

Written evidence submitted by His Honour Geoffrey Rivlin KC (CTB14)

A BAD PIECE OF WORK

I cannot speak for serving judges – as it happens, nor can they – but I believe I can speak for many retired judges in saying that throughout this long judge-alone saga the CBA and the Bar Council have been magnificent. It must have taken, and is still taking, an immense amount of hard work. It has been relentless, but they have never missed a beat. All credit not only for the work they have done, but the way in which they have done it.

Many valuable contributions to the cause of jury trial have already been made. The Chief Justice has made one of the most important, announcing that she has ‘grave security concerns over judge-only trials’. I am gratified, as I feel sure are many, that she said this. In January, I was asked by the Justice Committee for my views on the reforms, and how they might affect the judiciary. As to the latter, I said:

Security: This is a sensitive area, for it is easy to be accused of scare-mongering. Judges can normally be expected to look after themselves, but it is not quite as simple as that. Fears for the safety of judges of all types have been growing, and judges trying crime alone will not be immune. It is imperative that consideration be given to what may happen if judges do try cases alone – in particular high profile or sensitive crime attracting media attention.

The Chief’s words should be enough to stop this legislation in its tracks. We will have to see whether they do. Until then, the work must go on. I have been asked for my thoughts on recent events. None has been more significant than publication of the Bill and its progress, and so it was at 1.37pm on Tuesday 10th March, that the Lord Chancellor, Secretary of State for Justice and Deputy Prime Minister (in Hansard, ‘Mr Lammy’) rose to his feet to present the Second Reading of the Courts and Tribunals Bill. His first words raised an eyebrow: ‘*I am very proud to bring this Bill back before the House*’. To an outsider, this was puzzling. After all, he was about to propose the exact opposite of all that he had said, believed in and campaigned for throughout his political career. To an insider, it must have been extraordinary:

Sir Geoffrey Cox recalled the Mr Lammy he knew before he took office:

I remember vividly the fire that breathed from his soul as he spoke about justice. I can hear him now, in my mind's eye, speaking on this subject, and I know that he would have been saying the direct polar opposite of what he is advancing today in the House. I would say that he was his wiser self in those days ... because at that time he was motivated by those who were oppressed, who were poor and who faced the full phalanx of the state reined against them.

—a nostalgic reminder of his former self which drew from the Minister a warm, appreciative smile.

We all know what Mr Lammy was proposing – a Bill to remove the right to jury trial from defendants where judges decide that the sentence on conviction would likely not exceed three years imprisonment, and from defendants in long or complex fraud cases. It is a Bill which would rip the heart out of a justice system which, for so many years, has managed to achieve the impossible – the confidence of the public.

Could this be the man who, when sworn in as Lord Chancellor, had said ‘Justice is what called me to the Bar, to advocacy, to giving a voice to those who had none, to defending the principle that all are equal before the law. It led me into public service, into politics, and my work on the Lammy Review into racial inequality in our criminal justice system.’ The *Lammy Review* had proclaimed juries an essential, irreplaceable component of diversity and the fight against bias. Sir Kier Starmer, already a committed advocate of juries, was on his Advisory Committee.

Could anyone in the Chamber not have known that had this Bill been proposed by the previous Government, Mr Lammy would have been at the very forefront of opposition to it, and that his voice would have been the very loudest?

Aspana Begum:

Back in 2017, the now Justice Secretary said in his report: “Juries are a success story of our justice system. Rigorous analysis shows that, on average, juries— including all white juries—do not deliver different results for BAME and White defendants...This positive story about the jury system is not matched by such a clear-cut story for magistrates’ verdicts... In particular, there were some worrying disparities for BAME women... Of those women tried at Magistrates’ Court, Black women, Asian women,

Mixed ethnic women and Chinese/Other women were all more likely to be convicted than White women.” The Bill will entrench structural discrimination, and I believe that Justice Secretary knows it.

