Independent Review of the Criminal Courts

JUSTICE: Response to call for evidence

31 January 2025

Introduction

1. JUSTICE is a cross-party law reform and human rights organisation that is committed to strengthening the justice system – administrative, civil and criminal – in the United Kingdom. In December 2024, the Lord Chancellor commissioned Sir Brian Leveson to conduct an independent review of the criminal courts in response to the increasing Crown Court caseload (the “**Review**”).
2. Our submission builds on our longstanding work on strengthening the rule of law and improving the criminal justice system. Most recently, our work has included reports on remand decision-making in the magistrates’ court[[1]](#footnote-2), racial disproportionality in the youth justice system[[2]](#footnote-3), virtual trials during the COVID-19 pandemic[[3]](#footnote-4) and ensuring a fair trial for those with mental ill health and learning disabilities[[4]](#footnote-5). We are presently researching a wide-ranging report drawing on other jurisdictions' experiences to find solutions to improving the UK's compliance with rule of law principles, such as access to courts and equality before the law. In a further upcoming report, we build on the findings of our existing work on magistrates’ court remand decision-making and make a series of related follow up recommendations. When preparing this submission, we also heard evidence from practitioners at the criminal Bar, members of the judiciary and those from the third sector. We are grateful to the Criminal Justice Alliance for collaborating with us in convening a roundtable discussion comprised of third sector participants to aid this submission. We are also grateful to the practitioners and serving judges with whom we spoke for their time.
3. This submission firmly acknowledges the pressing need to reduce the outstanding caseload in the Crown Court and to ensure that our criminal justice system deals with cases in a timely manner. However, as the terms of reference of the Review recognise, the requirement that trials must be fair to both sides must not be jeopardised. Further, whilst we highlight areas where there is scope for criminal proceedings to be made more efficient, we invite the Review to look beyond the criminal courts and their processes in assessing the root causes of the Crown Court backlog and identifying effective ways to resolve it.

**The urgent need to address the outstanding caseload in the Crown Court**

1. As of September 2024, there were 73,105 cases outstanding in the Crown Court.[[5]](#footnote-6) This figure is the highest ever on record[[6]](#footnote-7) and is approximately double the outstanding caseload that existed at the end of 2019.[[7]](#footnote-8) The most recent Ministry of Justice data shows that whilst the volume of cases that are being concluded (“**disposal volume**”) is increasing, it nonetheless remains lower than the number of new cases (“**receipts**”).[[8]](#footnote-9) Between March 2020 and June 2021, the number of cases waiting longer than a year in the Crown Court increased dramatically (by 302%); over the same period the increase in respect of sexual offences was 435%.[[9]](#footnote-10)
2. These trends are of course a cause for real concern and must be urgently addressed. As observed by the National Audit Office (“**NAO**”): *“[t]he rise in the Crown Court backlog to its highest ever level can only have exacerbated the negative effects that waiting longer can have on victims, witnesses and defendants”.*[[10]](#footnote-11) Delays can result in a diminution in the quality of evidence relied upon at trial on behalf of the prosecution and/or defence. They can also lead to victims and witnesses withdrawing from the process, increasing the likelihood that there will be insufficient evidence to allow the prosecution to proceed with the case. Victims of rape and serious sexual offences are disproportionately affected by delays to jury trials, given that individuals charged with such offences are more likely to plead not guilty: the not-guilty-plea rate is approximately 50% in such cases compared with 20% of all Crown Court cases.[[11]](#footnote-12) In the 12-month period ending 30 September 2024, there was an 18% increase in the number of sexual offence cases in the active Crown Court caseload, the second-highest increase among all offence types.[[12]](#footnote-13)
3. Individuals held in custody on remand are also acutely affected by Crown Court delays. The remand prison population is made up of those who are either awaiting trial (and so have not been found guilty of the offence(s) in relation to which they are being held) (the “**untried population**”); or have been convicted and are awaiting sentence (the “**convicted unsentenced population**”). The remand prison population at the end of September 2024 stood at 17,662; the slightly higher figure recorded at the end of the previous month (17,711) represents the highest ‘month-end’ level for a least 50 years (effectively a ‘record high’).[[13]](#footnote-14) During the year ending 30 September 2024, both the untried population and the convicted unsentenced population increased (by 8% and 11% respectively).[[14]](#footnote-15)
4. Those in the untried population may well go on to be acquitted at trial, whilst those in the convicted unsentenced population may ultimately receive a non-custodial sentence.[[15]](#footnote-16) A Freedom of Information request made by Fair Trials revealed that 13% of those held on remand in June 2022 had been in custody for more than one year and nearly 4% for more than two years.[[16]](#footnote-17) Racial disproportionality has consistently been found to exist with respect to who is held on remand.[[17]](#footnote-18) In 2021, for example, 47% of black defendants were remanded in custody during Crown Court proceedings compared to 37% of white defendants, despite the fact that they were more likely to be acquitted and less likely to receive an immediate custodial sentence if convicted. Of the group of black defendants remanded in custody in 2021, 14% were acquitted and 24% did not receive an immediate custodial sentence - the corresponding figures for white people on remand were 8% and 19% respectively.[[18]](#footnote-19) The impact of being held on remand can be severe: in 2020-2021, those on remand comprised 40% of those who died by suicide in prison but only 16% of the prison population.[[19]](#footnote-20) Whilst it is likely that this proportion was particularly high due to the COVID-19 pandemic, self-inflicted deaths among the remand prison population were also disproportionately high in the previous year (albeit to a lesser extent).[[20]](#footnote-21)
5. It is important to note, finally, that whilst it is sometimes suggested that delays cause a greater proportion of individuals facing trial to plead not guilty, there is in fact evidence that in some cases the opposite is true. A report carried out by Fair Trials into the experience of those held on remand during the COVID-19 pandemic found that, disturbingly, a number of individuals had pleaded guilty or considered pleading guilty to offences they had not committed due to “*the uncertainty of remand times and trial delays, prison conditions and lack of human contact, among other things*”.[[21]](#footnote-22) JUSTICE has heard anecdotal evidence from practitioners that this remains a real concern, even post the COVID-19 pandemic. Again anecdotally, JUSTICE understands that defendants are particularly likely to enter, or to seriously consider entering, guilty pleas to offences in respect of which they maintain their innocence in cases where the custody time limit has been extended at least once.[[22]](#footnote-23)

