BIRMINGHAM LAW SOCIETY

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Birmingham Law Society's Criminal Law Committee Position Statement on Proposed Crown Court Reform

January 2026

Birmingham Law Society's Criminal Law Committee is a multi-agency forum for practitioners working within the criminal justice system, drawn from Birmingham and the surrounding area. Its co-opted members include representatives of the judiciary and the Legal Aid Agency, as well as HMCTS staff, probation officers, prosecutors and others.

The Committee liaises with prisons, police and the courts about issues affecting all of our members. It also responds to consultations, and lobbies on behalf of both members and our lay clients.

Birmingham Law Society is the largest provincial law Society in England and Wales with about 9,000 members. Those consist of solicitors, barristers, paralegals and academics.

Introduction

Members of the Criminal Law Committee of Birmingham Law Society have read with concerned interest the Government's proposals to introduce significant reforms to the criminal justice system. Of particular note is the proposal to remove the right to jury trial from a significant number of criminal matters.

We strongly oppose the Government's proposals to restrict the right to trial by jury for a wide range of criminal offences. Trial by jury is a defining constitutional safeguard, central to public confidence, community participation in justice, and the balance of power between citizen and state.

We are sufficiently concerned by the proposals that we have resolved to publish the following position statement for open circulation.

Our concerns are particularised below.

1. **Lack of an evidential basis**

   The Independent Review underpinning the reforms acknowledges that its recommendations were based on limited modelling and relied on untested assumptions. No persuasive evidence shows that removing juries will reduce the Crown Court backlog. In fact, the requirement for written judgments in every case risks increasing delay.

The Government's reforms adopt a far more radical posture than the Independent Review's incremental recommendations, consolidating decision-making in a single judge for many mid-level offences rather than retaining any lay participation or hybrid judicial benches.

2. Backlogs are not caused by juries

Chronic underinvestment—court closures, ageing infrastructure, insufficient sitting days, and the near-collapse of criminal legal aid—are the real drivers of delay. Where investment has been made, such as at Liverpool Crown Court, the system functions effectively with juries.

3. The reforms risk exacerbating inequality and damaging trust

Although proponents cite modelled projections of around a 20% reduction in disposal time for judge-only trials, this efficiency must be balanced against the loss of lay engagement and transparency that juries bring — elements essential to legitimacy that cannot be easily quantified.

The Lammy Review demonstrates disparities in conviction rates before magistrates versus juries. Removing the right to elect jury trial may deepen racial disparities and undermine legitimacy in the eyes of communities already disproportionately affected by the criminal justice system.

4. Judge-only trials create constitutional and operational risks

Granting judges sole responsibility for fact-finding increases vulnerability to political pressure and expands grounds of appeal. The operational impact—new facilities, altered appeal structures, and diversion of judicial resources—adds further uncertainty.

The requirement for written reasons in every case will create additional delay. At present, Crown Court judges can manage their workload by sending one or two juries into retirement while continuing to hear evidence in another trial, or by dealing with pleas, case management directions, and sentencing in other cases. Under a judge-only model, this flexibility disappears. Although it is suggested that standardised 'tick-box' reasons drafted by Professor Ormerod may streamline this process, such an

approach risks undermining the quality and transparency of judicial reasoning while still adding to judicial time pressures.

The lack of clear criteria for identifying 'technical and lengthy' cases eligible for judge-only trials raises concerns about discretionary inconsistency and the absence of defined safeguards in the reform package.

Concerns about particularly complex or lengthy cases should not be overstated. Authorised jury research following the Jubilee Line trial demonstrated that juries were able to identify the real issues and evaluate complex evidence accurately, even over extended periods. The difficulty posed by such cases lies not in juror comprehension, but in the significant additional burden placed on judges required to act as sole fact-finders, to produce detailed written reasons, and to anticipate expanded grounds of appeal. These demands risk increasing delay and pressure on judicial resources rather than alleviating them.

5. Removing juries will not address the real operational causes of delay

There is already a critical shortage of criminal barristers, with trials being listed as far ahead as 2028 due in part to lack of available counsel. Removing juries will not resolve this shortage, and raises the practical question of where sufficient suitably experienced advocates for the proposed Crown Court Bench Division are expected to come from. Many barristers may also be unwilling to undertake judge-only hearings.