Why was Mr Lammy doing this? Nick Timothy, his Tory shadow minister, detected the work of the civil service (and he should know). I cannot say. All I can say is that whether or not Mr Lammy expected to get his spin about backlogs and victims past the Commons, he could never have got it past a jury.

Still, I might be able to explain why Mr Lammy delivered his speech in such relaxed, good humour, for like many a barrister who saw trouble ahead when he went into court, he had done a deal in the ‘robing room’. ‘Let the future take care of itself’ – he knew that whatever happened hereafter, he would at least win this day.

Karl Turner, the leading labour rebel against the Bill, was the other party to the deal; and this firebrand too enjoyed the luxury of a little sweetness and light. While still warning the Government which side he was on – *‘There are parts of this Bill, though, that are unworkable, unjust, unpopular and unnecessary’* – he complimented his ‘Dear friend’ on obtaining extra funds from the Treasury, and he said: *‘I trust my right hon. friend to negotiate in good faith with colleagues who are opposed to the Bill’.*

But trust only ran so far with the wily Mr Turner, who, well-satisfied with his part of the deal, was careful to insure it against mishap by announcing at least part of it in ‘open court’:

Yesterday evening, I had what I can only describe as an incredibly honest and robust, but constructive, discussion with the Deputy Prime Minister, and I am glad to say that that discussion produced something of an offer. I think it is absolutely imperative that one of our number—one of those of us who are opposed to these changes for principled reasons—has a seat on the Public Bill Committee. Colleagues told me that this was impossible. They said, “It’s never going to happen.” They said that the Chief Whip would never concede to allowing one of the so-called rebels on to the Bill Committee. But, following the Deputy Prime Minister’s representations to the Chief Whip, that guarantee was made. For that reason and for that reason alone, I will abstain from voting on the Bill today.

Mr Turner had achieved enough to avoid voting against his party. He would abstain, and he advised his fellow rebels to do the same. From this moment onwards, the outcome was

certain – the Bill would survive the day, and proceed. The flame of suspense had been extinguished. It just remained to give MPs the chance to give vent to their feelings, and for the Government, with its huge majority in the House, to get some idea of the strength of opinion against it.

The debate was now in the hands of the backbenchers, of whom no fewer than 45 spoke, the majority being labour MPs. As to the other parties, in the order in which they spoke – Sir Edward Leigh (conservative and ‘Father of the House’) spoke against the Bill; Jess Brown-Fuller (Liberal Democrats) spoke against the Bill; Sarah Pochin (Reform) spoke against the Bill; Liz Roberts (Plaid Cymru) spoke against the Bill; Sian Berry (Green party) spoke against the Bill and Jim Allister (Traditional Unionist) spoke against the Bill. No-one in any party other than the labour party spoke or voted in its favour, and of their own MPs, in the debate itself, the majority spoke against it.

I thank the CBA for the following – at the end of the day 304 MPs voted for the Government, 203 against. 10 labour MPs voted against the Government; and of a considerable 142 abstentions, 88 were labour MPs. Given that the Bill includes other, welcome provisions about victims and child welfare, so as to subject anyone voting against it to the accusation that they are against these protections, and given that the Government has a huge overall working majority of 167 seats, I think that when Karl Turner left the building on 10 March he was entitled to feel quietly satisfied with his ‘deal’.

And so, I was about to watch five and a half hours of speechmaking. There were many excellent speeches, some infused with great passion. Most centred on the general principles of jury trials and the law’s delays. Even if this was understandable, it was (for me) disappointing that the debate never managed to get sufficiently deep beneath the surface to confront the practicalities of conducting judge-alone trials, and how they might sit beside jury trials. Perhaps, if MPs had been given more time ...

The Bill was published on 23 February. The Second Reading was on 10 March. The timetable speaks for itself, and we should remember throughout this time MPs have been pre-occupied with wars. Clearly, very few whom Mr Lammy was addressing had been given the chance to read the Bill that he was about to introduce.

