Independent Review of the Criminal Courts 2025

Submissions by the Criminal Bar Association

Introduction

1. The Criminal Bar Association is grateful to Sir Brian Leveson for his invitation to contribute submissions to assist him in his review. Our collective experience as advocates leads us to propose what we regard as sensible and achievable actions to reduce the current backlog.

2. It is our view that the backlog of cases in the Crown Court is damaging the rule of law in this country: long delays mean that victims of crime do not receive justice; defendants do not know what awaits them; witnesses' memories fade and/or they withdraw co-operation; some defendants will take advantage of the delay to commit more offences in the belief that they have got away with it. Others, who would normally be expected to plead guilty, will enter not guilty pleas anticipating that their case will be adjourned for years and may well collapse. The public will soon lose faith in the system of criminal justice. We think that the threat, over time, is equivalent in gravity to the outbreak of rioting in the summer of 2024 and should be treated with the same degree of urgency by government and the criminal justice agencies.

3. We say little about the historic underfunding of all parts of the criminal justice system, because its effects are all too apparent. However, there can be no question that the backlog and the causes of the backlog will not be remedied without an immediate and sustained increase in funding, although we have tried to focus on an approach that ought to be more affordable.

4. While the Review's Terms of Reference are widely drawn and include the possibility of long-term structural changes to the Court system, we submit that the most urgent task is to find practical methods to reduce the backlog with minimal delay, rather than (within the limited time available for this Review and our contribution to it) propose far-reaching reforms that (a) are unlikely to take effect sufficiently soon and (b) have implications that would require a much wider process of consultation.

5. We note that Sir Brian highlighted many of the current issues of concern in his 2015 Review Of Efficiency In Criminal Proceedings ('Leveson 2015') and proposed remedies, not all of which have been put into effect.

6. In the time allowed, therefore, the CBA has appointed members to give most attention to how the backlog of cases can be reduced as soon as possible. We have sought to analyse information emanating from the Ministry of Justice, with the caveat that we are not expert statisticians.

7. A separate group have been appointed to answer Sir Brian's request for information about non-jury courts in other jurisdictions.

8. We have made proposals for immediate and medium-term action, summarised as follows:

A. Immediate

(i) remove cap on Crown Court sitting days, so they can operate to capacity;
(ii) re-open mothballed courts and use other parts of court buildings to increase capacity;
(iii) triage cases in the backlog to remove those that can be resolved in the Crown Court or remitted to the Magistrates' Court;
(iv) promote engagement between judges and parties to resolve cases;
(v) reform of LGFS payments to reward early engagement and advice;
(vi) impose appropriate time-limits in court proceedings.

(vii) enforce or revise contracts with outsourced prisoner transport firms;
(viii) enforce or revise contracts for Court interpreters to ensure quality, timeliness, and appropriate language.

B. Medium

(i) end the allocation of sitting days in April each year;
(ii) improve and refine data collection;
(iii) reform pre-trial process, including the PTPH;
(iv) reform legal aid payments;
(v) re-classify certain either-way offences;
(vi) technological improvements;
(vii) reform sentencing procedure;
(viii) improve conference facilities at Court, in prisons and by video conferencing;
(ix) restore levels of service in HM Courts & Tribunal Service to enable appropriate listing and other administrative decisions to be made;
(x) recruit more legal advisers for the Magistrates' Court;
(xi) apply efficiency recommendations made in 2015 Review.

Background

9. The causes of the backlog are well documented:

- COVID Pandemic;
- reduction in Crown Court sitting days;
- closure of courts;
- historic reduction in number of full-time criminal advocates;
- Criminal Bar action on fees.

10. The backlog has been exacerbated by the following:

- increase in receipts into the Crown Court;
- increase in ineffective trial rate;
- inefficiencies in the Criminal Justice System;
- individuals taking advantage of the system;

Increase in receipts into the Crown Court

11. According to the National Audit Office report into the backlog (May 2024)[1] the MOJ did not anticipate the increase in receipts.

Ineffective Trial Rate

12. There are now significant problems with trial effectiveness. The latest statistics show that the ineffective trial rate has increased from 15% to around 25%. This is at the same time as the number of vacated trials has crept back up to historically high levels (approximately 5,000 cases in Q3 2024)[2].

Inefficiencies

13. The more glaring ones include:

i. The table for interpreter services shows a significant increase in 2024 of unfulfilled bookings.

ii. There are no easily identifiable statistics on Crown Court delays in terms of production of defendants, but anecdotal reports suggest it is becoming increasingly difficult to start remand cases on time at court. Some courts (including the Central Criminal Court) are not provided with enough staff to escort and accompany remanded defendants to and from cells and in the dock. This has been termed 'dock failure'. Delays not only affect individual hearings, but have knock-on effects on other hearings in the list and also cause adjournments, thereby causing further delays.

