

THE COURTS AND TRIBUNALS BILL

SUBMISSION TO THE HOUSE OF COMMONS PUBLIC BILL COMMITTEE

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Summary

This evidence sets out concerns around the changes to jury trial presented in the Bill, noting that there is insufficient evidence on the role and work of juries to inform such wide-ranging reforms. Furthermore, the evidence sets out that insufficient modelling of expected outcomes has been undertaken to justify the changes. The authors note their concern that a three-year punishment threshold is a poor metric for determining the right trial procedure and advance the case that, given that the right to jury trial is a cornerstone protection against the state, alternative reasonable measures should be explored first to determine if the backlog issue can be solved by other means in the short-to-medium term. As a key recommendation, the authors call for a sunset clause to be inserted into the Bill to allow for the effects of the changes to be analysed in the future and, if necessary, reversed.

Comments on the change to jury trial

Introduction

- 1.1 The premise behind the Bill is that the jury remains a central part of the criminal justice system, to be retained for the most serious crimes. Implicit is the idea that the jury trial is a 'gold standard' procedure that protects citizens from miscarriages of justice by involving them in the administration of justice. If we take this premise for granted, then the case for curtailing the right to jury trial requires a very high justification. With this in mind, we make two preliminary points.
- 1.2 **It is doubtful that future governments will re-extend the right to jury trial, once curtailed** by the proposed reform. The direction of travel seems only one way. Therefore, any decision to curtail the right to jury trial must be taken with extreme caution.
- 1.3 The aim of **reducing a backlog cannot alone justify permanent, radical reforms right away**. If the choice to curtail jury trial is taken, **there ought to be a 'sunset clause'** providing the opportunity to review the effects of, and prolong, the measure only based on a fresh vote in Parliament.

The need for jury research

- 2.1 Discussion is hampered by lack of clarity about *why* juries are regarded as a gold standard. Do they tend to make more accurate decisions than judges? Or do they

have some independent political value, such as serving to check the power of the state, or serving as a means of democracy?

2.2 We note that it is difficult to effectively assess what juries do well and what they do poorly. **Researchers are blocked from studying live jury deliberation.**¹ Existing methods for studying juries have serious limitations, given that they do not directly investigate how juries deliberate in real cases.

2.3 As a matter of urgency, measures should be taken to facilitate **research with live juries and/or live criminal trials**², utilising different groups of academic researchers for maximum empirical validity. We see this research as a crucial basis for jury reform.

The offences affected by the reform

3.1 If we assume that the right to jury trial is a cornerstone protection for accusations of serious criminality, it must be demonstrated that the crimes affected by the legislation do not require such high protection.

3.2 Much of the harm of imprisonment is caused by the stigma of criminal conviction, effects on personal relationships, and loss of employment & other opportunities. Shorter prison sentences are often highly disruptive and damaging in these respects. **The three-year punishment threshold is a poor metric for determining the right procedure.**

3.3 Given recent concerns about stricter rules on public protest, proposals to curtail the right to jury trial are troubling. Some offences charged in these prosecutions are triable either-way and fall within the scope of the reform. **Maintaining a role for lay adjudicators in politically charged cases is an important check on authoritarian government.**

The modelling underlying the reform

4.1 Sir Brian Leveson stated that the modelling on which his recommendations were based is 'uncertain and should be viewed as indicative'³ and that the MoJ should 'carry out more detailed modelling on the operational and financial impact of the recommendations'.⁴ Regarding the impact of jury reform on court time, the Institute for Government has questioned key assumptions of the MoJ's model.⁵

4.2 Given the range of reforms suggested by the Independent Review of the Criminal Courts, their complex interrelation, and the lack of rigorous modelling by

¹ See L. Ross, 'The curious case of the jury-shaped hole: a plea for real jury research' (2023) 27 *International Journal of Evidence and Proof* 2.

² See L. Ross, 'Mock juries, real trials: how to solve (some) problems with jury science' (2024) 51 *Journal of Law and Society* 3.