Mr Timothy and Dr Shastri Hurst protested that a Bill of this constitutional importance should be given so little time. It hadn't appeared in the manifesto; there has been no consultation. It was being rushed through – and this was obvious for all to see. The only backbencher who didn't see it was Warinder Juss: *'I thank Sir Brian Leveson for his detailed and thoughtful review—part 1 was completed last July, so the Bill is not being rushed'*. This might have made sense if the Bill had been faithful to Sir Brian's recommendations, which it is not; or if it had not contained major provisions never in his contemplation, which it does.

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The Bill is 100 pages long. It contains 27 clauses, some with numerous complex sub-clauses, and three schedules. The offending clauses which cause so much controversy are 1-7. Its Explanatory Notes run to 70 pages, and in some respects the notes differ from the Bill. The Bill's creation of a Crown Court Bench Division, in status said to be beneath the Crown Court, is prominent in the Notes, as it was in the debate. No one seemed to notice that the words 'Crown Court Bench Division' do not appear in the Bill.

Leaving aside the quite extraordinary additional powers that will be given to Magistrates both to sentence and choose mode of trial, the Bill contains entirely new provisions which fundamentally alter its own judge-alone 'structural reforms'. In summary, these appear in Clauses 3–74B-D (pages 6-10) and 4–42C (pages 12-14). Many of these provisions are head-splittingly impenetrable, and, if I understand even some of them, unworkable. A maze of permutations and conditions, I do not claim the capacity to negotiate them, and this is not the moment to try, but they present variations on the following themes.

(1) under Clause 3–74B-D, that when a judge tries a case alone under the '3 years or less' provisions he or she must at any time before the conclusion of the trial be aware of the need to assess whether, if certain conditions are met, they should abort the trial and order it to be tried by a jury.

And so, it would seem that if, during the course of their judge-alone trial, judges begin to find it a little too hot to handle, without using too much imagination they can easily

come up with a way of drawing stumps, and sending the case onwards and upwards to a jury!

(2) under Clause 4–42C relating ‘complex or lengthy’ cases, once again a judge sitting alone must consider at any time before the close of the trial whether the circumstances are such as to justify aborting the trial and having it heard by a jury.

And so, when a complex or long case is ordered to be heard by judge-alone, but after a very clear prosecution opening, and maybe a few witnesses have given evidence, everyone realises that this case is really quite simple after all, the judge must at least consider stopping the trial and starting afresh with a jury!

We need to understand that Clause 4 and its schedule are poisonous to the future of jury trials. The index to the Explanatory notes reads: ‘Introducing trials by judge alone for complex and lengthy cases.’ This is immediately contradicted by the words ‘Trial on Indictment Without a Jury: Complex or Lengthy Cases. Should we ignore the great difference between the two? Coming to the list of offences that might qualify under this Clause, and the powers of the MOJ to extend it, the Bill has a far wider net than that suggested even by Leveson.

We need to understand these provisions, and we need to understand the point of them. That is difficult when Ministers chose to say nothing about them. Could they have any other purpose than to mitigate the excesses and unworkability of the main judge-alone provisions? If so, I believe they will achieve the opposite result, and aggravate them. They certainly cannot provide ‘shorter trials and reduce the backlog’. I fear that in practice they will heap onto the 3-74A and 4-45A Clauses yet another unfathomable level of unworkability – unsettling for the prosecution, deeply unsettling for the defence, and excruciating for a judge straining to try a case sensibly. With the potential to disrupt and derail existing trials, and such an obvious vulnerability to abuse, they be hugely time-wasting and costly.

As far as I am aware, nothing resembling these ‘reallocation’ provisions has ever been suggested by Leveson, or anyone else. Surely, only someone wholly unfamiliar with criminal trials could come up with anything quite so bizarre. The fact that they were not mentioned in

any of the speeches only serves to confirm the undue haste with which this legislation has been presented. But that is not all:

Schedule 3ZA to the Bill (pages 36 to 37) sets out the long list of Clause 4 offences which qualify to be tried by judge-alone. The range appears to be arbitrary, perhaps the work of a moment; and it goes beyond anything suggested before. But even that is not the end of it. We move to Part 2 to the Schedule (page 38). This gives the Secretary of State the power by order to amend it so as to—

1. (a) add an offence to the list in that Part;
2. (b) remove an offence from that list.

