

**COURTS AND TRIBUNALS BILL SUBMISSIONS TO THE
GENERAL BILL COMMITTEE OF THE HOUSE OF COMMONS**

INTRODUCTION

I make these submissions to the General Bill Committee of the House of Commons as a private citizen, who has had experience of both trials by jury and also appeals to the Crown Court from the Magistrates' Court, in a supportive one as lay observer and supporter.

REFERRAL TO A GENERAL BILL COMMITTEE OF THE HOUSE OF COMMONS

1. The Bill was directed to be referred to a General Bill Committee of the House of Commons at the conclusion of the 2nd Reading Debate on 10th March 2026.
2. This was surprising, as clearly the Bill proposes to make a major change to the constitutional right of defendants in criminal cases to choose to elect for trial by jury at the Crown Court for triable either way cases that would be likely to attract a prison sentence of up to three years imprisonment.
3. It would also be argued that to a similar extent, the right to restrict the right to an appeal to the Crown Court against both conviction and sentence at the Crown Court also seeks to make a similar constitutional change.
4. It has been previously customary for the House of Commons to refer Bills that make such major constitutional changes to a Committee of the full House of Commons.
5. This occurred in the case of the European Union Referendum Bill in 2015/6 and the subsequent European Union (Withdrawal) Bill in 2017-19.
6. Both of these Bills obviously made major changes to the constitutional state of the United Kingdom, and no reasons have been given as to why it has been thought fit to refer this particular Bill to a General Bill Committee of the House of Commons.
7. In the event that the Committee finds that this Bill does make major constitutional changes, it is invited to refer the Bill back to the full House, so that the whole House may consider the Bill in Committee, as has been customary in the past.
8. The House may still direct that the Bill is considered in part in a General Bill Committee and that other parts be considered by the whole House however.
9. It is surprising that this option was not considered or taken in relation to this particular Bill.

RESTRICTION OF THE RIGHT TO ELECT FOR TRIAL BY JURY

This relates to clauses 1-5 of the Courts and Tribunals Bill.

10. The proposed restriction of the right to elect for jury trial for offences likely to possibly attract a prison sentence of under three years imprisonment will do nothing to affect the current back log of cases, or reduce the amount of court time taken up to try defendants by jury.
11. In jury trials, the jury hear the evidence, which is presented in the same manner as would be if the trial took place before a judge.
12. The only additional times are the prosecution opening and closing speeches, and the right to present these would clearly remain before a trial before a judge, as is the case in civil cases.
13. Clearly the prosecution has the right to outline their case either to a jury or a judge, and both parties to sum up their case again either to a jury or a judge, and if restricted to a judge, the time taken would be no different.
14. If the case were tried before a judge, the judge would then have to either deliver his findings *ex tempore* or reserve his judgment, as in both cases he would be required to make his findings of fact, as well as rule on issues of law.
15. This is what currently occurs in civil cases, and currently in cases tried with juries, the judge has to deliver his summing up, directing the jury on the law and what facts are open to them to find, leaving it up to the jury to make those findings of fact themselves independently.
16. Therefore, trials by judge regarding the time taken to deliver the judgment, or to sum up to the jury would not take up any more time than currently summing up, and as the judge may have to deal with the facts of the case, may take up considerably more time than at present, especially if the facts presented have been complex, as sometimes occurs in cases involving the consideration of documentary evidence.
17. In addition, currently, once the judge has delivered his summing up and the jury has retired, the court usually begins to hear another case, which is then briefly interrupted for any returned verdict in the meantime.
18. In most cases, once a jury's verdict has been returned, the defendant is remanded for sentence at a later date, either in custody or on bail, so again, no additional time is taken up than at present.
19. The only other time issue is the initial empanelling of the jury that takes place at the beginning of the trial, but in most trials, this takes no less than a quarter of an hour, especially as the rights of objection to jurors has been considerably reduced from what it was originally.
20. The proposed test under clause 3 of the Courts and Tribunals Bill, insertion of proposed section 74A(5) of whether any likely sentence would be three years imprisonment as the trigger for trial by judge is also too speculative and vague.