Any reform which assumes increased judicial or advocacy capacity, without addressing recruitment, retention, and remuneration, is therefore structurally unsound.

Delays are more frequently caused not by juries but by systemic operational failures: prisoners not being brought to court on time by GeoAmey or Serco; judges managing heavy lists of short matters each morning before part-heard trials can resume; and other routine inefficiencies. Colleagues report that delays in prisoners being produced for hearings are among the most significant causes of adjournments. These issues will remain entirely unaddressed by the proposed reforms.

6. Widespread expert opposition

Leading practitioners, King's Counsel, and former Attorneys and Solicitors General

warn that these proposals are fundamentally flawed and will not remedy the backlog. The practical and principled solution remains increased judicial sitting days, properly funded courts, and restoration of legal aid, not the dismantling of a centuries-old safeguard.

7. Sentencing threshold and allocation of cases

Further uncertainty arises from the proposed threshold of a "likely" sentence of three years or less. It is unclear who will determine this assessment, at what stage, and on what information. Such decisions may even require additional hearings and argument, adding delay rather than reducing it. There is also a real risk of tactical behaviour in charging decisions or case presentation to keep matters below, or move them above, the threshold depending on the preferred forum. If, as a case develops, it becomes apparent that the offending is more serious than initially anticipated, it is unclear whether the defendant would have any right to elect trial by jury at that stage. Conversely, where a case proceeds before a jury but mitigation results in a significantly lower sentence, questions of consistency and fairness inevitably arise. Taken together, these uncertainties risk damaging both actual and perceived fairness in the allocation of cases.

8. Magistrates' Court Reforms

Increasing magistrates' sentencing powers is likely to result in a substantial rise in the prison population, consistent with every historical expansion of those powers.

Over the past decade there has been a marked decline in the number of appeals from the magistrates' court, with no indication of any increase in frivolous or unmeritorious cases. The current appeal success rate remains over 40% – a striking and consistently high figure that demonstrates the ongoing need for robust appellate oversight of the magistrates' court, and contradicts any suggestion that the current appeal system is being abused. These figures amply demonstrate that appeals serve as a meaningful corrective mechanism, not merely an inefficiency to be overcome.

Requiring appellants to identify a specific legal or procedural error would impose an unfair and unrealistic burden—particularly on unrepresented defendants, many of whom lack the legal expertise to articulate such grounds.

These changes will further require full recording of magistrates' proceedings and formal written decisions in every case, placing heavy operational burdens on courts already under strain.

Conclusion

The Committee urges Parliament to reject the proposed restriction of jury trials and to prioritise sustained investment in the criminal justice system—including judicial sitting days, court estates, staffing, and legal aid—as the only evidence-based means of reducing delay and restoring public confidence.

There is a clear and persuasive consensus among practitioners that removing juries will not resolve the Crown Court backlog. The core causes of delay are structural and operational: chronic underinvestment, judicial shortages, the crisis in criminal advocacy, prisoners not being produced for hearings on time, and judges being required to manage heavy lists before part-heard trials can resume. Judge-only trials would add further delay through the requirement for written reasons, eliminate existing judicial flexibility, and risk undermining the quality and transparency of decision-making—even with proposed "tick-box" templates.

The Committee also has grave concerns about the associated magistrates' court reforms. Expanding magistrates' sentencing powers is historically associated with increased custodial sentences. Restricting appeals to errors of law or procedure would remove an essential safeguard, despite a decade-long decline in appeal volumes and a consistently high appeal success rate of over 40%, which strongly evidences the continuing need for factual rehearings. These reforms would also require full audio recording and written reasons in all magistrates' court cases, placing substantial additional burdens on a system already under severe strain.

Taken together, the proposals risk reducing fairness, weakening accountability, and disproportionately affecting communities already disadvantaged within the criminal justice system. If any elements proceed, they must be subject to a short, non-extendable sunset clause and rigorous, transparent monitoring of delays, conviction and appeal outcomes, and public confidence.

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