What does this mean? We look to the Explanatory Notes: ‘The Secretary of State for Justice can modify the eligible offences listed in Schedule 3ZA via affirmative Statutory Instrument. This means that, in future, the Secretary of State could add offences which are not related to fraud or financial crime to the Schedule, or remove offences already listed in the schedule where appropriate.’

There is to be no right to appeal judicial ‘mode of trial’ decisions. I wonder if all those MPs who made such careful and powerful speeches in the debate had any idea what the Government really has in mind. If they had, surely someone would have mentioned these provisions, seeing them for what they are – a mighty step along the way to the end of jury trials. We might be especially concerned that not a word of all this was mentioned by the Government ministers. Like Br’er Fox, they ‘laid low and said nuffin’.

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There is of course much more to say about the debate, but I only have space for a little about the three great shibboleths – (1) *Trivial offences and ‘gaming the system’*; (2) *‘Victims and victimhood’* and (3) *Our reforms must be seen as ‘a package.’*

(‘Reasoned judgments’, which we were at one time told would be ‘hard wired’ into the justice system, played little part in the proceedings, which is hardly surprising as the Government insists that the most serious offences, including murder and rape, will continue to be tried by jury.)

As to (1) and (2), for months now senior, highly experienced criminal lawyers have been concerned with the tactic that whenever the Bill is under discussion, we hear from the Government two mantras, or drum beats, intended to drown out any objections – the notion that the backlog is largely due to cases of the most trivial kind which should never be before the Crown Court, and the idea that judge-alone trials might somehow help in cases where women – ‘victims’ have been treated badly and have had to wait years for the trials.

(1) Mr Turner confronted the first. The trial of trivial offences can present a great problem. Thought might be given to taking the simple route of making more of them summary-only. But the problem has been exaggerated, and put out of shape. Mr Turner:

I am afraid to say that the analogy used by the Justice Secretary, of somebody stealing a bottle of whisky, is an unfortunate one. I do not pretend to be a terribly eminent lawyer—I was prosecuting and defending the theft of Mars bars in my second six pupillage before I was elected to this House in May 2010—but never did I see a situation in the magistrates court in which a defendant was advised to elect for a trial when they had allegedly nicked a bottle of whisky. That scenario is for the birds, to be perfectly honest.

(2) As for the second, let there be no doubt – the criminal justice system has failed defendants, victims and witnesses very badly; and the treatment of victims – in particular, female victims of sexual offences – has been, and continues to be, a scandal. Those who oppose the Bill do not disagree with this. Their simple point is that the ‘victim’ drum-beat is no argument in favour of judge-alone trials. Nevertheless, this has been played to destruction.

Just how sincere is the Government about rape victims? The 2024 Labour Party Manifesto contained nothing about juries and judge-alone trials (although we have been told by the Courts Minister that this is what the Government intended all along). It did, however, contain much about rape cases. It promised:

Prosecution rates for rape are shamefully low with many victims dropping out of the justice system when faced with years of delays. Labour will fast-track rape cases with specialist courts at every Crown Court location in England and Wales.

Leaving aside the desirability of such courts, after approaching two years in power, where do we find *any* of them in action?

Let us go to the Commons, where the drum beat was loudest in the speeches of the Ministers. Don't these legal supremo's know that two of the golden rules of our criminal justice system are equality before the law – that, as a matter of principle, no one should, be put first – and as a matter of principle, innocence is assumed until guilt is proven?