**Efficiency and trial fairness**

1. In addition to – and as a result of - the effects of court delays set out above, a lack of efficiency can have a detrimental impact on the fairness of trial proceedings. It is therefore incorrect to view efficiency and trial fairness as mutually exclusive considerations. However, there are times when efforts to improve the efficiency of criminal proceedings do run the risk of creating unfairness to either side. In our view, to the extent that efficiency and trial fairness conflict, fairness must always take priority. The cardinal importance of the right to a fair criminal trial, as expressed by Lord Bingham in his text on the rule of law, bears repeating here:

The right to a fair trial has been described as ‘the birthright of every British citizen’. It has also been said to be ‘axiomatic that a person charged with having committed a criminal offence should receive a fair trial and that, if he cannot be tried fairly for that offence, he should not be tried for it at all’. Yet again, the right to a fair trial has been described as ‘fundamental and absolute’.[[23]](#footnote-24)

1. It is with regard to this approach that JUSTICE sets out the recommendations made below and considers the other prospective options for longer term criminal court reform contained in the Review’s terms of reference.

Reducing the Crown Court backlog: recommendations

1. JUSTICE **recommends** the following measures to address the Crown Court outstanding caseload.

**Address delays caused by prison transport**

1. JUSTICE spoke with a number of criminal Bar practitioners and members of the judiciary in preparing this submission. Almost all cited the delayed arrival of prison transport to court as among the most common – if not the most common – reason that trials were delayed in starting or continuing at the beginning of each court day. This also reflects the findings made by the NAO in its 2024 report *Reducing the backlog in the Crown Court*, which identified witness and defendant availability as the main reason for ineffective trials; the failure of prison transport services to ensure defendants arrive at court in time for their trial was cited as one reason for defendant unavailability.[[24]](#footnote-25) The NAO reported that the proportion of trials which were ineffective in the Crown Court increased from 16% in 2019 to 27% in 2023.[[25]](#footnote-26) The ineffective trial rate has stablised well above the pre-pandemic rate: the most recent measure of the Crown Court ineffective trial rate is 25%.[[26]](#footnote-27)

**Consider elements of the trial process that could be expedited or removed in appropriate cases**

1. The Review should give thought to aspects of the trial process which might be carried out more efficiently or which are unnecessary in certain cases. One example suggested by the practitioners JUSTICE heard evidence from is the judge’s summing up of the facts. It should be noted that in some cases the summing up can provide a valuable neutral modifier as to the evidence that was heard at trial and so a wholesale removal of this aspect of the trial process is not suggested. On the other hand, there is no requirement for a factual summing up to be given and there is scope to consider whether it can be omitted from certain trials, for example those which are likely to be 2 weeks or shorter in length, or those which involve minimal live evidence. In such a situation, it will be necessary to make amendments to the direction given to the jury at the beginning of the trial regarding the extent to which they take notes of the evidence. Whilst the factual summing up may constitute a relatively small proportion of the overall length of a trial, cumulatively a significant amount of time could be saved: even two additional hours of court time could, for example, allow for two to three committals for sentences to be dealt with.

**Improve early engagement and case management processes**

1. A further core reason identified by the NAO for the increasing proportion of trials which are ineffective is poor case preparation (either by the prosecution or the defence).[[27]](#footnote-28) The practitioners from whom JUSTICE heard evidence considered that, in a number of respects, criminal proceedings had the potential to be improved, ensuring more effective case management and greater efficiency. For example:
   * 1. First appearances in the magistrates’ court could be made more constructive by ensuring that the initial details of the prosecution case (“**IDPC**”) are fuller, facilitating the taking of instructions, the provision of advice by defence advocates and the narrowing of trial issues in contested cases. JUSTICE understands that failure to serve video evidence at this stage is a particularly frequent obstacle. Issues such as this can have the effect of precluding the implementation of Better Case Management principles.[[28]](#footnote-29) Practitioners were of the view that the magistrates’ court should engage in more robust case management at this early stage, and that the guidance contained in the Better Case Management Handbook (the “**BCM Handbook**”) was too seldom followed. The BCM Handbook specifies, for example, that on sending a case to the Crown Court, a timetable should be established, giving directions for the case to progress in the time before the Plea and Trial Preparation Hearing (“**PTPH**”).[[29]](#footnote-30) Such directions may relate to matters including the evidence to be served before the PTPH or, where appropriate, review of the charges by the prosecution.
     2. Similarly, JUSTICE heard that PTPHs could be made more conducive to better early case management and trial preparation. A key aspect of this is the availability of thorough conferences between the individual facing trial and their solicitors and/ or barrister prior to the hearing, informed by the service of as much of the prosecution case as possible. Again, whilst pre-PTPH conferences are envisaged by the BCM Handbook[[30]](#footnote-31), JUSTICE understands that, anecdotally, in practice they are extremely rare. For those on remand, much depends on improved access to conference facilities within the prison estate. In more serious cases in which Kings Counsel would be required at trial, there is a strong argument that they ought to be engaged at or prior to the PTPH stage so that their advice and expertise is available to the person facing trial from the beginning of a case’s progress through the Crown Court. This may make it necessary to empower the magistrates’ court to grant the relevant certificate for representation; JUSTICE notes that the granting of certificates of counsel is a function already exercised by the youth court.
     3. The electronic case systems used by the criminal courts could allow for more effective and active case management by providing a feature which makes all outstanding directions that have been set viewable in one place, together with the relevant deadline and whether the directions have been complied with.

