

## Leveson at a Glance

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### **A Brief summary of the Major recommendations of Sir Brian Leveson's review of the Criminal Justice System**

It was announced on 12.12.2024 that the Government had commissioned Sir Brian Leveson to conduct a review of the Criminal Justice System. The review was to consider ways in which to combat the delays within that system.

I set out below a summary of Sir Brian's major recommendations. This is not intended to be a detailed analysis of the review, nor does it include all the proposals. The review is lengthy and detailed and I am conscious of the fact that the Government will soon produce its response to the review, and, no doubt, its own proposals which we will also have to analyse; so the task could be endless. This is a brief overview with some comment where I cannot contain myself!

So, here are the major proposals:

1. More use of out of court Disposals - cautions, restorative justice solutions, etc. The legal profession do not seem to oppose this proposal. It could be useful so long as nobody is (or feels) pressured into making admissions of guilt in order to obtain an out of court disposal, when they, in fact, are not guilty of any wrongdoing.
2. Recategorisation of some currently Either Way offences to be summary only. This includes some offences of dishonesty such as Making off without Payment, Theft of Pedal Cycle and Theft from an Unattended Vehicle.

Currently there exist offences which can be tried only in a Magistrates' Court (Summary offences) and those which can be tried on Indictment (in the Crown Court with a Jury) - Indictable offences. Within the category of Indictable offences is a category of offences known as "Either Way" offences which can be tried either in the Crown Court before a Jury or in the Magistrates' Court before either a lay bench of Magistrates or professional District Judge. In the case of summary only offences, the Defendant (and the court) has, under the current regime, no option but to have the case dealt with in the Magistrates' Court. The Defendant's right, and the people's right, to have a jury of the people hear these cases, is removed. Only a summary trial is available. There is a clue in the name: "Summary Trial." Look up the word, "summary".

3. Permanent increase in sentencing power of the Magistrates to 12 months imprisonment.
4. Credit for a Guilty plea to be reflected with a 40 percent reduction in sentence.
5. Removal of the right to elect a Crown Court (not Jury\*) trial in either way offences where the maximum punishment is 2 years imprisonment or less, and any others thought appropriate to be included. [\*because you will see below, that it will no longer be a right to elect Trial by Jury

if these proposals are enacted]. This proposal is, confusingly, called Restriction of the Right to Elect (RRTE): It seems to me that 'Removal' would be a more accurate description than 'Restriction'. There is a list of the proposed offences at Annex G in the review document.

In these cases it is proposed that it be up to the Magistrates to decide whether the case should go to the Crown Court or remain in the Magistrates' Court. If the Magistrates decided the case is suitable for summary trial the Defendant would no longer be able to elect a Trial by Jury. However, this does not provide certainty that the possible sentence would be restricted to the 12 months available to the Magistrates since, under the proposals, if information was to be revealed in the trial which the Magistrates felt made the offence more serious, then they can still send the case to the Crown Court for sentence. So, the Defendant who has had his choice removed from him as to where his trial takes place, may, in any event face the prospect of sentence by a Judge in the Crown Court.

Remember that, currently, it is not so much that a defendant elects Trial by Jury in the Crown Court (though this is how it has come to be known), but, more properly, that he *consents* to summary trial. In other words, a defendant is asked to forego his right to a Trial by Jury and consent to something considered to be lesser.

Primary legislation would be required to make this change - to create Either Way offences where it is no longer, ultimately, the Defendant's choice whether he consents to summary trial or not. It is suggested that, because the situation leading to these changes is an emergency, that we could make a schedule to the legislation which can be amended easily, so that when the emergency is over, if it was felt appropriate, these types of cases could easily be returned to full Either Way status. It is suggested that this could happen in either direction - i.e. other offences could be reduced to this status, though to be fair, Sir Brian does suggest that it might be felt that a reduction of other Either Way offences onto this list should always require full parliamentary scrutiny.

6. For the remainder of the Either Way offences, it will be up to the Defendant to decide whether he wishes to be tried in the Magistrates' Court or the Crown Court (but not necessarily before a Jury - as will be seen shortly). It is proposed that the Magistrates will not be asked to consider whether they would accept jurisdiction or not where a Defendant indicates his wish to be tried in the Crown Court. So, a Defendant would, if these proposals are enacted, have to make the decision as to venue for his trial without knowing whether the Magistrates would accept jurisdiction, and without knowing whether, if he does elect Crown Court trial, he would receive a Trial by Jury or a trial before a Judge and two Magistrates in the new Crown Court Bench Division - for the reasons set out in item 7. How is anyone to make this decision without having any certainty as to the type of trial he will receive? How is a lawyer to advise on this? The report states that the changes proposed can be applied retrospectively to the open list of cases in the Crown Court. Indeed, the changes would not have any real effect on the backlog if they did not apply retrospectively. But how is it fair for those who made choices based on the certainty, at the time, that they were electing a Jury Trial? Will they be given the opportunity to revisit their election?
7. It is proposed that a new Crown Court Bench Division (CCBD) be created where any Either Way offence could, potentially, be tried. Trials in this division would take place before a Judge

sitting with two Magistrates (as is currently the case for appeals to the Crown Court against conviction and/ or sentence from the Magistrates Court - more of which, later). It is proposed that there be a presumption that any case where the *likely* sentence would be 3 years or less, should be dealt with in the CCBD rather than before a Jury, this would be based on the sentencing guidelines, though exceptional factors may take such a case before a Jury.

