Legislative scrutiny: Courts and Tribunals Bill

Response to Call for Evidence on behalf of the City of London Law Society (CLLS)

EXECUTIVE SUMMARY

The City of London Law Society, through the Corporate Crime and Corruption Committee, welcomes the opportunity to respond to the Justice Committee's Call for Evidence on the Courts and Tribunals Bill 2026. This submission focuses on provisions within Part 1 of the Bill, and in particular those that affect trials of "complex and lengthy cases" (including fraud, bribery, corruption, and other financial crime), which are areas of expertise and concern for the CLLS, although we have also commented on certain other provisions of relevance given their significance.

The Committee acknowledges and supports the government's objective to reduce court backlogs and improve efficiency across the criminal justice system, and welcomes the government announcements of significantly increased financial investment, increased Crown Court judicial sitting days, and proposals to allow more remote participation in hearings and trials. The Committee believes that these measures could have a real, positive impact on the criminal case backlog. However, the Committee has significant concerns about provisions in the Courts and Tribunals Bill 2026 which seek to reduce the availability of trial by jury (including in relation to serious and complex fraud cases).

The Committee considers that marginal (and questionable) efficiency gains do not justify the fundamental changes which are proposed. The assumptions on which the government has based its proposal to remove juries from "complex or lengthy cases" are flawed and not adequately supported by evidence.

Furthermore, introducing all of the sweeping changes which have been proposed risks overwhelming an already fragile and struggling system. The Committee's view is that it would be better to focus on data-based improvements. Rather than implementing measures to reduce the availability of jury trial, the government should focus on enhanced case management measures, jury support systems and specialist fraud courts.

1. INTRODUCTION

1.1. The CLLS and the Committee

The City of London Law Society ("CLLS") represents more than 22,000 solicitors and 70 corporate member firms working in the City of London. The Corporate Crime and Corruption Committee (the "Committee") is made up of senior and specialist lawyers who have a particular focus on issues relating to the investigation of fraud and economic crime matters.

1.2. Scope of this response

This response covers overall policy objectives of the Courts and Tribunals Bill 2026 (the "Bill") as well as provisions in Part 1 of the Bill.

The Committee is responding from the perspective of its members and with a view to the CLLS's position as a champion of the interests of the City of London.

We have not commented on issues relating to the rule of law more widely, or on provisions which would impact the criminal appeals framework, as we understand those will be dealt with in submissions from other organisations.

In September 2025, the Committee submitted a detailed response to Part 1 of the Independent Review of the Criminal Courts (the "Leveson Review") to the Lord Chancellor, which is available online here and has also been included as an **Appendix** to this response. The Committee's position in respect of the Leveson Review was that while urgent action must be taken to clear the backlog of criminal cases, reduce wait times for criminal trials, and ensure certainty for victims and defendants, removal of trial by jury is a red herring and will not help to resolve the issues that are causing the crisis. The Committee did not agree that jury trials had caused inefficiency in the system or that their removal would significantly improve the current crisis. The Committee did not see any evidence that jury trials were either the cause of or the solution to the backlog problem, and took the position that such a fundamental change to the criminal justice system required a proper evidence-based rationale.

The Committee considered that many of the recommendations contained in the Review would, if implemented without significant safeguards, have a wide-ranging and long-term (potentially permanent) negative impact on this country's justice system.

The Committee's position remains the same. We further note that the current proposals as set out in the Bill go beyond the recommendations of the Leveson Review in relation to trial by judge alone; and that there continues be an erosion of public trust in public institutions, which only enhances the importance of trial by jury.[1]

[1] For example, see 'OECD Survey on Drivers of Trust in Public Institutions - 2024 Results' which reports a drop in the share of the UK population with high or moderately high trust in the courts and judiciary from 68% in 2021 to 62% in 2023.

2. OVERALL POLICY OBJECTIVES

2.1. Introduction

The Explanatory Notes to the Bill state, "The measures are designed to address the record and rising Crown Court open caseload, ensure timely and fair access to justice for victims, witnesses, and defendants, and enable a more proportionate allocation of resources across the criminal courts in line with the severity and complexity of the offending."[2]

These are commendable objectives which the Committee and the CLLS support.

However, it is the proposed means of achieving these objectives which the Committee opposes, particularly any proposals which seek to remove the availability of trial by jury.

The Committee does not consider that the reasons for change outweigh the benefits, and arguments in favour, of trial by jury.