**Increase Crown Court sitting days**

1. The 2,000 extra sitting days announced by the Lord Chancellor in December 2024[[31]](#footnote-32) are to be welcomed. However, we encourage the Review to urge the Government to go further in ensuring that maximum sitting day capacity is reached. The additional sitting days bring the total number of sitting days to 108,500. However, as pointed out by the Lady Chief Justice, the Crown Court has capacity to sit 113,000 days.[[32]](#footnote-33) In giving evidence to the House of Commons Justice Select Committee, her Ladyship described some of the effects of a lack of sitting days as follows:

We have courtrooms and some entire courts being stopped running for significant periods. Salary judges not sitting, so that’s full-time judges not sitting because there are no sitting days, and really important ancillary impacts... Think about criminal barristers who have cases taken away from them when the criminal bar is already suffering. Equally concerning for me, I’ve got the fee-paid judges, so those are the recorders, having their bookings cancelled, they’re running practices, they’ve set the time aside, the booking is cancelled, they become very disenchanted. I’m going to have to work very hard to keep them on side, so to speak.

I think you probably want some real-life examples. I’m going to take three courts from the West Country. In Bristol, hundreds of fixed trials are being removed and a number of backers are also being released, so those are cases that are backed, fixed for behind the fixed trials. On average, I’m being told 40 percent of courtrooms are not open on any given week and Bristol was dedicating certain courts to [rape and serious sexual offences] cases and that is no longer possible. In Taunton, next quarter, only one of two courts are going to be running and there are only 60 sitting days available in January to March, to conduct 76 trials, currently listed needing 265 days. Truro is going to shut one day a week until March 2025.

And before answering the how did we get here question, can I also emphasize the obvious? This is not about saving anything. It is not about saving money. You are deferring the cost and indeed you are increasing it. Why are you increasing it? You are increasing it because inflation will mean everything costs more. You are increasing it because barristers and the CPS are going to have to redo the work they had done to be ready for trial because the case will be stale and that is not even to touch upon the social cost. You have all been reading in the newspaper what the attrition rate is for delay that affects particularly [rape and serious sexual offences] cases where complainants simply don’t feel able to have confidence in the system anymore and walk away from what may be legitimate, very legitimate and very serious complaints.[[33]](#footnote-34)

1. JUSTICE would invite the Review to encourage the Government to go still further in extending Crown Court sitting capacity by increasing the available courtroom space. Any new court buildings should be appropriately designed and ensure, for example, that areas used by complainants and defendants are kept separate.
2. We also consider it crucial that a new approach is taken to the use of the dock in the criminal trial and that this is reflected in the design of any new court buildings and the refurbishment and use of existing ones. JUSTICE’s 2015 report *In the Dock: Reassessing the use of the dock in criminal trials*[[34]](#footnote-35) highlighted the negative impact the use of the dock can have on trial fairness. The dock can impede a defendant’s effective participation in their own trial by physically placing them in a structure which is removed from proceedings and making communication with their legal representatives difficult.[[35]](#footnote-36) Empirical research suggests that the dock is at odds with the right to presumption of innocence and can taint the defendant with the appearance of guilt in the perception of jurors.[[36]](#footnote-37) In our view, the dock also undermines the defendant’s dignity in the administration of justice: enclosing a person in a glass box or wooden pen is clearly an objectively humiliating experience and its rationale must be questioned as an affront to the dignity of proceedings.[[37]](#footnote-38)
3. A number of other jurisdictions, including those that share our common law heritage, have abandoned the use of the dock. These jurisdictions offer useful examples of alternatives: notably, available statistical evidence from the Netherlands and the United States demonstrates that security incidents rarely occur, and the same can be expected of England and Wales.[[38]](#footnote-39) It is also worth noting that in our own jurisdiction, the established use of docks did not occur until as late as the 1970s, while the secure dock now in use was not introduced until 2000.[[39]](#footnote-40)
4. JUSTICE therefore reiterates the **recommendations** made in our 2015 report[[40]](#footnote-41), including:
   * 1. There should be a presumption that all defendants sit in the well of the court, behind, or close to their advocate.
     2. Open docks should no longer be used and defendants should sit with their legal team.
     3. Where security concerns exist, a procedural hearing should be held to satisfy the court that additional security is required.
     4. In cases where there is no security risk, defendants should also sit with their legal team.
     5. We invite the Lady Chief Justice to consider issuing a practice direction with regard to the above recommendations.
     6. We invite HM Courts and Tribunals Service, the Ministry of Justice and other appropriate agencies to explore alternative security measures to the dock, mindful of the need for such measures to be concealed from the judge/ jury and comfortable for the defendant.
     7. We invite the Ministry of Justice and other relevant agencies to review prisoner escort custody contracts to ensure that appropriate security can be supplied to the courtroom.