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[1] https://www.nao.org.uk/wp-content/uploads/2024/05/reducing-the-backlog-in-the-crown-court-1.pdf

[2] Taken from Table C2 sheet from the published MOJ tables for Q3 2024.

iii. Inconsistent approaches to listing cases on particular days and at marked times across different court centres resulting in counsel being unable to maintain continuity in cases or being cross-courted. Lists are now frequently published after 4:30pm, and sometimes after 6pm. This massively increases the possibility of one or other side being unrepresented.

iv. Lack of engagement between listing, CPS, barristers' clerks and solicitors.

Individuals taking advantage of the system

14. There is little incentive for defendants to plead guilty when they know a 2 or 3 year period on bail (often with a qualifying curfew) is the alternative option. That alternative becomes even more attractive when the prospect of having the case dropped due to disengagement by the prosecution witnesses is also a clear possibility.

15. There is also anecdotal evidence of increasing examples of unscrupulous legal professionals encouraging defendants to delay entering guilty pleas until after the trial has commenced, Advocates are then inviting significant credit given the delay in a case coming to trial and the lack of need to call many witnesses. Solicitors involved in this practice will benefit from high fees under LGFS because the trial has been deemed "effective".

16. This will not show up in the statistics, but its effect on the Crown Court can be serious as it often involves high-value multi-handed, multi-week trials. The knock-on effects include:

i. court lists are taken-up with trials that ultimately crack after a few days;

ii. co-defendants who ought to plead guilty are swept up in the practice as they choose not to plead because others have made that decision;

iii. days of court time are wasted with starting a trial which ultimately never gets off the ground bar an opening and some trivial evidence;

iv. other substantial cases are not able to be accommodated at short notice;

v. advocates are forced to completely prepare cases for trial which should never really have commenced, meaning days of their time and focus is wasted which could be better utilised preparing cases which will actually be truly effective.

17. The Criminal Bar Association would encourage Sir Brian to ask Resident Judges about this practice and to establish whether it has become as pervasive as many suspect.

18. An emergency, cost-neutral change to LGFS which raised the fee for a cracked trial while lowering the fee for a trial would destroy this perverse incentive, while putting the LGFS regime on the same footing as the AGFS scheme (which already has equalised fees whether a trial or a crack).

The Identification of Cases in the Backlog

19. In order to remove cases in the backlog, it is necessary to identify them. First, there must be agreement on the dataset to be used. The most recent Ministry of Justice statistics (July to September 2024)[3] were produced in the context of an ongoing consultation relating to improvements of the statistical data used by the MoJ. It states:

> "*The Crown Court caseload data series (receipts, disposals and open cases) and estimates of the age of the open caseload published here use the "One Crown" caseload definitions. All other published metrics retain the existing methodology here, though we are looking to update them in the future.*
>
> *The proposed alignment of definitions runs beyond just caseload estimates and looks to harmonise our approach to all published Crown Court performance measures as well as key breakdowns and categorisation used.*

[3] https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-july-to-september-2024/criminal-court-statistics-quarterly-july-to-september-2024#statisticians-comment

We will continue to regularly review the presentation and breakdown of Crown Court measures ahead of a fuller release of the improved approach for additional measures in March 2025 and throughout future editions of the statistics release."

The statistics for the end of the third quarter of 2024 show that the number of open cases stood at over 73,000. By way of comparison, the figure was around 44,000 cases in 2016.

20. See table below taken from the "open cases pivot table" up to Q3 2024:

		Values			
year	quarter	Sum of 0. Total cases	Sum of 1. Valid cases	Sum of 2. Open duration (median)	Sum of 3. Open duration (mean)
2016	Q1	48,180	46,728	112	178
	Q2	44,788	43,466	107	180
	Q3	43,385	42,100	101	178
	Q4	43,030	41,774	99	177
2017	Q1	41,629	40,484	94	170
	Q2	41,022	39,888	93	169
	Q3	40,108	39,038	96	171
	Q4	38,887	37,851	97	174
2018	Q1	36,741	35,683	101	175
	Q2	35,534	34,515	93	171
	Q3	34,536	33,574	90	168
	Q4	32,952	32,018	88	165
2019	Q1	33,013	32,113	80	157
	Q2	34,125	33,190	83	153
	Q3	35,310	34,346	88	153
	Q4	38,016	36,929	91	157
2020	Q1	40,862	39,630	104	165
	Q2	43,052	41,808	152	208
	Q3	51,220	49,828	114	200
	Q4	56,954	55,433	126	211
2021	Q1	59,719	58,151	147	226
	Q2	60,748	59,009	159	239
	Q3	59,829	57,990	176	256
	Q4	58,522	56,734	190	271
2022	Q1	58,056	56,103	178	275
	Q2	59,366	57,388	169	282
	Q3	62,963	60,743	178	290
	Q4	62,637	60,223	185	298
2023	Q1	61,992	59,419	178	297
	Q2	64,624	62,051	163	289
	Q3	66,426	63,703	159	285
	Q4	67,284	64,358	165	287
2024	Q1	69,054	65,950	160	281
	Q2	71,042	67,857	156	276
	Q3	73,105	69,676	157	267