21. The Bill also gives no indication of what happens if a Judge of the Crown Court subsequently considers that there is a possibility that a sentence greater than three years imprisonment could be given.
22. The right to a trial before ones' peers is also guaranteed by section XXIX of *Magna Carta 1297*, which is still on the statute book.
23. It is correct that the concept of triable either way offences did not arise until the passing of the Administration of Criminal Justice Act 1855, but that only provided that some offences that were previously only triable by jury could be tried summarily, but importantly, also gave the right to elect for trial by jury to defendants.
24. It also gave the right of the Magistrates' Court to send a case to the Crown Court if they considered summary trial to be inappropriate, due to the seriousness of the case, which is still the case under the Magistrates' Courts Act 1980 at present.
25. Therefore, the issue raised by the Minister of State Ms Sarah Sackman MP regarding this does not have foundation and in my view is not relevant.
26. Therefore, whether or not such proposed restrictions on the right to elect trial by jury would or would not be in breach of schedule 1, article 6(1) ECHR to the Human Rights Act 1998 is irrelevant, as the right is a constitutional right guaranteed under statute, notwithstanding that it has been restricted in part as a result of subsequent legislation.
27. As such, the current proposals raise constitutional issues, and the Government does not have any mandate from the electorate for them and there was no reference to them in the Labour Party Manifesto in the 2024 General Election, unlike the Human Rights Act 1998, which was also a constitutional change and was clearly mentioned in the Labour Party Manifesto of 1997, "bringing rights home".
28. Therefore, as the current proposal is a major constitutional change, a *Referendum* should be held on the issue, in the absence of any current democratic mandate for such a change.
29. The proposals would cover cases such as theft, shoplifting and fraud offences, as well as some offences against the person for assault, and some public order offences, that findings of guilty for defendants would have a profound effect on their standing as citizens.
30. In addition, no persuasive arguments have been put forward as to why a prison sentence for under three years imprisonment would be likely to be less detrimental to a defendant's reputation and standing say from one of four years imprisonment and upwards.
31. As most offences currently tried before juries carry a potential prison sentence, then the liberty of the subject is at stake, and all procedural safeguards regarding wrongful

verdicts should therefore be retained by keeping juries to try such cases where the defendant elects to be so tried.

32. The current jury system also works well, and juries by and large reach the right verdicts, notwithstanding the occasional perverse ones, although in most cases of acquittals, this is because the jury were not satisfied that the evidence as presented to them merited a guilty verdict.
33. Juries therefore perform a valuable public service and are already an adequate safeguard against wrongful findings of fact and miscarriages of justice, especially when the judge is expected to give them an impartial summing up both on the law and reviewing the evidence, reminding them importantly that they are the sole judges of fact in the end.
34. In addition, the Minister has sought to weaponise victims and in particular women who have been the victims of sexual assaults etc. to attempt to justify these proposals.
35. In fact, most victims, and in particular most women who have suffered sexual assaults have far more confidence that their evidence would be viewed impartially and favourably by juries who apply their ordinary common sense and experience of everyday life than judges; who after trying many cases may get what is termed “case hardened” against both defendants and victims of crime alike.
36. It is contended that the real reason behind the current proposals are to make it easier for the prosecution to secure convictions, as Judges are more likely to favour the prosecution than juries and are more prone to accept submissions from the prosecution regarding factual issues and the credibility of witnesses than juries.
37. In other words, it is an attempt to “rig the ballot” in favour of the prosecution to obtain a more favourable and certain verdict than would otherwise be the case.

REMOVAL OF THE AUTOMATIC RIGHT OF APPEAL TO THE CROWN COURT FROM THE MAGISTRATES’ COURT

38. This relates to clause 7 and schedule 2 of the Courts and Tribunals Bill.
39. The current automatic right to appeal by way of complete rehearing of the case heard before the Magistrates’ Court currently works perfectly well and is an important safeguard against miscarriages of justice.
40. There is already the alternative right of appeal by way of Case Stated to the Administrative Court for both the prosecution and defence on points of law and jurisdiction issues under section 111(1) of the Magistrates’ Courts Act 1980 and rule 35(1) of the CrimPR 2025.