2.2. The constitutional importance of jury trial

Trial by jury represents a fundamental constitutional safeguard in the English legal system, particularly for serious criminal offences. The right to be tried by one's peers has been recognised for centuries as a protection against arbitrary state power and a means of ensuring that society's values are reflected in criminal justice outcomes. The British public have consistently shown their support for jury trial as one of the most important constitutional rights.[3]

For fraud, bribery, and corruption cases[4] (which often involve complex questions about commercial practices, business ethics, and the boundaries of acceptable conduct), the jury's role is particularly important. Juries bring diverse perspectives and collective judgement to questions of dishonesty and intent, which inherently involve commonly held standards and expectations. As the Supreme Court stated in *Ivey v Genting Casinos*, the question of dishonesty "is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people".[5] Community standards and expectations also form part of statutory crimes: for the purposes of the Bribery Act 2010, for example, the question of what is expected in the performance of a relevant function is "a test of what a reasonable person in the United Kingdom would expect".[6]

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[2] Paragraph 1

[3] For example, a poll conducted in 2006 by ICM and the Joseph Rowntree Reform Trust State of the Nation found that 89% of the population thought a British bill of rights should include the right to a fair trial by jury

[4] Dealt with in Clause 4 of the Bill as discussed further below

[5] [2017] UKSC 67, at 74

[6] Section 5, Bribery Act 2010

2.3. Marginal efficiency gains do not justify fundamental change

The Justice Secretary has been quoted as stating that a quarter of UK fraud and other "technical" cases are likely to be tried without juries. Yet the government's Impact Assessment accompanying the Bill states that only around 200 sitting days will be saved annually as a result of removing jury trials for complex cases. This is only a minimal gain resulting from a very significant constitutional reform.

The Impact Assessment does not appear to contain any calculation of the impact of the time and disruption which would inevitably be caused by replacing the jury with a judge only. For example, judges will be required to spend time preparing written reasons for their decisions, and there could potentially be an increase in appeals.

Analysis published by the Institute for Government shortly before the Bill was laid before Parliament provides context for assessing the government's efficiency claims.[7] According to the Institute:

- If the government's estimate that judge-only cases will be heard 20% quicker is correct, that would save less than 2% of total court time ("given the increase on demand on magistrates' courts");
- Even if such cases save 30% of court time across all hearings, that would only reduce total demand by 2.5%;
- The overall reforms (including magistrates' court changes) set out in the Bill are likely to achieve only a "7-10% reduction in total time taken in the courtroom, with just 1.5-2.5% of that coming from the introduction of judge-only trials".

An updated Institute for Government report issued on 10 March 2026 described some of the government's assumptions as "highly uncertain" and cast doubt on whether magistrates will in fact hear such a high proportion of the cases as predicted, noting, "If a large majority of cases likely to get a sentence of 1–2 years continue to be sent to the crown court for trial, the time savings are likely to fall short of the [government] estimate."[8]

The marginal (and doubtful) gains of potentially as little as 1.5-2% of total court time do not justify the proposed removal of a fundamental constitutional protection.

The Committee also notes that the Impact Assessment presents only a binary choice on this point: do nothing or introduce legislation. It does not refer to the other measures of investment, increased resourcing and case management.

3. SPECIFIC PROVISIONS

3.1. Clause 1: Removal of defendants' right to elect trial venue

[7] https://www.instituteforgovernment.org.uk/publication/judge-only-trials-court-demand-productivity
[8] https://www.instituteforgovernment.org.uk/publication/reviewing-proposed-reforms-jury-trials

Clause 1 entirely removes a defendant's right to elect Crown Court trial for "either-way" offences (which can include fraud offences).

The removal of election rights places significant power in the hands of magistrates to determine trial venue. It puts significant strain on courts and magistrates who have traditionally been used to dealing with cases at volume, but only because most of those cases are far less complex or uncontested.

As the Criminal Bar Association has pointed out, magistrates apply narrow allocation criteria focused on length of sentence. "In making their initial decision, magistrates cannot take into account any other factors, such as the wider consequences of conviction for the defendant. It is the right to elect which gives flexibility to the process."[9]

Under this proposal, magistrates will be making allocation decisions at an early stage, often with limited information about the full complexity of the case, the strength of the prosecution evidence, potential defences, or the defendant's personal circumstances.

For either-way fraud cases, which may still involve voluminous documentation, delayed disclosure and complex factual matrices, early allocation decisions are particularly problematic.

3.2. Clause 3: A new general rule for allocation

3.2.1. The three-year sentence threshold

Clause 3 (by way of new Section 74A to the Senior Courts Act 1981) removes the right to trial by jury for either-way offences unless the likely sentence is more than three years' imprisonment. The decision as to allocation will be taken at a pre-trial hearing where the judge must assess the "likely sentence".