21. It shows that the backlog increased by approximately 30,000 cases, and the mean number of days for cases to complete has increased from approximately 6 months to nearly 9 months.

22. The volume of receipts to the Crown Court shows that the number of cases being sent is not that much higher than pre-pandemic figures, but the crucial difference is that the number of disposals is now consistently lower than that of receipts. It follows that, logically, where there are more receipts than disposals the backlog will increase.

23. The receipts/disposal deficit appears to be stuck at around 1,000-2,000 cases a quarter and we see this reflected in the consistent increase to the backlog. See table below taken from the Table C1 sheet from the published MOJ tables for Q3 2024:

24. Upon closer examination it appears that of the 73,000 open cases the breakdown is (approximately) as follows:

    i. 58,000 Crown Court trial cases (these will not necessarily go to trial)
    ii. 12,000 committals for sentence;
    iii. 3,000 appeals or other unknown matters.

25. Within these headings there is virtually no historical change in the third category of appeals and unknown matters.

26. There are about 25,000 more open Crown Court trial cases than there were 8 years ago (in 2016/17). It is essential to establish how many of these extra 25,000 cases (that make up the 58,000) are likely to be effective trials.

Capacity

27. While the cap remains on sitting days, the courts cannot work to full capacity. The cap must be lifted with immediate effect. It is unsatisfactory for courts to be required to wait until April each year for the number of sitting days to be allocated. As is happening now, when the Courts have reached their limit before April, they have to vacate listings already made, thus adding still more cases to the backlog.

28. Along with this, more use should be made of retired judges and Recorders. We see no insuperable obstacle to the use of non-Court rooms in court buildings for non-contentious CVP hearings, in which the physical presence of defendants is not needed (such as unused former canteens or rooms used for staff meetings). We would also suggest that

days when judges cannot sit should be more closely monitored, to eliminate any that are not strictly necessary.

29. While the 'Nightingale' Courts are costly and underused, there may be other venues that are more suitable for additional court space. Some Magistrates' Courts are already used as Crown Courts. It may be that arrangements could be made with the new owners of the old Blackfriars Crown Court, which has stood empty since it was sold in 2020 (used only as a set for TV drama).

30. Whether extra space can be found or not, we can see no obstacle (subject to consideration of the needs of witnesses) to priority custody cases being moved to convenient centres with shorter waiting lists. Even the most vulnerable witness in a rape case would probably rather travel to the other end of the country than wait two extra years for trial. The use of video links would mitigate most difficulties. We consider that Presiding Judges should be regularly furnished with details of such cases to direct circuit transfers where appropriate, with the aim of reducing the jeopardy of the current "postcode lottery" of waiting time for trials, for victims of crime and defendants alike.

31. Different court centres in comparable places appear to have managed their caseloads differently. We are not privy to the details but we understand that Liverpool, for example, is listing bail cases within nine months, while Manchester has cases listed as far ahead as 2028. It may be that lessons in best practice can be learned and transmitted. We are aware that HMCTS has had significant staff cuts and are overstretched. This must have contributed to difficulties with the efficient administration of Court business but does not explain disparity between the management of cases in comparable court centres

32. Figures provided by the MoJ to the Criminal Legal Aid Advisory Board in January 2025 show the fluctuation in the number of barristers practising in criminal law.

Number of barristers in each group by year

Barrister group	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
Any Crime	3,754	3,773	3,753	3,692	3,595	3,429	3,402	3,499	3,615
Self-declared Full Practise	n/a	n/a	2,727	2,673	2,554	2,424	2,542	2,615	2,726
Implied Full Practise	2,312	2,391	2,254	2,197	2,162	1,871	2,224	2,273	2,584

33. It can be seen that during the Covid-19 pandemic, numbers fell sharply but have recovered and are now close to pre-Covid levels The 'any crime' headline figure shows a 3.7% drop. However, the number of barristers available are contending with a larger number of cases awaiting resolution. In short, the supply of barristers does not match the demand for advocates to process the cases.