David Lammy: *'This Bill puts victims first, as well as delivering the swift justice that they deserve. It will also strengthen protections for victims in court.*

Sarah Sackman: *Politics is about choices. This Labour Government choose modernisation over tradition, investment over decline, and to put victims and communities first in a transformed, modernised justice system in which our public and our citizenry can have confidence.*

Politics may be about choices, but are the settled principles of criminal justice and the constitutional importance of juries about politics? Several female MPs felt able to speak of their own shocking treatment as victims of sexual crime. Their courageous voices were rightly of the greatest importance – informative, dramatic and moving. I fear space does not allow me to repeat them in their entirety, and so, apologies to them for selections:

Natalie Fleet was the first to speak. She supported the Bill. She has suffered terribly at the hands of the criminal justice system. Her anger was entirely understandable; her words were received in respectful, stunned silence.

I want to start by pointing out that in this debate, we have called more barristers to speak than we have called women. It would be wrong of us not to realise that we are the absolute epitome of the British establishment ... we are more likely to have victims watching on than we are to have victims on these Benches ... We all have a role to play in eradicating our rape culture, but today we see the state stepping up for victims ... We know that if we do not invest and modernise our courts system, everything else is just tinkering around the edges.

By contrast, some MPs were anxious to disavow their suffering as a reason for reforming the jury system. Charlotte Nichols, in a widely praised speech, revealed, for the first time in public, that she too had been raped. Somehow, she managed to take a step back:

I care profoundly about rape victims facing intolerable delays for their day in court. I know only too well what that feels like, because, after being raped at an event that I attended in my capacity as a Member of Parliament, I waited 1,088 days to go to court. Every single one of those days was agony, made worse by having a role in public life that meant that the mental health consequences of my trauma were played out in public, with the event that led to my eventual sectioning for my own safety still being something that I receive regular social media abuse about from strangers to this day.

But here is the kicker. In this debate, it feels as if experiences like mine have been weaponised and are being used for rhetorical misdirection in relation to what this Bill actually is. The violence against women and girls sector has not had the opportunity to come together to discuss it, and the Government's framing and narrative has been to pit survivors and defendants against each other in a way that I think is deeply damaging.

Aspana Begum (to whom I have referred) told the court how she had been cleared of a criminal offence by a jury:

No one is denying that after 14 years of desecration by the Conservatives, the backlog in the Crown courts is out of control and stacked against victims, but curtailing jury trials is not necessary to tackle it... I have spoken with many rape victims who feel that their trauma is being instrumentalised to undermine and restrict a fundamental cornerstone of our democracy—all for cost-cutting purposes. Of course, they want reform of the criminal justice system, but they want it to be evidence-led. The value and importance of a jury system cannot be overstated.

Yasmin Qureshi:

The Government argue that these reforms are necessary to reduce the Crown court backlogs, and often point to the delays faced by victims of sexual and domestic abuse. I take those concerns very seriously—a substantial part of my career as a prosecutor was spent as a designated child and sexual abuse specialist and rape specialist. I worked closely with victims, witnesses and families affected by these traumatic offences. If I believed that the abolition of jury trials would genuinely allow those cases to be heard more quickly, I would support it, but I do not.

I record with admiration that on the day after the debate Flora Page KC added her condemnation of all the Government noise and spin around this offence by announcing her resignation from her position on the Legal Services Board. Her words to ministers will resonate with many who have been treated to an endless stream of 'victimhood': 'You should

be ashamed of yourselves. It was disgusting to see the way you hijacked the suffering of victims to make your arguments yesterday.'

(3) That for any progress to be made, reforms must be seen as 'a package' – they can only be seen to work on an 'all or nothing' basis. This has consistently been advanced as a justification for introducing judge-alone trials. What a silly argument this is!

I listened with care to discover if any of the speakers either blamed juries for the delay or sought to explain how the reduction of jury trials could impact upon the backlog. I heard nothing, save for a reminder that Leveson had expressed the opinion that judge-alone trials might be 20% shorter (now discredited) and for assertions that the reforms must be seen as 'a package'.