³ Part 1, Annex F, para. 31

⁴ Part 1, para. 28

⁵ https://www.instituteforgovernment.org.uk/publication/reviewing-proposed-reforms-jury-trials#footnoteref26_y08rie8.

independent research groups, **we are not confident that the evidential basis for curtailing jury trial has been established.**

4.3 Given that the right to jury trial is a cornerstone protection against the state, we must **first try every reasonable measure to determine if the backlog issue can be solved by other means in the short-to-medium term.**

Alternative solutions

5.1 Many other 'try first' solutions are both unobjectionable and address widely acknowledged problems. Sir Brian Leveson highlights various logistic issues causing delay in the delivery of justice.⁶

5.2 In particular, Leveson remarks that inefficiencies in the Prisoners Escort and Custody Services (PECS) have been 'a strong theme in my engagement' and caused approximately 9000 hours of delay across the Crown Court and the magistrates' court. Issues with PECS are widely known, having been highlighted by recent journalistic investigations⁷; they have been repeatedly raised in the Commons.

5.3 Delays are also caused by poor infrastructure and technology. The impact of poor infrastructures on the prompt delivery of justice was detailed by Leveson in his report and has been raised repeatedly in the Commons. Leveson also recommended investments in technology and technological literacy. The technology currently used is often inadequate: for instance, malfunctioning equipment regularly creates problems in the use of recorded evidence.⁸

5.4 Before curtailing the right to jury trial, **the government should first make a concerted effort to address 'low-hanging fruit' logistic problems** raised by Leveson, and especially the problems concerning PECS and poor technology.

5.5 Even if the battery of other measures suggested by the Independent Review of the Criminal Courts is regarded as insufficient, and the choice to modify jury trial is regarded as essential, this does not necessitate a radical restriction of the right to jury trial. There are other ways to make use of lay adjudicators without convening a full 12-person panel.

5.6 For example, there is no obvious reason why smaller jury panels could not be considered, or mixed panels of judges and lay adjudicators. We should expect the government to take a lead in commissioning research on these alternatives.

5.7 Before curtailing the right to jury trial tout court, the government should **consider other ways of retaining jury involvement.**

⁶ Part 2, Chapter 9.

⁷ <https://www.theguardian.com/law/2024/dec/10/hundreds-trials-derailed-failure-transport-defendants-court-serco-geoamey>

⁸ J. Jackson et al., *Mapping the Changing Face of Cross-Examination in Criminal Trials* (University of Nottingham/Nottingham Trent University 2024), p. 12.

Other Comments

- 6.1 The impact of the proposed reform on the availability of legal aid is considerable. The Equalities Statement for the Bill recognises at page 12 that “if more cases are dealt with in the magistrates’ courts, it is likely that an increased proportion of these defendants may be ineligible for legal aid when they would otherwise have been eligible if their case had been heard at the Crown Court.” This is because the income threshold for legal aid eligibility is significantly higher in the Crown Court than in the magistrates’ court. Self-representation in the magistrates’ court will likely be detrimental to many disadvantaged defendants and will cause delays in the administration of justice.
- 6.2 Concerning sexual history evidence: we believe that there ought to be an explicit mention of spurious generalisations (such as rape myths) in the amended section 41(2)(a) of the Youth Justice and Criminal Evidence Act 1994. We suggest adding the following at end of letter (f): ‘in particular, due to the spurious generalisation on which the inference relies’. This phrase serves as a clear reminder to the judge to check whether the evidence could elicit spurious generalisations such as rape myths and ought to be excluded on that ground. Moreover, the suggested change is in line with the recommendations by the Law Commission, whose proposed admissibility test includes an explicit reference to rape myths.⁹
- 6.3 Finally, we note that an apparent silver lining of the reform is the introduction of ‘reasoned’ (written) verdicts in all cases that would be tried by judge under the new system. While the European Court of Human Rights has stopped short of maintaining that reasoned verdicts are a fair trial requirement¹⁰, many scholars agree that reasoned verdicts would increase transparency and, therefore, fairness. However, it is doubtful whether this counts in favour of the Courts and Tribunals Bills. Reasoned verdicts could arguably be implemented in jury trials.¹¹ Moreover, the drafting of reasoned verdicts is time-consuming and such verdicts will likely give rise to more appeals. While we welcome this proposed innovation, it is hard to square with the aim of saving court time.

⁹ See Law Commission, *Evidence in Sexual Offences Prosecutions: A Final Report*, 21 July 2025, p.520.

¹⁰ See *Taxquet vs. Belgium*, app. no. 926/05, 16 November 2010 (GC).

¹¹ See M. Coen and J. Doak, ‘Embedding explained jury verdicts in the English criminal trial’ (2017) 37 *Legal Studies* 786.