The City of London Law Society

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:

    a. Recommendation 43 (the right for a defendant to be able to elect trial by judge alone)
    b. Recommendation 44 (judge-only trials for serious and complex fraud)
    c. 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,[1] 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.[2]
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 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

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

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.[3]

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

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

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,[4] the number of serious and complex fraud cases brought to trial is very low and cases are generally not exceptionally lengthy:

    a. 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).[5]

    b. 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).[6]

    c. 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[7] and the Practice Note[8] 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**[9], providing an essential check and balance on the use of criminal powers by the state. Performing jury service is a **civic responsibility**

[4] The CPS data summary for Q4 of 2024-2025 gives a rolling total of 7,316 completed fraud and forgery prosecutions for 2024/25

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

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

[7] *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

[8] 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

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

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."[10] 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[11], 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[12]) 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.[13]

19. The Committee has itself consulted with Professor Thomas, who has set out four main headline findings from her empirical research[14]:

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[10] *"…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).

[11] Criminal Procedure Rules, rule 25.14

[12] p.284

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

[14] Cheryl Thomas, *"Are Juries Fair?"*, Ministry of Justice Research Series 1/10 [2010]

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

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

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

d. **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.[15]

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[16]. 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*

[15] 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

[16] Recommendation 44: *"Eligible cases should be defined by their hidden dishonesty or complexity that is outside the understanding of the general public"* (p.318).

evidence, some commenting that it was not all that difficult"[17] 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"*.[18] 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*".[19]

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."[20]

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.

[17] Footnote 443, p.307
[18] p.307
[19] 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.
[20] Criminal Law Week, issue 28, 20 August 2025

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.[21]

[21] https://www.judiciary.uk/judicial-attitude-survey-2024/

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 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.[22]

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

    a. **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.

    b. **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."*

    c. **Issue: The extent and complexity of disclosure**[23]

[22] 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).

[23] "*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)

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.[24] This included specific criteria and safeguards, including the judge assessing if trial manageability could be resolved by any other means.

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:

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

35. The Committee additionally recommends that:

    a. 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;[25] and
    b. 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.

[24] See p.300
[25] p.300

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.

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)

1 September 2025