41. This right is however not automatic as the Magistrates' Court may refuse to state a case if they consider that the application is "frivolous" under section 111(5) of the Magistrates' Courts Act 1980, which is already an adequate procedural safeguard against misconceived applications that have no "reasonable prospects of success".
42. In such circumstances, the aggrieved party may challenge such a finding by an application for a Mandatory Order under section 111(6) of the Magistrates' Courts Act 1980, by an oversight, still referred to as an Order of Mandamus, and the Administrative Court now usually deals with such applications as it would an appeal by Case Stated, so that all matters are determined decisively in the one set of proceedings, see Sunwold v. L.B. Hammersmith & Fulham [2000] 1 W.L.R. 2102.
43. Therefore, as this avenue of appeal will remain intact under the Courts and Tribunals Bill, any restriction on the right of appeal on both fact and law by way of a complete rehearing in the Crown Court is rendered totally unnecessary and possibly will give rise to duplication of almost identical remedies.
44. Currently, the right of appeal against conviction to the Crown Court under section 108(1)(a) of the Magistrates' Courts Act 1980 is an important safeguard regarding the determination of factual issues and credibility of disputed witnesses' evidence.
45. Likewise, the right of appeal against sentence to the Crown Court section 108(1)(b) of the Magistrates' Courts Act 1980 is an important safeguard regarding any arbitrary use of sentencing powers by Magistrates.
46. Regarding convictions, as unlike trials on Indictment, the defendant also has not had the benefit of a trial by jury, but only by either three lay Justices or a District Judge, who may be more inclined to find a defendant guilty than a jury.
47. Therefore, the analogy sought to be made by the Minister for Justice that the same restrictions on the right of appeal with leave of the Court of Appeal (Criminal Division) after a trial by jury should be applied to appeals to the Crown Court is not well founded.
48. In addition, further evidence may be called by either the prosecution and defendant in appeals to the Crown Court, so the current procedures may in fact be more beneficial to the prosecution, as additional or technical or formal evidence may then be produced that may have been omitted for one reason or another before the Magistrates' Court, in many cases by oversight.
49. The same also applies to Defendants, as additional supportive witnesses may have become available since the date of conviction, or additional documents may be produced that exonerate a defendant.
50. It is also sought to introduce a paper application for leave to appeal to the Crown Court with no right to an oral hearing under schedule 2, clause 4 of the Courts and Tribunals Bill, insertion of proposed section 108A(2).

51. This may be in breach of schedule 1, article 6(1) ECHR to the Human Rights Act 1998, as although this paper filter is used applications for permission to appeal in civil cases, the procedural guarantees are much stronger in criminal cases than civil ones under the Strasbourg jurisprudence.
52. In addition, defendants seeking leave to appeal from trial on Indictment to the Court of Appeal (Criminal Division) under the Criminal Appeal Act 1968 may currently renew applications for leave to appeal to an oral hearing under section 31(3) of the Criminal Appeal Act 1968 rule 36(1)(a)(b) CrimPR 2025, after refusal of leave to appeal by the paper judge under section 31(1) of the Criminal Appeal Act 1968.
53. No justifying arguments have been put forward as to why it is therefore proposed to restrict the right to an oral hearing for leave to appeal in the Crown Court, which could be considered discriminatory in this context.
54. As most cases tried in the Magistrates' Court are for minor summary offences carrying no more than 6 months imprisonment, the proposals for remitting for retrial of such charges after the quashing of a conviction in the Crown Court would also seem totally disproportionate, as proposed under schedule 2, clause 4 of the Courts and Tribunals Bill, insertion of proposed section 108F(2).
55. The position of similar powers in the Court of Appeal (Criminal Division) for defendants convicted on Indictment bear no similarity at all, as these may include the most serious of offences, such as terrorist related cases and murder cases, where re-trials may well be justified as being in the overall "interests of justice.
56. This can hardly be the case with cases tried summarily, which in many cases may be for purely finable offences not carrying a maximum prison sentence penalty.
57. Finally, appeals in the Crown Court take up far less time than trials on Indictment, and restricting the right of appeal will in fact have very little impact on the allocation of court time frames for disposing of cases, as they usually are listed for less than a day's hearing.
58. It is contended that again, the real reason behind the current proposals are to make it more difficult for Defendants to challenge their convictions and sentence from the Magistrates' Court and that way, uphold convictions and sentences that may be unjust or unfairly and unlawfully obtained.
59. In other words, it is an attempt to "rig the ballot" in favour of the prosecution to obtain a more favourable and certain verdict than would otherwise be the case.

OVERALL CONCLUSIONS

60. The proposed restrictions on defendants being able to elect for trial by jury and the rights of appeal to the Crown Court will do nothing substantial to reduce the time taken to reach final decisions in the Crown Court.
61. The solution is clearly to provide more judges and court sittings and to provide proper and adequate funding for the courts to clear the backlogs.
62. It is clear that the whole court system has been grossly under-funded for many years, and successive governments have done nothing to alleviate the situation.
63. The case of Liverpool Crown Court is an example of how resources should be allocated and that particular court has hardly any backlog of cases waiting to be tried and determined at all.

Dated 13th March 2026

T Ewing