34. The headline numbers appear to mask losses of more senior practitioners. Analysing the 'any crime/ AC' numbers up to 2021-22, Lord Bellamy[4] found:

13.29 On the basis of the figures available, between 2015/16 and 2019/20 the AC group declined in number by about 6% (from 3,930 to 3,680) and the IFP Group declined by some 9% (from 2,490 to 2,270).185 In the SFP Group, between 2018/19 and 2019/20 the number declined from 2,780 to 2,690, about 3%. This is against the background of an overall drop in AGFS claims between 2015/16 and 2019/20 of some 26%.186 These figures, in my view, tend to suggest that the overall decline in numbers of criminal barristers is less, relatively speaking, than the fall in the amount of work.

13.30 Drilling down a little further, however, on the AC figures for the junior bar, it appears that between 2015/16 and 2019/20 there were reductions in the number of practitioners in the 8-12 years of practice band (from 530 to 280, -47%), in the 13-17 years band (580 to 480, -17%), and in the 18 to 22 years band (from 500 to 450, - 10%). On the other hand, numbers consistently rose in the 23+ years band (850 to 960, +13%).

13.31 The number of AC junior barristers in the 0 to 7 years band also consistently rose in the same period from 950 in 2015/16 to 1100 in 2019/20 (+16%), despite the overall fall in work over the same period. According to the Bar Council, criminal law pupillages have remained oversubscribed by about 10:1.

13.32 Specifically in relation to QCs, the AC figures show a decline between 2015/16 and 2019/20 from 520 to 400, some -24%, with a particularly

[4] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041117/clar-independent-review-report-2021.pdf

large reduction in QCs in the 18-22 years of practice range (140 to 40, a 67% decline). SFP QCs stood at 340 in 2019/20. IFP figures show a decline from 266 QCs in 2015/16 to 207 in 2019/20, a reduction of 22%.187.

13.33 A further source of data is the information provided to the Bar Council by barristers renewing their authorisation to practise certificates. This shows that in 2018/19 there were 5,110 barristers who indicated they did criminal work, of which 2,670 described themselves as criminal specialists – that is they self-report working (or intending to work) solely on criminal matters.188 In 2019/20 there were 5060 self-reported criminal barristers, of which 2600 described themselves as criminal specialists. This later number fell to 2440 in 2020/21, although those reporting a mix of crime and other work rose from 2460 to 2580, making 5020 self-reported criminal barristers overall. For 2021/22 (i.e. post the height of the pandemic) the figures are not yet complete, but so far 2420 barristers self-reporting as criminal specialists, and 2500 reporting a mixed practice including crime, have renewed their certificates.

35. From these figures, it can be seen that recruitment at entry level is not so great a problem as retention.

36. While this is not the occasion to be seeking a fee increase, it may be considered that advocates who are capable of taking on these cases, but are not taking them, or not working full time in crime, need to be incentivised.

Trials and Triaging

37. While an increase to capacity is an imperative, demand can sensibly be reduced.

38. Any available resources must accordingly be directed to identifying those cases that need to be tried and to those that ought to resolve without a trial. Hence the urgent need to establish a method of triaging.

39. We suggest that each court centre adopts a method of triaging the cases in its lists. There are different ways in which this could be done, perhaps adapting methods used during the Covid-19 pandemic. We do not presume to prescribe any particular method, but offer some possibilities.

40. Resident Judges will have experience of the types of cases that are most susceptible to resolution in their areas. We have been informed about the

approach taken in Liverpool Crown Court. Cases are listed for trial ambitiously, in the expectation, supported by experience that those selected are likely to resolve as guilty pleas. Domestic violence cases are listed within about 14 weeks of PTPH. They are rarely contested. Straightfoward drugs cases are listed within the same timescale. The guilty plea rate is higher than average and they almost never go to trial.

41. A group of Judges also reviews cases that are due for trial within the next three weeks, to see if there is potential for resolution (excluding RASSO or more complex cases). The judges then prepare a report which goes to the parties and in some cases to a senior CPS officer. The cases are then listed for 'final review' hearings, at which Goodyear applications are facilitated.

42. Alternatively, the selection criteria could be based on the time since charge, the position of the defendant (age, physical and mental health); or the position of witnesses/complainants. It may be that the youngest defendants should be prioritised to halt a slide into further offending.

