the pale for him. Once again, I was explaining, "No, I can't identify what went wrong when you gave evidence the first time round, and the process doesn't involve that identification, but you will need to come to court again to give evidence, and that is if the Crown court can list the case promptly."

I want to address the figure that is given of cases in which the appeal is allowed. First, self-evidently, that means that, for the majority, the appeal is unsuccessful after the victims and witnesses have given evidence again. Also, imagine a situation where you had a third or fourth level of appeal. You would equally have at least a 44% success rate. Victims drop out. They do not want to give evidence again. Sometimes, the Crown court will take a different view of the case. Nothing is stopping people appealing. The unrepresented defendant's point is absolutely correct. We need to have a really clear appeal form and the ability of Crown court judges to have an unrepresented defendant and to deal with them directly for permission to appeal. There absolutely should be time for that. That 44% should be completely entitled to appeal again on reasonably arguable grounds with the benefit of a transcript, but, in our view, not with victims and witnesses just giving evidence again with no good reason given.

Q27 Tessa Munt: Do you have a view on legal aid?

Tom Guest: Yes. Every time I had an unrepresented defendant as an opponent, I would far rather they were represented. I appreciate there are policy decisions around that. We need to look really carefully at this. I do not think it is in anyone's interest for unrepresented defendants to put together badly drafted grounds of appeal and then for them to be unpicked. The prosecutor has a duty to be fair when we receive those grounds and not just simply to ignore them. In fact, part of our increased workload will be to respond effectively and to try to work out what the real issue is. I do not want to make policy statements about legal aid, but quite clearly it is to the benefit of everyone when unrepresented defendants are represented wherever possible.

Q28 Tessa Munt: The other thing I want to ask you about is magistrates court proceedings being recorded. Do you have a view on that? Is it going



HOUSE OF COMMONS

to work? Do you have any concerns about that?

Richard Atkinson: It is a very positive change for the reasons that I said. It will improve the discipline of those in court, if they know that their words and decisions are being recorded. It is now not a difficult technical feat to achieve. That is fairly clear from Sir Brian's report and from my experience. The Crown court is now recorded rather than having a stenographer there, as was originally the case. It is a very positive move that will improve justice in the magistrates court and will improve confidence in it. That is a point that Sir Brian makes very strongly in his report in part 1: the whole basis of these reforms rests on people being confident that the magistracy will deliver justice in the magistrates court. I am wholly supportive of that measure.

Tom Guest: We are wholly supportive, absolutely.

Tessa Munt: I am celebrating that you are agreeing.

Tom Guest: Please do reassure your colleague that I was not suggesting anything untoward happened in the magistrates court. It is just that a judge can be very much more direct with the prosecutor than they could be otherwise. I also take Mr Monteith's point.

May I make a practical point, though? To roll out not even Rolls-Royce but another manufacturer's level of recording in every magistrates court in England and Wales will take some time, money and resource. We absolutely support it. In the meantime, we would welcome measures that ensure that appeals reform is not held up. If it were put off for years and years, that would defeat what I have just described as a proper policy intention for victims and witnesses not to have to give evidence again. We all have devices in this room that are capable of recording. With the right oversight, there should be enough measures that can enable a Crown court judge to fairly determine permission to appeal, and the appeal. There should be written reasons of a judgment that they can consider. There can be an agreed note of the evidence between the advocates. That is what happens when recordings do not work. We absolutely need the proper recording—I do not suggest that at all—but that will take some time and resource, and we would not want that to be artificially coupled to appeals reform. A judge fairly determining a permission to appeal or appeal is not going to read or listen to a transcript of the entirety of the proceedings. They need to be assisted with whatever is available to determine that appeal fairly.

Q29 **Tessa Munt:** The only observation that I would make is that I have certainly seen a number of cases where a potential appellant needs to listen to a transcript or to be able to read a transcript in order to decide whether what they thought they heard being said was indeed what was being said. You cannot possibly go equipped to create an appeal unless you know you are absolutely certain that you are appealing on the right grounds. That will help.



HOUSE OF COMMONS

Tom Guest: I entirely agree. I support practical approaches to this. Between the defence and the prosecution, we should be able to find ways to ensure that happens. You are quite right. We need to go back and say, "Was that question put in that way, and was the answer like that?" That should not await a national roll-out of recording, in our view.

Keir Monteith: Can I get a full house?

Tessa Munt: Go on. I knew you were going to. I could see that look.