**Reassess the warned list system**

1. Currently, the Crown Court operates a ‘warned list’ system. Under this system, cases are allocated a one or two-week period during which they may be called on any given day, however they may not be called on at all. This requires barristers, solicitors and the CPS to be prepared to conduct the case even though the preparation may ultimately be wasted if the case does not come into the warned list. When cases are called on, it is at extremely short notice, usually the afternoon before. If the case is not called on during the warned list period, a new listing for the case will need to be found, possibility in another warned list period which may be a considerable amount of time into the future. This creates uncertainty and further anxiety for defendants, complainants and witnesses alike. JUSTICE understands that it also requires barristers to fill their professional diaries with other matters during the warned list so as to ensure they have a source of income should the warned list trial fail to go ahead. This leads to diary clashes and can result in counsel for either side being unavailable if, for example, a warned list trial comes into the list towards the end of the warned list period when barristers may already be part heard in another matter. It is far from clear that the warned list system is conducive to the efficient running of the Crown Court and improved availability of barristers.
2. JUSTICE therefore **recommends** that the Review give serious consideration to ending the use of the warned list system and replacing it with a system of fixed trial listings. Improving case management and addressing other sources of delays (such as unreliable prison transport) appears likely to improve the accuracy of trial time estimates and reduce the likelihood of last minute ‘cracked’ trials. There may still be justification in appropriate cases for retaining some use of fixed ‘backer’ trials (i.e. trials which are listed to be a ‘back up’ case in the event that the priority trial is ineffective). Whilst fixed backer trials involve an element of uncertainty in that there is no guarantee they will be effective, it nonetheless allows for greater levels of planning, advance notice and availability of barristers (as barristers will know for certain in advance that they are required at court and will be remunerated for attending even if the trial is ineffective). However, JUSTICE echoes the recommendation made by Sir Brian Leveson in his 2015 *Review of Efficiency in Criminal Proceedings* that: *“steps are taken to enable the courts to move towards single/fixed listing”*[[41]](#footnote-42)and his conclusion that *“the present approach to multiple listing, while it provides an immediate solution to the twin problems of optimum court utilisation and timely hearings, is also an inefficient means of organising the court’s work and it frequently leads to dissatisfaction on the part of victims, witnesses, the general public and the professions.”[[42]](#footnote-13445)*

Response to prospective long-term measures contemplated by the Review

**Magistrates’ sentencing powers**

1. JUSTICE notes that as of November 2024, the magistrates’ court has the power to sentence individuals to up to 12 months’ custody for a given offence – double its previous sentencing powers.[[43]](#footnote-45) JUSTICE has a number of concerns about this development and invites the Review to consider its reversal. In particular:
   1. The magistrates’ court has a rapidly increasing backlog of its own: at the end of September 2024 there were 327, 228 open cases at the magistrates’ court, which represents an increase of 22% on the previous year.[[44]](#footnote-46) It is vital that the criminal justice system as a whole runs effectively, and that we do not attempt to solve the Crown Court backlog by simply ‘shifting’ the problem from one court to another.
   2. Lay magistrates must be supported by legal advisers in their decision-making. However, there is currently an acute shortage of legal advisers (driven by difficulties with both recruitment and retention), which is already leading to reduced sitting capacity in the magistrates’ court.[[45]](#footnote-47) Research undertaken by JUSTICE for the purposes of our upcoming report on remand decision-making in the magistrates’ court indicates that increased pressure on legal advisers, in terms of time and administrative tasks, means that they are less able to focus on supporting magistrates in their decision-making. Pressure to rush decision-making can risk striking the balance between efficiency and fairness too heavily towards the former, negatively impacting both the extent to which justice is achieved and seen to be achieved.[[46]](#footnote-48) Concerns about the quality of decision-making in the magistrates’ court in the context of the Bail Act 1976 were highlighted by JUSTICE in our 2023 report *Remand Decision-Making in the Magistrates’ Court: A Research Repor*t.[[47]](#footnote-49) In the 742 hearings observed by JUSTICE, processes for determining bail did not appear to be properly followed and reasons were rarely provided by decision-makers. Whilst further research is needed, the possibility that such concerns will also apply in the context of sentencing cannot be discounted.
2. It is important to note that any subsequent changes to magistrates’ sentencing powers must be compatible with any recommendations or reforms which arise from the ongoing Independent Sentencing Review.
3. JUSTICE also **recommends** that if the increase to magistrates’ court sentencing powers remain in place, careful monitoring and data collection should take place to assess its operation and whether it should continue. Matters which should be monitored include:
   * 1. Sentencing outcomes for the offences affected by the increase in magistrates’ court sentencing powers and any changes in these;
     2. Sentencing outcomes for members of Black and other racialised groups and any disproportionality that exists;
     3. Changes in the number of successful appeals against sentence for those offences affected by the increase in magistrates’ court sentencing powers;
     4. Qualitative analysis of the standard of decision making in the sentencing exercises affected by the increase in magistrates’ court sentencing powers.
4. It is worth observing that section 224 of the Sentencing Act 2020 - which contains the limit on magistrates’ court sentencing powers - applies to the magistrates’ court itself, rather than to particular decision makers. No delineation is made between the sentencing powers of a bench of lay magistrates as opposed to a District Judge sitting in the magistrates’ court. Some of the concerns we set out above (including the need for a legal adviser) might be addressed by means of retaining the increase in magistrates’ court sentencing powers in respect of District Judges only. Our upcoming report on remand decision-making in the magistrates’ court finds that whilst the concerns we identify in relation to magistrates’ court decision-making are not exclusive to lay magistrates, they are more acute in relation to them.