43. Subject to their own resources, we would recommend that the CPS reviews the charges of cases in the list.

44. We would also recommend any steps to encourage the earliest possible engagement between prosecution and defence, to determine whether cases can be resolved without a trial. Earlier, full service of prosecution case, including disclosure of unused material (cf. Leveson 2015 §23). Prosecutors should whenever possible provide an indication of their view of the likely categorisation of offences, with reference to the applicable Sentencing Council's guideline. The Criminal Procedure Rules can be amended to require earlier and proactive engagement by both sides. Early case ownership is essential to progress and the avoidance of delay.

45. To incentivise this and reduce the unscrupulous behaviour commented on above at paragraph 14, legal aid fees should be redistributed to reward early engagement. This must go hand-in-hand with the CPS proactively serving evidence as early as possible (cf. Leveson 2015 §72).

46. We recommend greater intervention by Judges who should feel less inhibited in expressing their view about the appropriateness of charges and potential sentences.

47. If after due consideration it appears that an offence brought before the Crown Court can better be represented by a summary-only charge, the Court should remit the case to the Magistrates' Court under Section 46ZA of the **Senior Courts Act** 1981).

48. The reality of everyday practice is that indications of sentence are rarely sought and more rarely given. Few judges have the confidence that the Recorder of Bristol showed in **Redding** [2021] EWCA Crim 1502, in raising sentence as a matter of case management at PTPH (while being scrupulous to avoid **Nightingale** [2013] EWCA Crim 405 arm-twisting). Given that sentence is so very often the single most relevant feature in a plea decision, and that there is likely to be a still further BCM restatement, it would be an easy matter to make clear that judges are encouraged or even expected to canvass the parties' view of sentence in the light of any applicable Guideline at an early and meaningful hearing (see paragraph 59ff below). More judicial pro-activity would require a cultural change but we see it as a helpful step; as has been the case in Liverpool. Provided no unfair pressure is brought to bear, we see no principled objection to informing defendants of the likely outcome of a guilty plea. It may be thought that many simply want to know.

49. The most obvious (but in our view the least attractive) way to cut the backlog would be for emergency legislation that reclassifies some 'either-way' offences as summary only and retrospectively cancelled sending decisions and defendants' elections. We do not recommend it, but we are not opposed to reclassification in principle and see reclassification as a viable means to reduce demand in the Crown Court. Offences such as assaulting an emergency worker, or lower-value drugs offences, or less serious sexual offences, could be re-classified without injustice to victims or harm to the public interest.

50. In other cases, demand on the Crown Court can be reduced by bringing the law up to date. In cases of low-value theft and criminal damage that are triable summarily, the thresholds(£5000 and £200) were set in 1994 and 2014 respectively and have not been adjusted for inflation and should be.

51. In the trial process itself, we are not opposed to greater use by Judges of their power to place reasonable time limits on advocacy – speeches, oral submissions and cross-examination. This was recommended in Leveson 2015 (paragraph 11.53) and is included in the Criminal Procedure Rules, but Judges rarely invoke it. In daily practice we encounter trials that are prolonged for no good reason. In addition, we would recommend that summing up on facts should become the exception rather than the rule, and should be concise. We have all experienced summings-up in which the judge reads out their notes of the evidence at length. Time can also be saved by the early provision of draft legal directions.

Committals & Sentence Hearings

52. Committals for sentence are at a historically high level. Quarterly receipts are over 11,000, up from historical receipts of 7,000-8,000. The backlog stood at 12,000, more than double the historical figure of 5,000. A targeted approach at disposing of the majority of committals for sentence would have an immediate impact on the backlog.

53. One possibility, for the medium term, would be to remove the power to commit for sentence altogether (save for cases where an offender is considered/ believed to be dangerous). If Magistrates apply the allocation guidelines rigorously, and if certain offences are reclassified as summary only, there should be no need for the Magistrates to commit for sentence. More legal advisers should be recruited and trained. We note that Sir Brian emphasised how important allocation is, in the 2015 Review (paragraph 21).

54. We also note that sentencing in general is presently under a separate review by David Gauke, so any proposals we make must be tentative at

best. Lengthy, adjourned sentence hearings often disrupt ongoing trials, and create more delay.

55. That said, we think that steps can be taken to speed up sentencing and save court time:

- Judges to use discretion over credit more widely, especially when there has been substantial delay;
- more use of stand-down probation reports (Leveson 2015 paragraph 6.7);
- time limits on advocacy;
- list at end of court day.

PTPH

56. In our view, the PTPH system is inefficient, inconsistently practised, and a source of delay, as they often disrupt ongoing trials.