Keir Monteith: I agree with both my learned friends. Can I make a plea to you, please, or whoever is in charge of the roll-out of the recording? This should apply to the Crown court. Please use the technology so that judges do not need to take either a longhand note or type up a transcript of what is said. We all have the ability now to transcribe in real time what is being said. Whatever new technology will be used in the mags, please get it in the Crown court. You will have transcripts coming out of your ears, and you will not have private companies—I saw this happen but a few weeks ago—charging tens of thousands of pounds of taxpayers' money to transcribe what is being said.

Tessa Munt: Indeed.

Q30 **Sarah Russell:** I have two questions. One is about unrepresented litigants, about whom I have significant concerns. The movement of cases into the magistrates court will produce a large number of unrepresented litigants. What impact do you think that will have on relative timesaving? My second question is about the fundamentals of Sir Brian Leveson's report. The framing of the question was essentially that there will not be significantly more resource in the justice system in the immediate future. In view of that, what do you suggest we do? If there were going to be some more resource, what would you do with it, and how do you think it would be most effectively deployed to get these backlogs down? I do not think anyone here is arguing that the status quo is okay. What do we need, when do we need it and how?

Richard Atkinson: Gosh, how long do we have?

Chair: Thirty seconds.

Sarah Russell: I have to leave the room in 10 minutes.

Richard Atkinson: Let me deal with unrepresented defendants because I can deal with that more quickly. We had a means test review that concluded in 2023 and made recommendations. The Government have yet to respond to that and implement it. That is a piece of work that is waiting. That is really important, as I said, because of how few are now eligible for it. It is really important on my soapbox of justice. It is also really important for getting work done more quickly. I know that the current Justice Ministers are very keen, and they are fond of telling us of their trips to Canada and how good things are there. I was in Canada last year, and one thing that Legal Aid Ontario told me was that it is very



HOUSE OF COMMONS

concerned about backlogs, and one big issue and driver of that is unrepresented defendants. They have increased legal aid eligibility in Canada to make sure that more defendants are represented so that cases can move more swiftly. The issues of both speed and justice are met by ensuring that defendants are represented and have access to legal aid. It is fundamental to ensure that that is what happens. Because I have a tiny amount of time, that is where I would start with extra resources. I could give you quite a long list, but I do not have time.

Q31 Pam Cox: My questions are to Mr Guest and Mr Atkinson. Mr Guest, under the Bill's proposals for judge-only trials, the Crown court would have to decide whether a defendant is likely to be sentenced to three years or more. What information will be presented to the court to facilitate that determination?

Tom Guest: The prosecution would set out its representations, which are about the facts of the case and previous convictions, and make representations on the sentencing guidelines. The defence will also make representations. We do not think that will overcomplicate matters. Yes, they need to be carefully considered submissions. Maybe in rare cases, it will take more time to consider. Fundamentally, the advantage of having sentencing guidelines and advocates who are experienced in prosecuting and defending the cases that would regularly come before the courts means that we can be quite focused in those submissions on both sides.

Q32 Pam Cox: Are you satisfied, as the CPS, that it would be a fair process?

Tom Guest: Yes, as long as there is fair opportunity to prepare submissions and to make them.

Q33 Pam Cox: Mr Atkinson, do you agree?

Richard Atkinson: No, because it throws up an unfortunate anomaly, which involves, as you heard from my friend, the facts of the case, defendants' previous convictions and likely sentence. If you are a heavily convicted person, you are likely to get a longer sentence and will get a jury trial. If you are a person of good character with the same set of facts, you may find yourself not facing as long a sentence and will not get a jury trial. The issue there is around length of sentence because that is the determining factor. The loss of character, the impact on your employment and your ability to hold yourself high in your local community is really important, but that is not going to be a factor in determining allocation. Someone who is saying, "I didn't do it. I've never done anything wrong in my life," will be told it is judge-only. Someone who has a string of previous convictions and is told, "If you did do this, you're going to prison for a long time," will get a jury. That cannot be a logical outcome when looking at justice issues. I do not think that is appropriate.