This is problematic for several reasons:

- "likely sentence" is inherently uncertain at the allocation stage;
- magistrates may underestimate the seriousness of certain types of cases, such as fraud cases where financial harm is not immediately apparent;
- the three years' imprisonment threshold is arbitrary and does not reflect the seriousness of many fraud offences;
- the three-year threshold has been brought forward from the Leveson Review where no positive arguments were put forward to support this particular measure;
- the serious implications that flow from the allocation stage for individuals could motivate them to pursue potentially lengthy and time-consuming applications to resist

[9] https://www.criminalbar.com/wp-content/uploads/2026/03/The-CBAs-Nutshell-Guide-to-the-Courts-and-Tribunals-Bill-2026.pdf

suggestions that the likely sentence will be less than three years, which could potentially minimise any envisaged efficiencies.[10]

The consequences of incorrect allocation would be very serious, depriving a defendant of access to jury trial.

3.2.2. The Crown Court Bench Division

Clause 3 proposes that cases in the Crown Court could be tried by a judge sitting alone, without a jury. This proposal goes further than the equivalent recommendation of the Leveson Review, where it was envisaged that certain cases would be heard by a panel consisting of a judge sitting with two magistrates.

The Impact Assessment and Explanatory Notes to the Bill refer to trials without jury being heard in a newly-created Crown Court Bench Division (following the nomenclature in the Leveson Review). The Bill itself does not make mention of this term, however, although for the sake of clarity we will use it below.

In the new Crown Court Bench Division, the Impact Assessment assumes that where either-way offences are reviewed at plea and trial preparation hearing ("PTPH") stage, judges conducting those hearings will be more adept at allocating cases correctly than magistrates are currently. The Impact Assessment assumes an "allocation accuracy" of:

- 95% for cases with likely sentences up to two years
- 90% for cases with likely sentences between two and three years[11]

These assumptions are, however, entirely unproven.

3.2.3. Recommendations

The removal of election rights, combined with the provisions relating to the Crown Court Bench Division where only a single judge would try cases, creates a troubling scenario representing a double erosion of the right to jury trial.

The Committee's position is that the right to elect trial by jury should be retained for either-way offences, many of which are serious.

3.3. Clause 4: Fraud cases to be heard without a jury

Clause 4 of the Bill would create a power to order certain complex or lengthy cases to be tried without a jury. Schedule 1 of the Bill sets out the economic crime offences which would fall into this category. It is not clear how these particular offences were chosen.

[10] The Leveson Review appears to suggest that allocation would be dealt with by way of new guidelines drawn up by the Sentencing Council as well as amendments to the Criminal Procedure Rules, and the expanded use of a *Goodyear* type process (see Chapter 7) which could prove to be time-consuming.
[11] Table 7

Given the potential increase in the number of corporate defendants which could result from reforms of corporate criminal liability, it would be helpful for the government to provide an analysis of, and guidance on, the way in which the proposed measures would be applied to such defendants.

3.3.1. Judicial discretion and inconsistency

The Bill provides for judicial discretion in determining whether a case should proceed as a judge-only trial. Parties can then make representations on the determination, although there is no right of appeal. The Impact Assessment assumes that "judges deem 25% of eligible cases suitable for a judge-only trial".

Schedule 1 encompasses a wide range of offences, from false accounting to highly complex multi-jurisdictional bribery schemes.[12] The breadth of this list suggests insufficient consideration of which cases genuinely require judge-only trials (if any do).

This creates several problems, including:

- Different judges may reach different conclusions about similar cases, leading to inconsistent access to jury trials across the country;
- The Bill does not specify the factors judges should consider when exercising their discretion;
- A defendant may reasonably feel that the same judge who decides they should not have a jury will then determine their guilt (which would create an appearance of bias), undermining confidence in the system;
- Defence lawyers and defendants will face uncertainty about trial format until a relatively late stage;
- There is a risk that there is no incentive for the prosecution to ensure good case management to reduce the complexity or length of a trial (indeed, some prosecutors may see the option of a judge-only trial as a better option and manage the case accordingly);
- A new process will be introduced which will in fact add complexity and time to the overall case without granting associated rights of appeal. This potential additional time does not appear to have been taken into account in the Impact Assessment, and it is likely that less than the predicted 200 sitting days will in fact be saved.

3.3.2. The "complexity" justification is unproven

[12] Notably the list includes all Bribery Act offences regardless of complexity, all substantive money laundering offences under the Proceeds of Crime Act 2002, all fraud offences under the Fraud Act 2006, and ancillary offences

The government's rationale for judge-only trials in "complex or lengthy cases" rests on two assumptions: that juries struggle to understand complex fraud cases, and that judge-only trials will be significantly more efficient.

Neither assumption is adequately supported by evidence.

There is substantial research and practical experience demonstrating that juries, when properly directed and assisted with appropriate case management, are capable of understanding and deciding complex fraud cases. Modern trial techniques have been brought in to address issues that arose in the past, significantly enhancing jury comprehension.

Juries have been involved in many hundreds of fraud trials, following the evidence and reaching rational decisions. The Leveson Review noted that in the Jubilee Line case (one of the longest running in British legal history and one which pre-dated many of the changes that have been introduced to help improve the jury's understanding), jurors reported "a very good understanding of the evidence", with "some commenting that it was not all that difficult"[13].