**The introduction of an intermediate court**

1. The introduction of an intermediate court would have a significant impact on the right to jury trial in England and Wales. JUSTICE acknowledges at the outset that the vast majority (95%) of criminal cases are heard in the magistrates’ court.[[48]](#footnote-50) We do not suggest that no criminal trial can be fair without a jury. Nonetheless, the right to jury trial is of fundamental historical and constitutional significance as a safeguard of our liberty and is available to individuals charged with all but the most minor offences (in relative terms). It has been described, variously, as *“the bulwark of our liberties”* (Lord Denning), *“a safeguard against oppression and dictatorship”* (Lord Devlin) and *“the foundation of our free constitution”* (Lord Camden).[[49]](#footnote-51) Any measures which restrict or curtail the availability of jury trial must, in our view, be justified on grounds of principle and not adopted simply as a response to practical exigencies.
2. The right to jury trial is also key in ensuring public trust and confidence in the criminal justice system, including members of racialised groups, amongst whom trust in the criminal justice system is disproportionately low. In 2017 the Centre for Justice Innovation reported that: “*A majority (51%) of British-born BAME people believe that the criminal justice system discriminates against particular groups and individuals, compared to only 35% of the British-born white population*.”[[50]](#footnote-52) Further, there is evidence that those from racialised groups are more likely to elect Crown Court trial when charged with either way offences due in part to a lack of trust in the magistrates’ court.[[51]](#footnote-53) The Lammy Review noted that in the Crown Court, individuals from racialised groups are consistently convicted at very similar rates to their white counterparts, including in cases with all-white juries and across a range of offence types.[[52]](#footnote-54)It concluded that: *“This does not mean that every jury decision is perfect, but it does indicate that the system as a whole is working.”*[[53]](#footnote-55)This stands in contrast to magistrates’ court verdicts: the Lammy Review found that *“...decisions were broadly proportionate for BAME boys and girls. However, there were some disparities for adult verdicts that require further analysis and investigation. In particular, there were some worrying disparities for BAME women...”*[[54]](#footnote-56)Black women, for example, are 22% more likely to be found guilty at the magistrates’ court than white women; for those described as ‘Chinese/other’ the figure is 43% more likely.[[55]](#footnote-57) As noted by the Lammy Review, the data required to analyse the reasons behind these figures is lacking.[[56]](#footnote-58) Unless or until a thorough study is conducted of the reasons behind this concerning disproportionality, JUSTICE would urge against any incursions into the availability of jury trial.
3. Jury trial is also an important means by which the public can participate in, and be exposed to, the criminal justice system. As observed by Lady Justice Hallett in her 2017 Blackstone lecture: *“Jury trial...increases participation in democracy generally through giving a central role to the public in the criminal justice system. It ensures that the public do not become estranged from the justice system. It helps maintain the health and vitality of our inclusive institutions, and the general health of our society.”*[[57]](#footnote-59) Trial by jury also helps the criminal justice system reflect the values and standards of the general public.[[58]](#footnote-60) Whilst the proposal that two lay magistrates sit with the judge in the intermediate court is intended to provide or replace this ‘democratic‘ aspect of jury trial it should be noted that the magistracy has some way to go before it can be said to be sufficiently representative of society as a whole. As set out in JUSTICE’s upcoming report on remand decision in the magistrates’ court, the magistracy continues to disproportionately attract middle class applicants, aged 50 and above.[[59]](#footnote-61) Moreover, whilst numbers of applications from racialised candidates has been increasing, their representation within the magistracy has remained static.[[60]](#footnote-62)
4. By contrast, the available research suggests that in virtually all Crown Courts in England and Wales, there is no significant underrepresentation of racialised groups among those summoned for jury service and that individuals from racialised groups are summoned in proportion to their representation in the local population.[[61]](#footnote-63) It should be noted, however, that this does not mean that each jury panel or jury is racially diverse: significant differences exist in the proportion of racially mixed jury panels and juries depending on the demographics of the Crown Court catchment area.[[62]](#footnote-64) The same research also found no significant underrepresentation of any occupational groups among serving jurors in the Crown Courts studied, contradicting the assertion that jurors do not reflect the full range of skills in their community.[[63]](#footnote-65) Further, in all Crown Courts looked at in the study, the single largest group of serving jurors were in the 25-44-year-old age group, and this age group was represented among serving jurors almost exactly in proportion to their representation in the national population.[[64]](#footnote-66) It is not suggested that there is no room for improvement when it comes to jury diversity – in some Crown Courts there was an overrepresentation of higher-earning jurors, for example, highlighting the need to consider court-based differences in assessing the representative nature of serving jurors.[[65]](#footnote-67) In addition, jury diversity should continue to be monitored and improved. However, some of the key areas of concern with regard to insufficient diversity within the magistracy do not appear to be present in relation to juries.
5. It is, at present, difficult to accurately assess the merits of the proposal for an intermediate court. It is not clear, for example, whether it has been calculated that such a proposal would in fact help to reduce the backlog significantly. Each trial which takes place in an intermediate court would require a circuit judge or recorder and two lay magistrates to spend time away from their work in the Crown Court and magistrates’ court respectively. Even if trials in the intermediate court do take less court time than they would before a jury, there is no evidence as to whether they would be a better time-saving measure than alternatives which do not impact on the right to jury trial. Similarly, it is difficult to assess the level of resourcing which this proposal would require as opposed to that which it might save.
6. In any event, any intermediate court system would require the following considerations to be addressed:
   * 1. Whether the intermediate court would be a court of record;
     2. Whether written reasons for verdicts would be given;
     3. What the fitness to plead procedure would be;
     4. What the appeal route would be.