When an Either Way case reaches the Crown Court, it is then up to a Judge to decide whether the case goes before a Jury or to the CCBD. This will introduce another hearing at which representations will be made as to where a case should be tried, and an avenue of appeal against the decision of the Judge. One wonders how much of the hoped-for time saving will be lost again in such hearings and appeals.

Note well, the decision to allocate to the CCBD does not mean that sentence is restricted to three years or less, because, you've guessed it, if information is revealed in the trial which makes the matter more serious than it appeared when jurisdiction was decided, the Bench can sentence freely (well, in accordance with the discretion fettering sentencing guidelines) up to the maximum available for that offence.

The review emphasises the fact that the CCBD is not an Intermediary Court, but is still part of the Crown Court. However, as the Criminal Bar Association point out: "The proposed new court is in form a Crown Court but in substance a Magistrates' Court." <sup>1</sup> The review suggests that District and Deputy District Judges from the Magistrates' Courts could gain experience in the CCBD, and that the CCBD may use Magistrates' Courtrooms.

8. Automatic right of appeal to the Crown Court against conviction and/or sentence in the Magistrates' Court to be removed - appeals would, if proposals are enacted, need permission and be made (and heard) on specific grounds, in the same way as from the Crown Court to the Court of appeal. At present, a defendant convicted in the Magistrates' Court may appeal that conviction, as of absolute right, to the Crown Court. Such hearings in the Crown Court are before a Crown Court Judge sitting with two Magistrates and are by way of re-hearing - in other words, a fresh trial. Similarly appeal against sentence in the Magistrates' Court is a fresh hearing, from scratch. Interestingly the CBA members object to the removal of absolute right to a re-hearing in the case of conviction. They do not object to the removal of the right in relation to sentence (presumably because the sentencing guidelines make it clear whether the sentence in the Magistrates' Court was off track).
9. Proceedings in Magistrates' Courts to be audio recorded and transcribed where necessary in order to facilitate the ability to put forward grounds of appeal and to remove the need for a hearing afresh on appeals to the Crown Court. The current right to appeal by fresh hearing in the Crown Court is described by some as an anomaly - why should you have an automatic right to appeal and have a re-hearing in the case of less serious offences dealt with in the Magistrates' Court, when there is no such automatic or a new trial in the case of the more serious offences dealt with before a Jury. It strikes me, though I have not researched the point, that part of the reason why this seeming anomaly exists is because everyone understood that, in having a summary trial, you were losing, or agreeing to forego, a proper trial before a Jury. So this automatic appeal by way of re-hearing may have been intended as a kind of compensation and safeguard.

10. Defendants in the Crown Court to be able to request trial by Judge alone. It is up to the Trial Judge whether to consent to this - the Judge's decision on this to be final with no appeal.
11. Serious and Complex fraud cases to be tried by Judge alone, where it is felt that the complexity lies outside the understanding of the general public. This relies on the notion that Juries cannot understand complex evidence, even though, it is acknowledged in the review that there is evidence to support the fact that juries can and do understand such evidence.
12. Cases of exceptional length or complexity also to be tried by Judge alone. Limits and processes for 11 and 12 to be set out in Practice Direction by the Lady Chief Justice.
13. The review denies that these proposals will mean any loss of safeguard against overreaching legislation, on the basis that TBJ is used in only 1 percent of cases, and is not available in 'summary only' cases or cases in the Youth Court. In other words, using previous watering down of our protections to justify their further watering down.
14. The review denies that these proposals are removing any constitutional or common law rights. The review denies that the right to Trial by Jury is a constitutional or common law right. The review also states (in contradiction to the statement that there is no right to TBJ) that the Trial by Jury is a 'hallowed principle of the administration of criminal justice' and is a 'right.. deeply entrenched in our constitution,' and goes on that it is "a right available to be exercised by a defendant unless and until the right is amended or circumscribed by express legislation'. (The report quoting Lord Judge CJ in R v Twomey [2009] EWCA Crim 1035) Sir Brian summarises: 'This recognition that any 'right' to trial by judge and jury may be restricted by legislation is no more than a reflection of the constitutional supremacy of parliament.'" (Page 147, paragraph 52).

For those of you who believe that parliament may alter your constitution (which is supposed to limit the powers of the state) by legislation, or legislate away fundamental constitutional rights, I ask you this: What is the value of your constitution?

#### References and Further Reading

(1) <https://www.criminalbar.com/wp-content/uploads/2025/08/CBA-Position-on-the-Independent-Review-of-the-Criminal-Courts-Part-1-.pdf>

For more on the constitutional arguments please see <https://www.commonlawconstitution.org/resources/my-letter-to-brian-leveson?c=letters-and-communication>

For the review itself see here: <https://www.gov.uk/guidance/independent-review-of-the-criminal-courts>

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