More recently, in R v *Hayes & Palombo*,[14] the Supreme Court opined that a properly directed jury would have no problem assessing dishonesty in the context of a complex financial service-related case.[15]

The assumption that juries cannot cope with complexity is unproven and patronising. It fails to recognise that juries regularly include individuals with professional expertise, financial literacy and analytical capabilities, and that issues of intent and dishonesty are familiar and well understood by the jury.

The Committee notes that the cases that have been preserved for jury trial under the Bill also are likely to include complex expert evidence (such as forensic medical or science-based expert evidence or statistical analysis), which undermines the argument that complex trials should be left to a judge alone.

The hypothesis that judge-only trials are more efficient also relies on the assumption that time will be saved by counsel not having to simplify evidence when presenting to a judge rather than a jury. However, this fails to take into account that, without the requirement to simplify charges and evidence, this is likely to encourage increased charging by the prosecution and increased applications for more complex evidence to be presented to judges. This will thereby increase the time spent in pre-trial hearings and evidence presentation, as well as the length of and time to produce written judgments.

3.3.3. Recommendations

[13] See Appendix, paragraph 22
[14] [2025] UKSC 29
[15] See Appendix, paragraph 23

The Committee recommends that the right to elect Crown Court trials be retained for all offences listed in Schedule 1 to the Bill (i.e. all fraud and corruption cases). These offences involve questions of dishonesty, intent and commercial conduct that are particularly appropriate for jury determination. The public's judgment, through the jury, is essential for maintaining public confidence in the prosecution of economic crime. If election rights are to be removed for other offence categories, fraud and financial crime should be explicitly exempted.

4. ALTERNATIVE APPROACHES

The government has announced additional funding and resources for the criminal justice system, which the Committee welcomes. In the Committee's view, these measures are likely to improve case backlogs materially. However, their impact is likely to be impaired if at the same time structural changes and new procedures are being brought into the system. Introducing such significant changes at this stage risks overwhelming a struggling system. As the Institute for Government has noted, "Some of the reforms are also likely to be actively counterproductive when it comes to improving productivity."[16]

The Committee's view is that it would be better to focus on data-based improvements, rather than try to implement two sets of changes at the same time. This approach will also help capture what works and what further measures, if any, may be required.

Rather than implementing measures to reduce the availability of jury trial, the government should focus on the following.

4.1.1. Enhanced case management

Robust case management by specialist judges can significantly reduce trial length and complexity without removing the jury. This includes:

- Early identification of issues
- Streamlining of evidence
- Agreed facts and admissions
- Structured presentation of complex evidence
- Use of expert evidence to explain technical matters

4.1.2. Jury support mechanisms

Modern techniques for assisting juries should be expanded, such as:

- Written directions and aide-memoires
- Visual presentations and timelines
- Glossaries of technical terms

[16] https://www.instituteforgovernment.org.uk/publication/reviewing-proposed-reforms-jury-trials

- Structured verdict documents
- Regular judicial summaries during trial

4.1.3. Specialist fraud courts

If efficiency is the goal, more consideration should be given to specialist fraud courts with dedicated judges, case management protocols, and support resources, while retaining jury trials.

The City of London Fraud Court, once opened, is likely to have a positive impact on the case backlog, opening up more capacity in the system to hear economic and cybercrime cases. However, there is a risk that any gains may be offset by the added complexity which will result for some provisions of the Bill.

4.1.4. Application route

As the Committee explored in its response to the Leveson Review,[17] section 43 of the Criminal Justice Act 2003 (repealed in 2012 without coming into force) allowed for the prosecution (with the approval of the Lord Chief Justice) to make an application for trial without jury in serious and complex fraud cases.

This approach included specific criteria and safeguards, including and assessment by the judge if trial manageability could be resolved by any other means. The Committee's position remains that: this model provides a more favourable route to identify those very rare cases where the removal of jury trial may be appropriate; any statutory changes which relate to removal of jury trial should be subject to a sunset clause; and it would be supportive of a pilot scheme to test the effectiveness of such an approach.