57. There is in theory only one Crown Court which sits in different venues, but there is no single protocol for the conduct of its more routine business. Some courts list PTPHs on particular days, some in the morning before trials. Some courts insist on the presence of trial counsel at PTPHs or at FCMH or mention hearings, some do not. Some courts - even within courts, some Judges - permit the use of CVP for trial counsel to attend with grace, others grudgingly or not at all. Some courts allow case progression officers to make decisions as an authorised court officer in accordance with Part 6A of the **Courts Act** 2003 and rule 2.7 of the Criminal Procedure Rules 2020 or encourage the parties to vary time limits themselves, while others require judicial imprimatur in every instance. Some courts list further case management and pre-trial review hearings in every case no matter the seriousness, some only where there might be a particular reason for it. Some require counsel and officers to attend such hearings in person regardless of the fixed time, whilst others list them at 9:45 and invariably by CVP.

58. This lack of consistency brings inefficiency. In those centres (or worse, multi-centre single-administered court clusters) with whole day PTPH lists, trials wait indefinitely while counsel queue at the cells and in Court to complete their PTPHs. Where administrative work is done before trials, juries wait while multi-handed PTPHs wait for prison vans to bring defendants. Counsel who have been refused CVP by one judge travel for hours to appear in Court only to see that their opposing Counsel have been granted CVP by a different judge and appearing from their Chambers forty miles away.

59. We suggest that a regional protocol is needed for the listing of administrative work to address timings of PTPHs, which hearings need judicial decisions, and when trial counsel may be properly required to attend pre-trial mentions in person. If the backlog is to be reduced then the limited available workforce needs to be engaged in trial work for as much time as is possible, and that should be the focus of the protocol. Given the regional differences such as the different distances between courts and feeder prisons and the clustering or isolation of court centres, a one-size-fits-all system may be difficult to adhere to, but a degree of consistency would be welcome.

60. We commend the protocol used at Reading Crown Court (attached) which makes CVP the default for most non-contentious hearings.

61. As a medium-term proposal, we advocate a radical reform to the PTPH. We submit that it is not necessary for every case.

62. At PTPH the Crown Court will be unlikely to have any documents (except the transfer notice) which were unavailable in the Magistrates' Court. The current format for such a hearing is for the Defendant to be arraigned, stage dates to be read out from a ready reckoner, for bail or remand to be considered and for warnings to be given to the defendant. Without service of the Crown's case, or most of it, little progress can be made in Court which could not be made administratively. There is no reason why a defendant who wants credit for an early plea should not indicate as much, after which a hearing can be arranged.

63. As the Prosecution case is not required to be served until *after* the PTPH, it can be no more than a very broad exercise involving some guesswork as to what evidence might follow .

64. While we express these doubts about PTPHs generally, we do consider that, if they are thought necessary in some or all cases, they should take place after the prosecution case has been served and enough time has passed for it to be digested by the lawyers and their lay clients.

65. We recall that under the former Plea & Case Management Hearing regime, the point of arraignment came later in the process, when a case had been served and defendants were expected to have served a defence statement and settled their witness requirements. That brought a proper sense of case ownership to the advocate and made for more effective case management. It also crystallised the point at which credit for a plea became truly significant for the defendant.

66. CBA members are of the view, from experience, that the reduced credit available at PTPH tends to stiffen the resolve of those who have chosen not to offer pleas in the courts below; and that this effect is particularly acute in those serious cases in which the shape and strength of the evidence is unclear by PTPH and whose length and complexity cause the greatest drain on the public purse and have the greatest impact upon the lists.

67. Some judges will at trial speak of "unusual" credit, given the prospect of a 4/6/8/10/12 week trial, and that often unlocks cases; but by trial a great deal of the damage has been done. If credit reductions are plotted against the current average timescales for trials the reduction between sending and PTPH looks precipitous, even punitive. By way of example, if a defendant is sent to the Crown Court for a burglary worth 3 years' imprisonment after trial:

    a. a plea in the magistrates' court would be worth a reduction of 1/3, so a reduction of 12 months taking the sentence to 2 years;

b. a plea at PTPH only 4 weeks later would be worth a reduction of 1/4, so a 9-month reduction taking the sentence to 2 years and 3 months; the defendant has in effect lost 3 months' of credit in 1 month;

c. a plea on the day of trial, perhaps 18 months later in the best case scenario, would be worth a reduction of 1/10, so a reduction of 3 months taking the sentence to 2 years and 9 months; the defendant has in effect lost 6 months' of credit in 18 months.

68. In the example above, the defendant is losing credit at a rate nine times slower after PTPH than before it. If the trial were, as it probably would have been when the rules were framed, listed within 6 months, then the difference between pre- and post-PTPH credit loss would be only three times.