This 'package' phrase has its origins in the *Leveson Review*, where it appears frequently (for example, page 7): 'This package needs to be looked at as a whole: it is an across-the-board series of recommendations and should not be approached as providing a 'pick-n-mix' series of options.' Taken up by supporters of the Bill, in his speech Mr Lammy mentioned it three times. Also, Lloyd Hatton, in reply to Sir Ashley Fox who commended the 'Liverpool experience' where the Crown Court has shown the way in listing cases efficiently.

I completely accept that there have been successes in some parts of the country, including in Liverpool, but that is not the case elsewhere, which is why a much wider package of structural reforms is essential. I firmly believe, in response to that point, that we must pull every lever at our disposal to stabilise the system and begin to turn the corner on the rising backlog in the Crown Court. We need transformative change, backed up by investment and modernisation, to fix the problem. That is not optional; it is essential. That is why, in my view, the reforms in the Bill form a coherent package designed to deliver system-wide change. We cannot indulge in a game of pick and mix and simply implement the measures that we prefer. We must understand that, to relieve the scale of pressure currently facing the Crown courts and the wider criminal justice system, this Bill must make its way through this place.

But MPs identified two problems with this argument:

First, Jess Brown-Fuller:

If the hon. Gentleman (Mr Hatton) believes that we should not have a pick and mix approach to Sir Brian Leveson's proposals, why does he think that the Government have chosen only some of the measures and not others? Her conclusion: Justice needs juries, and today we must defend them.

Second, everyone has learned from the Liverpool courts, along with the many other suggestions that have come from the Bar Council, CBA and others, that providing there is the will, spirit, energy and engagement, very good work can be done to reduce the backlog without recourse to judge-alone trials. Kim Johnson:

Last month, I was pleased to visit Liverpool Crown court with the Criminal Bar Association. I had the pleasure of hearing from Judge Andrew Menary, under whose leadership Liverpool courts can now proudly boast the lowest backlog in the country. His work in bringing together prosecution and defence teams to negotiate common-sense solutions to avoid cases needlessly going to court, speeding up access to justice for victims and ensuring fair outcomes for defendants, make him a leading light in our country. I am pleased that the Government are looking to roll out these solutions... There is lots in this Bill that I really support, but I am ideologically opposed to restricting the right to jury trial, because it undermines the foundations of our democracy, and I have not seen any evidence to show that it will go anywhere near tackling the backlog.

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Of course, other important matters featured in the debate – legal aid, magisterial powers, appeals, recruitment of judges and magistrates, bias and bullying behaviour by judges. But I hope I have said enough to give a flavour of the day. Clauses 1-7 of this Bill are a bad piece of work, undemocratic and unworkable. Unless I missed something, by comparison with the speeches lauding the benefits of jury trial and advocating its retention, not one argument said to be in favour of the Bill came over as so compelling as to suggest otherwise.

More than ever, we should heed Lord Devlin's warning that '*If the jury system is allowed to crumble, it can never be rebuilt*'. The Ministry should take the concerns of the Chief Justice to heart. In this day and age they are too well-known, real and disturbing, to be ignored. Be that as it may, despite the Government's unseemly haste, there is still a long way to go, and that includes time in the Lords. If the Second Reading is anything to go by, those who oppose the Bill have reason to take heart that even if the cause is not yet won, it is by no means lost.

His Honour Geoffrey Rivlin KC

Geoffrey Rivlin was called to the Bar in 1963 and took silk in 1979. He was appointed a Judge in 1989. During his 23 years on the bench he tried many cases of serious and complex fraud. He was a Member of the Criminal Rules Committee. He revised and edited the Specimen Directions to Juries. He was a tutor on the Judicial Studies Board (JSB now, Judicial College) courses, and ran the JSB course on the conduct of long trials. For some years he also sat as a Deputy High Court Judge and an additional judge in the Court of Appeal (Criminal Division). In 2004, he was appointed Resident (Senior) Judge at Southwark Crown Court and the Honorary Recorder of Westminster. In 2012, following retirement from the Bench, he took up post as Adviser to the Director of the Serious Fraud Office, and was appointed a Member of the Investigatory Powers Tribunal.

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