Louise Hodges, Chair

On behalf of the Committee

11 March 2026

Any comments or questions arising from this Response should be directed by email to the Committee Chair, Louise Hodges (LHodges@kingsleynapley.co.uk), copying the Committee Secretary, Phil Taylor (Phil.Taylor@whitecase.com)

[17] See Appendix, paragraphs 33 to 35

APPENDIX

The City of London Law Society – Corporate Crime & Corruption Committee

Response to the *Independent Review of the Criminal Courts: Part 1* (the "Review")

INTRODUCTION

1. The City of London Law Society ("CLLS") represents more than 22,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government Departments, often in relation to complex, multijurisdictional legal issues (more information is available at https://clls.org)
2. The Corporate Crime and Corruption Committee (the "Committee") is made up of senior and specialist lawyers who have a particular focus on issues relating to the investigation of fraud and economic crime matters. Membership of the Committee is diverse and includes leading practitioners from global law firms, leading City firms and boutique criminal law and investigation firms. Between them these firms are experienced in representing large corporates, SMEs, third parties and individuals in relation to criminal and regulatory investigations by overseas and UK agencies including the SFO, CPS, HMRC, NCA and FCA. There are also specialists in conducting corporate investigations and private prosecutions.
3. This paper was prepared on the basis of themes which emerged from the diverse collective opinions of Committee members.

SCOPE

4. The Committee has focused on the following parts of the Review:

    4.1. Recommendation 43 (the right for a defendant to be able to elect trial by judge alone)
    4.2. Recommendation 44 (judge-only trials for serious and complex fraud)
    4.3. Recommendation 45 (direction of judge-only trials for cases of anticipated exceptional length or complexity)
    (collectively the "Fraud Recommendations").

5. The Committee also reviewed Chapter 9 (trial by judge alone) of the Review, in particular the section relating to Serious and Complex Fraud Cases.

THE COMMITTEE'S POSITION

6. The Committee agrees that the criminal justice system is close to being broken,[18] and urgent action must be taken to clear the backlog of criminal cases, reduce wait times for criminal trials, and ensure certainty for victims and defendants.[19]
7. However, the Committee considers that removal of trial by jury is a red herring and will not help to resolve the immediate issues that are causing the current crisis. The Committee does not agree that it is jury trials that have caused inefficiency in the system or that their removal will significantly improve the current crisis.
8. The Committee considers that the Fraud Recommendations would, if implemented without significant safeguards, have a wide-ranging and long-term (potentially permanent) negative impact on this country's justice system. The Fraud

[18] *"Criminal justice is in crisis"*, p.4
[19] *"The scale of the problem requires a solution of equal magnitude"*, p.4

Recommendations risk an absolute and eternal abolition of fundamental rights to ostensibly fix a relatively short-term problem. At the same time, there appears to be no empirical evidence that these recommendations will provide the solution to the core problem identified.

9. Any changes which result in the removal of the right to jury trial, however selective, may also result in an erosion of confidence in the criminal justice system (arguably already weakened as a result of well-publicised issues including delays in bringing cases to trial, overcrowding of prisons and high-profile miscarriages of justice), particularly as certain sectors of society (notably those from minority ethnic backgrounds) are known to be disproportionately impacted by the criminal justice system (see the section 'Point 2: Juries are vital, fair and efficient' below).

10. Any proposals to reduce the availability of trial by jury must therefore be based on clear, empirical evidence and be able to stand up to scrutiny. Removing any element of the right to jury trial should not take place unless the reasons for change outweigh the benefits, and the arguments in favour, of trial by jury.

11. As there appears to be no evidence that trial by jury of serious and complex fraud is a cause of, or a significant contributor to, the current crisis, the focus should be on areas where reform will genuinely improve the current situation and which do not require an erosion of fundamental rights (see the section 'Alternative Solutions' below).

12. The negative impact of the Fraud Recommendations would not be limited to the criminal justice system. There is evidence that jury service can have a positive impact on broader society, including through driving changes to voting behaviour and people's participation in community and civic groups.[20]

13. In the Committee's opinion, there are four key points to be addressed, namely:

Point 1:
Serious and complex fraud cases are not the cause of the current crisis
Point 2:
Jury trials are vital, fair and efficient
Point 3:
Juries are capable of trying serious and complex fraud cases
Point 4:
The Fraud Recommendations will negatively impact judicial status, resources and timelines

14. In addition, the Committee proposes a number of alternative solutions which it believes would be preferable to those included in the Fraud Recommendations. These key points and alternative solutions are set out in further detail below.

KEY POINTS TO BE ADDRESSED

Point 1: Serious and complex fraud cases are not the cause of the current crisis

15. Evidence shows that serious and complex fraud cases do not significantly impact the overall Crown Court caseload. Although thousands of lower-level fraud cases are dealt with by the courts every year,[21] the number of serious and complex fraud cases brought to trial is very low and cases are generally not exceptionally lengthy:

[20] Cheryl Thomas, *"The 21st Century Jury: Contempt, Bias and the Impact of Jury Service"* [2020] Criminal Law Review, Issue 11.
[21] The CPS data summary for Q4 of 2024-2025 gives a rolling total of 7,316 completed fraud and forgery prosecutions for 2024/25

15.1. According to the Crown Prosecution Service ("CPS"), in 2023/24, seven economic crime offence cases were referred to it by the National Crime Agency (one was prosecuted and three were discontinued).[22]

15.2. According to data provided by the Serious Fraud Office ("SFO") in response to a Freedom of Information Act ("FOIA") request made to by a member of our Committee, over the past five years 13 trials resulting from an SFO prosecution were completed, 11 of which were heard at Southwark Crown Court (where judges sit with specific expertise in conducting trials of this nature).[23]

15.3. The same data shows that between January 2020 and July 2025 the longest SFO trial took 22 weeks; however, the mean trial length during that period was 57 days (11 weeks). This is in line with the Protocol for managing these cases[24] and the Practice Note[25] which judges at Southwark Crown Court follow on managing serious and complex fraud cases.