**The reclassification of offences from triable either-way to summary only**

1. JUSTICE does not object in principle to the reclassifying of suitable offences from either-way to summary only. In particular, we strongly encourage an evidence-based approach to determining the severity and type of sentence and any associated interventions which ought to be available in respect of any given offence. As we set out in further detail in our response to the Independent Sentencing Review, there is a lack of robust evidence that lengthier custodial sentences achieve a deterrent effect or a reduction in reoffending.[[66]](#footnote-68) Moreover, the counter-productivity of short immediate custodial sentences and the significantly lower rates of reoffending associated with sentences served in the community are well established.[[67]](#footnote-69)

|  |
| --- |
| **For more information, please contact:**  Tyrone Steele, Deputy Legal Director, JUSTICE – tsteele@justice.org.uk [tsteele@justice.org.uk](mailto:tsteele@justice.org.uk)  Annie Fendrich, Criminal Justice Lawyer, JUSTICE – afendrich@justice.org.uk  JUSTICE | 31 January 2025 |

1. JUSTICE, [*Remand Decision-making in the Magistrates’ Court*](https://files.justice.org.uk/wp-content/uploads/2023/11/16103002/Remand-Decision-Making-in-the-Magistrates-Court-November-2023-1.pdf), 2023 [↑](#footnote-ref-2)
2. JUSTICE, [*Tackling Racial Injustice: Children and the Youth Justice System*](https://files.justice.org.uk/wp-content/uploads/2021/02/23104938/JUSTICE-Tackling-Racial-Injustice-Children-and-the-Youth-Justice-System.pdf), 2021 [↑](#footnote-ref-3)
3. JUSTICE, [COVID-19 response](https://justice.org.uk/our-work/criminal-justice-system/current-work-criminal-justice/justice-covid-19-response/) [↑](#footnote-ref-4)
4. JUSTICE, [*Mental Health and Fair Trial*](https://files.justice.org.uk/wp-content/uploads/2017/11/06170615/JUSTICE-Mental-Health-and-Fair-Trial-Report-2.pdf), 2017 [↑](#footnote-ref-5)
5. [Criminal courts - Courts data - Justice Data](https://data.justice.gov.uk/courts/criminal-courts) [↑](#footnote-ref-6)
6. National Audit Office, [Reducing the backlog in the Crown Court](https://www.nao.org.uk/reports/reducing-the-backlog-in-the-crown-court/) [↑](#footnote-ref-7)
7. Ministry of Justice, [Criminal court statistics quarterly: July to September 2024](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024/criminal-court-statistics-quarterly-july-to-september-2024) [↑](#footnote-ref-8)
8. *Ibid*. [↑](#footnote-ref-9)
9. National Audit Office, [*Reducing the backlog in the Crown Court*](https://www.nao.org.uk/wp-content/uploads/2024/05/reducing-the-backlog-in-the-crown-court-1.pdf), HC 728, 2024, p.4 [↑](#footnote-ref-10)
10. National Audit Office, [Reducing the backlog in the Crown Court](https://www.nao.org.uk/reports/reducing-the-backlog-in-the-crown-court/) [↑](#footnote-ref-11)
11. National Audit Office, [*Reducing the backlog in the Crown Court*](https://www.nao.org.uk/wp-content/uploads/2024/05/reducing-the-backlog-in-the-crown-court-1.pdf), HC 728, 2024, p.23 [↑](#footnote-ref-12)
12. Ministry of Justice, [Criminal court statistics quarterly: July to September 2024](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024/criminal-court-statistics-quarterly-july-to-september-2024) [↑](#footnote-ref-13)
13. Ministry of Justice and HM Prison & Probation Service, [Offender management statistics quarterly: April to June 2024](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2024/offender-management-statistics-quarterly-july-to-september-2024), published 31 October 2024 [↑](#footnote-ref-14)
14. *Ibid*. [↑](#footnote-ref-15)
15. In December 2022, Fair Trials reported that: *“In 2021, more than 1 in 5 people (21%) were not sent to prison after being held on remand, and 1 in 10 people held on remand were subsequently acquitted at trial“* See: Fair Trials, [Highest number of people on remand in England and Wales for over 50 years](https://www.fairtrials.org/articles/news/highest-number-of-people-on-remand-in-england-and-wales-for-over-50-years/#:~:text=Many%20people%20who%20are%20held,33%2C059%20people%20held%20on%20remand.), November 2022 [↑](#footnote-ref-16)
16. Fair Trials, [England and Wales: FOI reveals almost 1,800 people in pre-trial detention for over a year](https://www.fairtrials.org/articles/news/england-and-wales-foi-reveals-almost-1800-people-in-pre-trial-detention-for-over-a-year/), August 2022 [↑](#footnote-ref-17)
17. Fair Trials, [Highest number of people on remand in England and Wales for over 50 years](https://www.fairtrials.org/articles/news/highest-number-of-people-on-remand-in-england-and-wales-for-over-50-years/#:~:text=Many%20people%20who%20are%20held,33%2C059%20people%20held%20on%20remand.), November 2022. Fair Trials reports that the same disproportionate rates of remand, acquittal and sentencing present in 2021 were also found in 2019 and 2020. [↑](#footnote-ref-18)