I have one point on allocation. Allocation and the current situation look a little strange. Magistrates' sentencing powers are going to be increased to 18 or 24 months. We know that, on allocation, magistrates are told that if



they think it will be slightly longer they can retain it, and if it will be longer they can commit the sentence. If the Government choose in due course to say it is 24-month sentencing powers for the magistrates, they will retain cases of two and a half to three years. If a case goes to the Crown court for the Crown Court Bench Division, it has to deal with cases that will be less than three years. I would suggest that a judge will not want to find themselves in the scenario that the Bill allows for, which is that the trial is going along and suddenly they say, "Whoops, this will be more than three years. I've now got to decide whether I should stop this and give it to a jury or, none the less, carry on." There will be a lot of discussion and argument about that. They will be cautious and say, "Well, actually, if I think it's about two and a half years, I'll retain it to the Bench Division. If it's more than that, I think I'll say jury." There is the problem. The magistrates are saying, "We're keeping up to two and a half years," and judges are saying, "We're sending anything over two and a half years to the jury." What is the Bench Division doing?

Q34 Pam Cox: We have divergent views on that one. Allocation decisions under the Bill cannot be appealed. Do you expect that decisions would therefore be challenged by judicial review, Mr Guest?

Tom Guest: We reserve our right in that instance to argue whether allocation relates to trial and indictment. We would say that it is better that it is put beyond doubt on the face of the statute so that it is clear whether judicial review is available. We are certainly not here to oust judicial review because of the principles on which it rests: namely, it is there for irrational decisions; it is not simply to have a further rehearing and check. It is a fair point about previous convictions. The CPS does not have a corporate view, one way or another, on whether or not we need to refer to them at allocation. I do not know in how many situations that would be the single deciding factor. That is certainly something well worth looking at as the Bill goes through. On judicial review, it is probably an arguable point, and we would rather it is put beyond doubt if possible.

Pam Cox: Do you have a view on that?

Richard Atkinson: I do not have anything further on that, no.

Pam Cox: Okay, thank you. I think my other question has already been covered, so I will stop there.

Q35 Tessa Munt: Clause 5 requires the court to give a judgment stating the reasons for conviction or acquittal. Could you anticipate this causing any difficulties?

Richard Atkinson: I do not think difficulties, necessarily, but there will be consequences, ones that have already been referred to by Mr Guest and have been raised in the past. That is of course that judges will have to spend some time writing these up. I am sure you are all aware that the way in which the Crown court trial process works is that a judge sits with a jury, they get to a conclusion of the case, at which point the jury is



HOUSE OF COMMONS

sent out to make its decision. The next thing that happens is the judge gets on with the next piece of work. He does not retire. He will have to retire to consider and write his judgment. Those judgments will, I am quite sure—perhaps Mr Monteith will give a better view on that—be pored over by those who will look at appeals. If reasons are given that are insufficient and inaccurate, they will cause a basis of an appeal that does not exist at the moment. We do not know what the jury's thought process was. We only know its verdict. Therefore, there will be greater opportunity for appeals.

Of course, if an appeal is successful in the Court of Appeal, in most cases that results in the order of a retrial. That case that has been heard will be sent back to the Crown court for another attempt at a trial. Until we have a greater understanding of the impact and how this will operate, we question how much this will save overall in the time that this new process will be brought in—if it actually deals with any cases at all, bearing in mind my previous answer.

Tom Guest: They are all valid points and all worth weighing in the balance. That is the one area in which the concern about judge-only trials decreasing efficiency has some weight, as against what I was attempting to do earlier, which was to go through each of the stages of the case. Judges will have to take time to carefully prepare decisions, but, again, there is the test in the Court of Appeal. We might be talking about a backlog in the Court of Appeal now if we think there will be some immediate responses. The test applied by the Court of Appeal is whether the conviction is safe. Although you can pore over the judgment as much as you want, you will have to pin your colours to the mast and say why the judge has convicted and done so unsafely. We are less pessimistic about that, while recognising it. That is why I wanted to model the beginning to end. It is not just about the judgment. The whole process is potentially more efficient, albeit they will need to take time to retire and write their verdict.

Keir Monteith: I do not mind saying it will cause difficulties. I have not met a judge who wants to do this. It is not what judges signed up for at all. That is the first difficulty. You may well find fewer applications to become judges. Who wants to spend hours, if not days, writing up a judgment, whereas you can get on, as has already been said, with the business of the court, which is what you have been trained to do and what you want to do as a judge? It will have unintended consequences in terms of the judiciary. You also look at the hierarchy. Who would want to end up doing this five days a week, four weeks a month as a judge? Very few. If we talk about two-tier justice, most judges will want to do the trials with juries. There will be difficulties—that might be a polite way of describing it—between allocation of this type of work between the judiciary. I can see serious problems.