Point 2: Jury trials are vital, fair and efficient

16. It is the Committee's belief that trial by jury is indeed a vital component of the criminal justice system[26], providing an essential check and balance on the use of criminal powers by the state. Performing jury service is a civic responsibility which enables citizens to exercise their democratic rights, including to allow for an acquittal where they assess that the state is overreaching in the exercise of its power.

17. The Review states that there will be "greater opportunity to scrutinise and hold to account the reasoning of the judge and their approach to the evidence than would ever be achieved with a jury trial."[27] The Committee disagrees. Although the reasoning process within the jury room is sacrosanct, the appeal process already gives the defence the opportunity to challenge a conviction on the basis that the Judge made an error of law during the trial; the Judge misdirected the jury in law or fact in summing up; there was otherwise a procedural irregularity during the trial; or the verdicts were inconsistent. Moreover, judges are required to give juries written directions[28], which today almost always include specific questions to assist the jury in reaching its verdict (known as "routes to verdict"). These provide information about the basis of the jury's verdict that was previously unavailable.

18. In several places, the Review notes research by Professor Cheryl Thomas KC who is one of the UK's leading experts on juries and judges and has spent many years conducting empirical research with Crown Court juries in relation to trials of all kinds. A study by Professor Thomas (cited in part in the Review[29]) found that jury service can have a transformational effect on members of the public, with 87% of jurors surveyed saying they would not have done jury service when they were summoned if it had been optional, but 81% of the same jurors saying they would be happy to do jury service again if summoned and most having found it interesting, educational and/or informative.[30]

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[22] See https://www.cps.gov.uk/foi/2024/national-crime-agency-nca-economic-crime-referrals-and-outcomes

[23] FOIA request made by a member of the Committee on 18 July 2025

[24] *Control and Management of Heavy Fraud and Other Complex Criminal Cases: A Protocol issued by the Lord Chief Justice of England and Wales*, 22 March 2005; available at https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Protocols/control_and_management_of_heavy_fraud_and_other_complex_criminal_cases_1803.pdf

[25] Southwark Practice Note No.1/2024, available at https://www.criminalbar.com/wp-content/uploads/2024/07/2024-07-01-Southwark-Practice-Note-No.1-FINAL-INCL.-DMD.pdf

[26] *"Juries have always been viewed as a vital component of the criminal justice system"*, p.279

[27] *"…judges sitting without a jury must provide reasons for their decision whereas juries do not. There is a greater opportunity to scrutinise and hold to account the reasoning of the judge and their approach to the evidence than would ever be achieved with a jury trial"* (p.292).

[28] Criminal Procedure Rules, rule 25.14

[29] p.284

[30] Cheryl Thomas, *"The 21st Century Jury: Contempt, Bias and the Impact of Jury Service"* [2020] Criminal Law Review, Issue 11.

19. The Committee has itself consulted with Professor Thomas, who has set out four main headline findings from her empirical research[31]:

    19.1. Juries are representative. Those summoned and empanelled in each Crown Court in England & Wales are representative of local populations from which summoned.

    19.2. Juries are efficient. Once sworn, they are rarely discharged (in approximately 1% of cases) and almost always go on to deliberate.

    19.3. Juries are effective. They reach a verdict 99.4% of the time. Hung juries are very rare.

    19.4. Juries are fair. All empirical evidence shows that juries in this jurisdiction reach verdicts based on evidence and law. There is no postcode lottery whereby you get different verdicts for similar offences depending on where you are tried. The one stage in the criminal justice system where Black, Asian, and minority ethnic ("BAME") defendants do not face disproportionality is the jury verdict. There was no significant difference observed across all offences between white vs. BAME defendants.[32]

20. This empirical evidence is highly persuasive and supports the current position: that jury trials are a key component of fairness in our criminal justice system.

Point 3: Juries are capable of trying serious and complex fraud cases

21. Recommendations 44 and 45 are based on the proposition that juries are not able to understand more complex cases[33]. However, no evidence is provided that juries have not been able to understand such cases in the past or may have reached incorrect verdicts in cases of serious and complex fraud.