69. If the justification for credit is public benefit, we submit that restoration of one third at a later PTPH would bring little greater expense for potentially significant gain. We would support a larger discount, to encourage early pleas, subject to any recommendations made by David Gauke in the parallel review of sentencing.

Access to Defendants

70. Lawyers cannot advise their clients if they cannot meet them. Conference time at court for defendants on remand tends to be limited by the requirements of the security staff. There may be time before court if they are delivered promptly but that has become an increasing problem. Advocates find that the late arrival of remand prisoners has become an almost daily occurrence across the country. Judges are powerless to enforce contracts made between the Ministry of Justice and the private security companies. Again, the time wasted was highlighted in Leveson 2015 (paragraphs 207ff) but there has been little or no sign of improvement. In the experience of our members, the problem has, if anything, become much worse.

71. Lack of access to defendants in (some though not all prisons), whether by video-link or person is yet another source of delay, when there is insufficient time to explain and advise properly, so that defendants can make informed decisions in good time.

TECHNOLOGY

72. We recognise that technological improvements are a longer-term project and will involve considerable expense. We have considered present failings, which create delay, and the benefits of improved technology.

AI

73. We expect that there will be scope for AI in many areas, subject to rigorous testing, but we identify two in particular: listing and transcripts/translation.

74. AI may be able to assimilate listing data for a number of Courts, for example clustered in one area or across a Circuit, to provide lists for all the Courts in that area.

75. It may also prove useful in translating written and oral evidence replacing interpreters. It could also be used to provide instantaneous transcripts of evidence, as LiveNote does at present.

76. Whether its use in legal research or drafting assists in the criminal sphere, remains to be seen.

Tablets

77. Tablets or Ipads are already in use in some trials. If used efficiently they save time taken to generate, copy and distribute paper documents.

Existing Systems

78. The experience of CBA members is that current technology provision is not being used to its full potential. The reasons include insufficiently

powerful or reliable wifi, software and hardware breakdown, poor retrofitting in courtrooms not designed for installation of computer hardware, lack of/total absence of training, variations between police forces, CPS areas and courts; and systems which are unfit for purpose.

79. Communications between systems used by the police and the CPS are unreliable, as are those between the CPS and the Crown Court Digital Case System.

80. This results in evidence and unused material not being properly transmitted to the CPS, and relevant evidence and unused material not being served or disclosed in a timely fashion. Material that is served, is often served in a haphazard way with variation in standard practice between individual officers, police teams, forces, CPS lawyers and CPS areas.

81. The CPS is unable to transmit or receive larger quantities of material by email (in a non DCS case), and seemingly cannot (or cannot always) use Egress or Dropbox. It is not clear if that is a systems fault or if it is a result of a lack of training of CPS lawyers. Our experience is that egress has poor functionality, cannot be adequately searched and is cumbersome to use. We would endorse phasing out the use of egress.

82. Communication between the police, CPS and defence solicitors is frequently hampered by the use of generic email addresses. Communication with a named person via these email addresses is often delayed or missed. Emails sent to generic email addresses are often not responded to, leading to ineffective preparation and sometimes wasted hearings.

CCDCS

83. The CCDCS has been a success on the whole. Having case papers in a centralised digital location, with each exhibit and statement having its own number has improved case management and presentation. Amendments to the system to add in sections for unused material,

Proceeds of Crime Act applications and appeal documents has worked well. Nevertheless, we are of the view that improvements could be made to CCDCS to make it more user friendly.

84. Some features of CCDCS, such as the ability to search a case and take other participants to a particular page, are not widely known about or used. We consider this to be a failure of training. We encourage provision of a training package, to be completed remotely for both advocates and judges. Completion of this could form part of a practitioner's CPD and be a condition of receiving a practising certificate.

85. Some judges, particularly resident judges, have implemented schemes for the usage of the 'Notes' function on DCS. We endorse a uniform policy of applying notes to a case so that notes appear chronologically. Additionally, we endorse greater use of the 'Case information' page to show the stages which the proceedings have reached. This would particularly benefit those covering hearings on behalf of colleagues or fee-paid judges who are often asked to preside over administrative hearings with very little knowledge of what has happened before (or even what the case is listed for).

86. Evidence.com and other platforms used for sharing evidence (apart from egress) are an excellent tool and consistently seem to work well. However, they are often used by the police to transmit large files to the CPS by way of an MG0 MME coversheet. This necessitates downloading the coversheet document and following a link to download the evidence. In the case of CCTV evidence we would hope that CCDCS could be amended automatically to allow the clicking of an embedded link without the need to download a document. Where the embedded document is an evidential document, such as a pdf, we would encourage the CPS to download the document from the evidence.com link and upload the document to CCDCS. This would allow all parties to reference particular CCDCS pages, search documents using the 'search case' function and take other parties or the judge to a particular page. Issues are also caused with remuneration when documents are served by way of an MG0 MME coversheet. Despite it being evidence in the case, and

having to be considered like any other document, arguments are had as to whether pages served by MGO MME are PPE.