Let us consider a multi-handed case. Juries deal with these really well, actually. My experience is that they generally get it totally and utterly



HOUSE OF COMMONS

right. They have time to reflect, consider, mull over and consider other opinions, which is brilliant. I have seen it in action. It is absolutely phenomenal. A judge, I would imagine, would have to do similar. You cannot just have a decision like that. You have to consider the evidence properly to reach just verdicts. If you have four or five defendants to go through, that is difficult. That is why it takes juries days, sometimes weeks, but they generally get it right. The difficulty is that you may have a judge out of action. They do not want to have sleepless nights about getting the verdict wrong for defendants one and three, two and four, or five and six. The difficulty is that it will slow down justice. You will not be able to get hold of your judge for the next trial because they are still trying to work out the verdicts and get the right ones. Then, of course, there is putting it together to make sure that their decision making is properly represented on paper or electronic document so that nothing is missed out and nothing is included that should not be there, because mistakes can be made when judges are under pressure, and they are under pressure. Then, of course, if those mistakes are made or there is bias, which we have talked about, the decision will be appealed. On occasion, the Court of Appeal will quash the conviction, and we start everything all over again. All this when, it seems to me, something is not broken with the jury system. No one is suggesting there is anything wrong with the jury system. Why are we even going through this, for goodness' sake?

Richard Atkinson: Can I just add one very quick point about judges? I am sure you have seen the Lady Chief Justice's comments this morning about her concerns over judicial safety for single-judge hearings. She restricted herself, understandably because of her position, to physical safety. There are also unquestionably going to be more judges attacked in the media. It would not surprise me if, six months in, we see league tables appearing in certain newspapers of the toughest and softest judges in this country. Their judgments will not only be subject to comment and judgment by the Court of Appeal but also by the press, because it is criminal cases that attract the press's attention. The judiciary will find themselves on a level of scrutiny that they have never experienced before, which feeds back to the points around who would want to do it.

Q36 **Chair:** Thank you very much. We have covered all the ground that we wanted to cover this afternoon. I will give you the opportunity not for closing arguments, but for any fresh matters that you think we should cover or that you are burning to unburden yourselves of, otherwise I will close proceedings. Do you have any final comments?

Richard Atkinson: The one final point, because I like to flog horses whether they are alive or not, is that this is an interlinked system, and when you make one change, you impact on other parts. Therefore, simply focusing on one issue is very dangerous for overall justice.

We have said that salaries for legal advisers need to be increased, and Sir Brian recommends that. If you increase the salaries for legal advisers,



HOUSE OF COMMONS

which I would utterly support, but do not increase legal aid for defence lawyers, you are giving yet another escape route for defence lawyers. You have to have enough defence lawyers, legal advisers and magistrates—all three—to have a court sitting. If you take a measure that will take away from one area such as defence lawyers and solicitors and put them into CPS or HMCTS because they are now both much better paid, you will not solve the problems. The problems are interlinked, and therefore the Government must look at an integrated set of solutions. Otherwise, all they are doing is moving the problem from one place to another.

Chair: Thank you very much indeed.

Keir Monteith: Just very briefly, 48 courts out of 516 are not sitting today. That is 9% of the court estate not being used. If you had judges with juries in those courts, you would see the backlog start to decrease. You do not need to get rid of juries; you can just get on with the business. I know the criminal lawyers want to do that. I know the judges want to do that. I know juries enjoy being involved in these decisions. When I say they are happy to do that, they want to be part of the justice system, part of the democratic process of deciding innocence or guilt. I hope this Committee, one way or another, can encourage Mr Lammy to make sure those courts are open, and to fill them with judges, juries and lawyers. We can reduce the backlog that way.

Chair: Thank you very much. Is there anything you want to say, Mr Guest?

Tom Guest: Two sentences. We think it is right in principle to look again at the relationship between the magistrates court and the Crown court. The status quo is not an option. Absolutely, investment and non-legislative efficiencies must be driven forward concurrently. Impact must be assessed concurrently. We need to look carefully at why structural reform is not simply something that will address the backlogs, which must be addressed, but also is the right thing to do.

Chair: Thank you all very much. We really appreciate all the time you have given to us this afternoon. It has been incredibly helpful. I say again that I am sorry that we did not hear the voices of victims today. That was a decision for the Victims' Commissioner. We will have to find other ways to ensure that is incorporated in our report. Certainly, your contributions and help in our understanding of the proposals have been excellent. I thank you again. I bring this session of the Justice Committee to a close.