22. Juries have been involved in many hundreds of fraud trials, following the evidence and reaching rational decisions. The Review cites the Jubilee Line case, which was one of the longest running in British legal history, but acknowledges that that length of the trial was due to a combination of factors, none of which related to the jury's ability to understand the evidence. The Review references in a footnote that *"All the jurors were adamant that the jury had a very good understanding of the evidence, some commenting that it was not all that difficult"*[34] and later notes: *"Despite the stresses and personal impacts, most jurors, when interviewed after the trial collapse, insisted they had a good understanding and recollection of the facts of the case"*.[35] Indeed, not only did the jurors in that case *think* they had a good understanding of the evidence, a subsequent review found that they objectively *did* understand the evidence. In the report of Her Majesty's Crown Prosecution Service Inspectorate ("HMCPSi"), Stephen Wooler, Chief Inspectorate of HMCPSi, stated that: "*No responsibility for the inconclusive outcome of the case can properly be attributed to the capabilities or conduct of the jury. Overall, they discharged their duties in a thorough and conscientious manner. Collectively, they appeared even at the time of our interview with them to have a good grip of the evidence and the issues, particularly allowing for the fact that many months had passed since they had last heard any evidence*".[36]

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[31] Cheryl Thomas, *"Are Juries Fair?"*, Ministry of Justice Research Series 1/10 [2010]
[32] Chryl Thomas "*Ethnicity & the Fairness of Jury Trials in England and Wales 2006-2014"* [2017] Criminal Law Review, Issue 11. This finding is cited at p.291 of the Review
[33] Recommendation 44: *"Eligible cases should be defined by their hidden dishonesty or complexity that is outside the understanding of the general public"* (p.318).
[34] Footnote 443, p.307
[35] p.307
[36] Review of the Investigation and Criminal Proceedings Relating to the Jubilee Line Case (pursuant to a reference by the Attorney General under section 2(1)(b) of the Crown Prosecution Service Inspectorate Act 2000) (HM Crown Prosecution Service Inspectorate, 2006), para 1.40.

23. As recently pointed out in commentary by barrister Donal Lawler, the recent Supreme Court judgment in *R v Hayes & Palombo* (the Libor cases) illustrates some problems with the approach taken in the Review:
"But unfamiliarity with a concept does not mean that it cannot be understood when explained. This happens every day in jury trials as jurors are introduced to evidence on topics such as cell-siting, DNA, medical evidence and ballistics... The actual issue here, as in most fraud trials was, ultimately, very simple: was the defendant dishonest? The Supreme Court certainly did not seem to think that a properly directed jury would have any problems with assessing that in the context of LIBOR."[37]
24. Taking the Review recommendations as a whole, jury trials would be reserved only for cases which are not too minor or too serious and complex. Establishing what falls into the middle would create another layer of procedure and complexity.

Point 4: The Fraud Recommendations will negatively impact judicial status, resources and timelines

25. The Fraud Recommendations would require criminal trial judges to produce written judgments. It should be noted that written judgments in civil courts often take a significant length of time to be prepared and delivered. It is entirely foreseeable that in a case of serious and complex fraud a judge sitting alone may hand down a decision with written reasons to follow, allowing the case to proceed to sentence and confiscation. There may then be a wait of several months for the written judgment before a defendant can properly be advised on any right to appeal.
26. Introducing judge-only trials in complex cases will therefore create a new resource problem and a new area of complexity which the already overburdened criminal justice system would need to accommodate. It is feasible that the number of appeals based on the written judgments could increase. This would add to uncertainty for victims, witnesses and defendants and potentially lengthen the overall justice process.
27. Under the current system, there is a clear framework during a criminal trial whereby a judge is required to sum up the evidence which has been presented and direct the jury on the law and the decisions it must make. The Fraud Recommendations would place a significant amount of new power in the judge's hands. This would represent a further erosion of the constitutional separation of powers and would likely give rise to increased challenges to judicial authority. Judges would become directly associated with their verdicts which could cause a number of issues, including making them vulnerable to undue pressure or to personal attack and criticism which goes beyond acceptable critique of decisions or accountability for conduct. The 2024 UK Judicial Attitude Survey revealed a substantial increase since 2022 in judges' concerns for their personal safety in and out of court, with those presiding over judge-alone cases having the highest levels of safety fears.[38]
28. As Mr Lawler states: *"The procedural history of Hayes and Palombo emphasises the need to have a bright line between the facts and law. If Sir Brian's recommendation were followed, putting both functions into the hands of a single judge would encourage conflation. Of course, it can be argued that the individual judge would be capable of keeping those two things separate in their mind, but that is far different from the physical separation of those two functions, with the factual matter being dealt with by the collective views of 12 individuals and all the benefits that brings."* To maintain the necessary "bright lines" between different aspects of a trial (including admissibility of evidence, verdict and sentence) would require more than one judge per trial, which in turn would have serious resourcing and time implications.
29. The Committee agrees that the selection process for judges is undeniably rigorous. However, judges are currently selected because of their ability to be neutral arbiters of the law, and not as representatives of the community, unlike juries. Whilst there is empirical evidence on the conviction rates in different types of cases tried by jury, there is no

[37] Criminal Law Week, issue 28, 20 August 2025
[38] https://www.judiciary.uk/judicial-attitude-survey-2024/

comparable data on conviction rates in judge-alone cases. Implementing the Fraud Recommendations would require a rethink of how to recruit, select, train and support the judiciary through this change and an increase in the number of non-sitting hours required to fulfil their additional responsibilities.