18. *Ibid*. [↑](#footnote-ref-19)
19. *Ibid*. [↑](#footnote-ref-20)
20. The proportion (40%) of self-inflicted deaths in custody experienced by the remand prison population in 2020-21 was double the previous year: *Ibid*. The remand population at the end of 2019 comprised 12% of the overall prison population: Ministry of Justice, [Offender management statistics quarterly: July to September 2019](https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2019/offender-management-statistics-quarterly-july-to-september-2019), January 2020. [↑](#footnote-ref-21)
21. Fair Trials, [*Locked up in Lockdown: Life on Remand During the Pandemic*](file:///C:/Users/AnnieFendrich/Downloads/locked-up-in-lockdown.pdf), 2021 [↑](#footnote-ref-22)
22. Custody Time Limits (“**CTLs**”) govern and restrict the length of time for which a defendant can be held in custody prior to their trial. They *“safeguard unconvicted defendants by preventing them from being held in pre-trial custody for an excessive period of time”:* Crown Prosecution Service, [*Legal Guidance: Custody Time Limits*](https://www.cps.gov.uk/legal-guidance/custody-time-limits), March 2023. However, CTLs can be extended under section 22(3) of the Prosecution of Offences Act 1985 if the court is satisfied that: (a) the extension is necessary due to (i) the illness or absence of the accused, a necessary witness, a judge or a magistrate; (ii) a postponement which is occasioned by the ordering by the court of separate trials in the case of two or more accused or two or more offences; or (iii) some other good and sufficient cause and (b) the prosecution has acted with all due diligence and expedition. Lack of court availability is frequently treated by the courts as amounting to a ‘good and sufficient cause’ for the purposes of section 22(3). [↑](#footnote-ref-23)
23. Tom Bingham, *The Rule of Law*, Penguin Books, 2011 [↑](#footnote-ref-24)
24. National Audit Office, [*Reducing the backlog in the Crown Court*](https://www.nao.org.uk/wp-content/uploads/2024/05/reducing-the-backlog-in-the-crown-court-1.pdf), HC 728, 2024, p.37 [↑](#footnote-ref-25)
25. *Ibid*. [↑](#footnote-ref-26)
26. Ministry of Justice, [*Criminal court statistics quarterly: July to September 2024*](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024/criminal-court-statistics-quarterly-july-to-september-2024), December 2024 [↑](#footnote-ref-27)
27. *Ibid*. [↑](#footnote-ref-28)
28. Judiciary of England and Wales, [The Better Case Management Revival Handboo](https://www.judiciary.uk/wp-content/uploads/2024/04/BCM-Revival-Handbook.pdf)k, January 2023 [↑](#footnote-ref-29)
29. *Ibid*., paragraph 11.1 [↑](#footnote-ref-30)
30. *Ibid*., paragraph 11.4 [↑](#footnote-ref-31)
31. Ministry of Justice, [*Press release – 2,000 extra sitting days to help address courts crisis*](https://www.gov.uk/government/news/2000-extra-sitting-days-to-help-address-courts-crisis), December 2024 [↑](#footnote-ref-32)
32. Justice Select Committee, [Lady Chief Justice Evidence Session](https://www.judiciary.uk/wp-content/uploads/2024/11/LCJ-JSC-transcript-26.11.24.pdf), 26 November 2024, p.5 [↑](#footnote-ref-33)
33. *Ibid*., p. 4 [↑](#footnote-ref-34)
34. JUSTICE, [*In the Dock: Reassessing the use of the dock in criminal trials*](https://files.justice.org.uk/wp-content/uploads/2015/07/06170833/JUSTICE-In-the-Dock.pdf), 2015 [↑](#footnote-ref-35)
35. *Ibid*., pp. 12-13 [↑](#footnote-ref-36)
36. *Ibid*., pp. 17-18, 20-22 [↑](#footnote-ref-37)
37. *Ibid*., pp. 22 - 24 [↑](#footnote-ref-38)
38. *Ibid*., pp. 25 - 30 [↑](#footnote-ref-39)
39. *Ibid*., pp. 4 - 7 [↑](#footnote-ref-40)
40. *Ibid*., p. 34 [↑](#footnote-ref-41)
41. The Rt Hon Sir Brian Leveson President of the Queen’s Bench Division, [*Review of Efficiency in Criminal Proceedings*](https://www.judiciary.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf?utm_source=chatgpt.com), (2015), p.41 [↑](#footnote-ref-42)
42. *Ibid*. [↑](#footnote-ref-13445)
43. The Sentencing Act 2020 (Magistrates’ Court Sentencing Powers) (Amendment) Regulations 2024 [↑](#footnote-ref-45)
44. Ministry of Justice, [Criminal court statistics quarterly: July to September 2024](https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024/criminal-court-statistics-quarterly-july-to-september-2024) [↑](#footnote-ref-46)
45. The Law Society Gazette, [*Crowded House*](https://www.lawgazette.co.uk/features/crowded-house/5119448.article#:~:text=Staff%20shortages%20across%20the%20criminal,impact%20on%20easing%20the%20situation.;%20https://www.magistrates-association.org.uk/blog/things-to-look-out-for-in-2024/.), April 2024; See also: BBC News, [*Court sittings in three counties halved due to lack of staff*](https://www.bbc.co.uk/news/articles/cx2wykx91nzo), December 2024 [↑](#footnote-ref-47)