87. CCDCS is also unable to facilitate the uploading of files in Microsoft Excel format. Telephone data is usually provided in this format and is often voluminous. This results in large Excel files having to be emailed to defence solicitors or experts. Logistically this creates problems and there is frequent dispute as to whether telephone data has actually been sent or not and, on occasion, whether it has been properly served. We would endorse the CCDCS being amended so that it is able to accept Excel files and the creation of a section specifically for telephone data so that parties are able to see exactly what has been served and download it, if required. Even if CCDCS could not be amended to allow viewing of Excel files in the 'Review' section, we are of the view that there should be a function by which telephone data can be uploaded to and downloaded from CCDCS.

Technological equipment in court

88. Technological equipment in court is inadequate. We have identified the following problems with equipment in court which arise time and again. These inevitably lead to delays at every stage of the proceedings.

    a. Internet – in some court buildings the GovWifi is unreliable and not of sufficient strength to support CCDCS or CVP. These courts should have remedial work undertaken to ensure there are sufficient routers and that the bandwidth can support the traffic.

    b. Microphones in witness boxes/counsel's row/the bench – often the microphones in court are simply used for the purposes of DARTS and do not amplify voices. Those that do amplify are often antiquated and distort the voice when people speak too close to them. Many participants in criminal proceedings, both witnesses and defendants, are unused to speaking publicly and struggle to project their voices in court. We would encourage a review of court recording and amplification equipment to ensure that it is fit for purpose.

c. Charging points – charging points on counsel's row often do not work. In large multi-handed cases there are sometimes not enough charging points. We would encourage sufficient working charging points on counsel's row. There are insufficient charging points in robing rooms and conference rooms.

d. Audibility issues/Hearing loop – the hearing loops often do not work. Defendants often struggle to hear in a secure dock. It is obviously of paramount importance that defendants are able to hear the proceedings and we would encourage a review of speakers in the dock which ensure that defendants can hear what is being said.

e. Screens – the presentation of digital evidence, particularly CCTV and ABE interviews is done through screens. Often screens are mounted on walls tens of feet from the jury or wheeled around the court on dollies. This is cumbersome and does not allow the jury to view the minutiae of evidence which may be important in the case. Individual screens that are in court are often not of sufficient resolution to match the clarity of modern camera equipment. Screens on the judge's bench do not always work, leaving the judge to crane around and try and see the jury's monitor. Connections between counsels' laptops and court equipment often fails resulting in delays.

f. Paper evidence – juries are still provided with large quantities of paper. The indictment is provided in paper form, so too (in most cases) are pictorial exhibits and agreed facts. Printing voluminous evidence into bundles causes considerable delays. Printing equipment at court is often unreliable and often produces poor quality reproductions.

g. Given that evidence presented to juries will become ever-more digitised we would welcome consideration as to whether jurors should be provided with a secure tablet, each with limited functionality. This would allow documents, video footage and graphics to be exported to the tablets and shown to juries in real time.

CBA members have experience of conducting large-scale fraud trials where external companies are engaged to provide iPads to juries so that evidence can be presented digitally. We have found that this is an effective way of presenting cases. It further eliminates the unreliability of printing large volumes of paper. Jurors can annotate and make notes on documents using these tablets. Sub-folders can be created for prosecution and defence documents.

'Hybrid'/Intermediate Court

89. Without an understanding of the form that such a court might take, it is difficult to comment on its merits. We would point out that the establishment of such a court will require complex amendment to primary legislation. The expense is unknown, but is likely to include the cost of new data systems and training for its staff and judiciary, whose new functions will deplete the existing headcount unless more are to be recruited – and trained – at additional expense. Judges sitting in the Court would be taken away from more serious cases in the Crown Court, and Magistrates would be removed from the Magistrates' Court.

90. We do not see how setting up this court would help to clear the backlog.

91. Practical considerations aside, the establishment of a new court and the partial abrogation of defendants' right to elect jury trial give rise to constitutional issues beyond the scope of this exercise. A concrete, reasoned and costed proposal would need to be put forward and subjected to widespread consultation and scrutiny by all interested parties.

92. For the reasons given in this document, we think that relatively minor adjustments to systems already in place are more likely to reduce the backlog and prevent a similar one arising in future. But above all, we regard the key to reducing the backlog is getting the Crown Court working at full capacity.

29th January 2025