30. The cost and time required for these changes should be modelled to see the net impact that the Fraud Recommendations may have on resourcing.

ALTERNATIVE SOLUTIONS

31. The Review lists three causes of the current problems with the criminal justice system: resource constraints and rising inefficiency; the ever-increasing complexity of criminal law and procedure; and rising caseloads since 2019, and their combined impact with the Covid-19 pandemic and Criminal Bar Association's industrial action. However, the details provided of each of these three causes do not reference the use of juries.[39]

32. The issues the Review was commissioned to resolve can be better addressed in other ways. For example:

    32.1. Issue: Trials are too long

    Solution: Further streamline key procedural steps and extend judges' case management powers. There are already well-advanced plans for fraud cases to be heard at a new, purpose-built court centre in Central London; these should be followed through, and the impact of the new court centre should be monitored closely to ensure maximum impact on efficiency.

    32.2. Issue: Inadequate case preparation, presentation and management by prosecutors and judges

    Solution: Invest in high quality recruitment, more advanced case management and document review technology, better training for prosecutors on case presentation, and further training for judges. As Mr Lawler points out: *"Frankly, part of the job of counsel is ensuring that they present evidence in a way that is easily understood. Is the concept of a derivative any more difficult to understand than DNA, probability or cell-site location? Equally, it is the function of the judge to direct the jury on the law. While discussions on the legal directions will often involve detailed and complex arguments and submissions, it does not follow that the ultimate jury directions will be as complex. The simple issue in both Hayes and Palombo was that it was the trial judge who made the mistake of treating a question of fact as if it were a matter of law … The fault lay entirely with a misdirection by the judge, and not with the jury."*

    32.3. Issue: The extent and complexity of disclosure[40]

    Solution: Pre-trial disclosure issues often cause delays in serious and complex fraud cases. Jonathan Fisher KC has recently investigated this issue in detail and made a number of recommendations, none of which was to take away jury trials.

33. Section 43 of the Criminal Justice Act 2003 (repealed in 2012 without coming into force) allowed for the prosecution (with the approval of the Lord Chief Justice) to *make an application* for trial without jury in serious and complex fraud cases. This was referred to in the Review although not adopted in the Recommendations.[41] This included specific criteria and safeguards, including the judge assessing if trial manageability could be resolved by any other means.

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[39] The only reference to juries is that *"jury trial has been progressively reserved for the most serious cases"* (p.65) and that *"jurors are given much more extensive guidance than in the past"* (p.69).

[40] "*Between 2010 and 2017, the average size of Serious Fraud Office (SFO) cases grew from around two million documents (350 gigabytes of data) to six million documents (850 gigabytes), with the largest live case on the SFO system as of January 2025 having around 48 million documents (6.5 terabytes)"* (p.66)

[41] See p.300

34. If the government concludes that introducing non-jury trials is a necessary step, and provided that there is good empirical evidence that removing jury trials in serious and complex fraud cases will have a net benefit, in principle the Committee would be:

    34.1. in favour of considering a model similar to Section 43, with the requisite safeguards; and/or
    34.2. supportive of Recommendation 43 enabling *election by the defendant* (after taking independent legal advice).

35. The Committee additionally recommends that:

    35.1. any changes which involve cases of 'serious and complex fraud' should be accompanied by a suitable definition of such cases. Several tests are referred to in the Review;[42] and
    35.2. any statutory changes which relate to removal of jury trial should be subject to a sunset clause, allowing for the impact of the measure to be independently and transparently monitored, assessed and reviewed (on a regular basis) and the amendments to be reversed after a defined period of time.

36. The Review discusses a potential extension of the Deferred Prosecution Scheme ("DPS") for minor offences. The Committee considers that using a scheme of this type for individuals in serious and complex fraud cases may provide a quicker means of disposal and a means to divert cases away from the courts (other than for a short approval hearing). Since 2014, Deferred Prosecution Agreements have become an established method by which the SFO and, more recently, the CPS deal with corporate criminal cases and have resulted in significant financial penalties. They are not available for individuals. If the DPS were to be extended for serious and complex fraud offences, it would need to include financial penalties and confiscation orders as part of the overall arrangement.

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[42] p.300