46. See e.g. Welsh. [Informality in magistrates’ courts as a barrier to participation](https://sussex.figshare.com/articles/journal_contribution/Informality_in_magistrates_courts_as_a_barrier_to_participation/23491802?file=41930361) (2023) [↑](#footnote-ref-48)
47. JUSTICE, [*Remand Decision-Making in the Magistrates’ Court: A Research Report*](https://files.justice.org.uk/wp-content/uploads/2023/11/16103002/Remand-Decision-Making-in-the-Magistrates-Court-November-2023-1.pdf), 2023 [↑](#footnote-ref-49)
48. Courts and Tribunals Judiciary, [About Magistrates’ courts](https://www.judiciary.uk/courts-and-tribunals/magistrates-courts/magistrates-court/#:~:text=Magistrates%20are%20trained%2C%20unpaid%20members,magistrates%20on%20our%20Magistrates%20page.) [↑](#footnote-ref-50)
49. Lady Justice Hallett, [*Blackstone Lecture – Trial by Jury*](https://www.judiciary.uk/wp-content/uploads/2017/05/hallett-lj-blackstone-lecture-20170522-1.pdf), 2017 [↑](#footnote-ref-51)
50. Centre for Justice Innovation, [*Building Trust: How our courts can improve the criminal court experience for Black, Asian and Minority Ethnic defendants*](https://justiceinnovation.org/sites/default/files/media/documents/2019-03/building-trust.pdf), 2017, p. iii [↑](#footnote-ref-52)
51. *Ibid*., p. 7 [↑](#footnote-ref-53)
52. [The Lammy Review](https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf), 2017 pp. 31-32 [↑](#footnote-ref-54)
53. *Ibid*. [↑](#footnote-ref-55)
54. *Ibid*., p. 32 [↑](#footnote-ref-56)
55. *Ibid*. [↑](#footnote-ref-57)
56. *Ibid*., p. 33 [↑](#footnote-ref-58)
57. Lady Justice Hallett, [*Blackstone Lecture – Trial by Jury*](https://www.judiciary.uk/wp-content/uploads/2017/05/hallett-lj-blackstone-lecture-20170522-1.pdf), 2017 [↑](#footnote-ref-59)
58. Paul Mendelle,[*Why juries work best*](https://www.theguardian.com/commentisfree/2010/feb/21/juries-work-best-research), The Guardian, 2010 [↑](#footnote-ref-60)
59. In the year 2023/24, 53 percent of applications were from candidates aged 50 or over, and 59 percent of those appointed belonged to this age group. This is compared with 38% of the general population. As of 2024 this age group represents 81 percent of magistrates in post. In terms of socio-economic background 77 per cent of applications were from professionals or those in management positions, just 6 per cent of applicants had manual or service jobs. This translated into 81 and 5 per cent of appointments respectively. Data Tables Diversity stats. [↑](#footnote-ref-61)
60. Applications from racialised individuals constituted 24% of magistrates' applications submitted in 2022-23 and 30% of applications in 2023-24. However, the number of magistrates in post has remained at around 13% for the past 5 years. See: Ministry of Justice,[*Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2021 Statistics*](https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2021-statistics/diversity-of-the-judiciary-2021-statistics-report#non-legal-and-magistrates) ; Ministry of Justice,[*Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2023 Statistics*](https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2023-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2023-statistics#magistrates-recruitment46) [↑](#footnote-ref-62)
61. C. Thomas, [*Diversity and Fairness in the Jury System*](https://www.ucl.ac.uk/judicial-institute/sites/judicial-institute/files/diversity-fairness-in-the-jury-system.pdf) (Ministry of Justice Research Series 2/07), pp. i - ii [↑](#footnote-ref-63)
62. *Ibid*., p. iii [↑](#footnote-ref-64)
63. *Ibid*., p. 137 [↑](#footnote-ref-65)
64. *Ibid*., p. 142 - 44 [↑](#footnote-ref-66)
65. *Ibid*., pp. 139 - 40 [↑](#footnote-ref-67)
66. See, e.g., Sentencing Council, [*Reconceptualising the effectiveness of sentencing: four perspectives*](https://www.sentencingcouncil.org.uk/html-publication/item/reconceptualising-the-effectiveness-of-sentencing-four-perspectives/), (2024); Sentencing Council, [*The Effectiveness of Sentencing on Reoffending*](https://www.sentencingcouncil.org.uk/wp-content/uploads/Effectiveness-of-Sentencing-Options-Review-PUBLISHED-FINAL.pdf), (2022) [↑](#footnote-ref-68)
67. See, e.g., Ministry of Justice, [*Impact Assessment, Sentencing Bill – Changes on the Presumption of the suspension of short sentences*](https://publications.parliament.uk/pa/bills/cbill/58-04/0011/SentencingBillIAShortSentences.pdf), (2023); Ministry of Justice, [*Sentencing Bill Factsheet: Short sentences*](https://www.gov.uk/government/publications/sentencing-bill-2023/sentencing-bill-factsheet-short-sentences), (2023); Georgina Eaton and Aiden Mews, Ministry of Justice, [*The impact of short custodial sentences, community orders and suspended sentences on reoffending*](https://assets.publishing.service.gov.uk/media/5d1c732ee5274a08cdbe45c4/impact-short-custodial-sentences.pdf), (2019) [↑](#footnote-ref-69)