

Courts and Tribunals Bill Committee

Legislative Scrutiny

1. This is the Crown Prosecution Service (CPS) response to the House of Commons Public Bill Committee's Call for Evidence in support of its scrutiny of the Courts and Tribunals Bill.
2. The criminal justice system is under significant pressure which is only going to increase. Crown Court trials are being listed as far ahead as 2030 and according to Ministry of Justice demand projections, the open caseload is to exceed 100,000 cases by March 2029. The scale and persistence of these challenges mean incremental change will not go far enough. This Bill presents a generational opportunity to pursue end-to-end reform in the interests of victims, witnesses and defendants alike. We therefore support structural reform – looking again at the relationship between the magistrates' court and the Crown Court – in principle.

Clauses 1 to 7: Right to elect, trial on indictment with or without jury and appeals

3. We consider two sets of statistics to be of particular relevance in addition to the impact projections available. First, 42% of Crown Court cases result in non-custodial sentences, while 35% of custodial sentences passed in the Crown Court are for 12 months or less. Second, while approximately 70% of Crown Court cases result in a guilty plea, only just over a third (37%) of guilty pleas are entered at the first hearing in the Crown Court. The remainder are entered at later stages, including a substantial number at the beginning of the trial. Those cases which eventually plead guilty but do not do so at the first opportunity are unnecessarily causing delays in the Crown Court.
4. It is apparent from the above that there are many cases in the Crown Court that either do not need to be there since they could have been dealt with by magistrates, or which could have been dealt with more quickly since they would never in fact reach a jury. In fact, only one in five cases that begin with a not guilty plea actually end up as a trial. Generally, they either end up as a guilty plea, or the case is stopped by the prosecution. Where cases are stopped by the prosecution, this can be because the victim is no longer available to give evidence: victim attrition has risen from 26.2% of contested cases five years ago to 31.5%.
5. These factors have led to our view that there is a strong case for structural reform in the Crown Court. One option which we believe should be considered is to place the Crown Court under a duty to remit cases to the magistrates' court when it concludes that the magistrates' court's powers of sentence are sufficient. While at present there is a power for the Crown Court to remit cases, the circumstances in which it might do so, and when, have not been defined, and it is subject to the defendant's consent. The combination of these factors has meant that this provision is rarely used. The Bill removes the ability of the defendant to object to remittal and this will of itself increase the prospect that Crown Courts will exercise the power, but in our view there is a good case for strengthening the Bill further by making it a requirement that the Crown Court consider whether the case should be remitted back to the

magistrates court if clearly within its sentencing powers. This duty could be exercised at the outset, and at the same time that under the Bill the Crown Court upon receipt of a case must decide if there is a trial by jury or not.

6. CPS operational experience from district judges hearing cases in the magistrates' court and youth court suggests that judge-only trials could offer opportunities for efficiency throughout the lifecycle of a case when mapped against Crown Court proceedings. Examples of case management or efficiencies in the magistrates' court and youth court relevant to cases in the Crown Court include the absence of jury empanelment, shorter opening speeches if they are needed at all, more focused evidence, greater judicial control to limit unnecessary or extraneous examination-in-chief or cross examination, a shorter or no prosecution closing speech and more limited defence closing submissions, no need for a summing up to the jury nor time for jury deliberations. We acknowledge that these time savings gained need to be considered in the context of the time required for judges to provide written reasoning for their decisions and potentially an increased likelihood of appeals based on the contents of the judge's written reasoning.
7. Our view is that the magistrates' court has sufficient expertise to try cases which the Bill would mean remain in that court. The magistrates' court already tries very serious cases such as those heard in the youth court, including the most serious sexual offences and offences against the person short of murder and attempted murder. It deals with factually and legally complicated cases, from technical road traffic matters to courses of conduct amounting to harassment or stalking. The magistrates' court will require greater resourcing to take on an increased workload, but we consider it has the capability to conduct this work.
8. Appeals are an important safeguard for defendants. Currently, 0.4% of cases in the magistrates' court are appealed. Of these, around 41% (from Q3 2025) are successful. The provisions in the Bill do not stop anyone from appealing but require them to show reasonably arguable grounds. The CPS is supportive of this measure to support efficiency, but primarily because it better balances fairness for victims, witnesses and defendants.
9. We have looked at a random selection of 100 appeals against conviction finalised in 2025. Although some care must be taken in assuming these findings are representative across all appeals due to the small sample size, they do provide important insights. We found the following:
 - Similar numbers of appeals were allowed as were dismissed in line with published figures referred to above, but equally in line with those figures, a substantial number (around a quarter) were abandoned.
 - In 3 cases the appeal was allowed because the complainant refused to give evidence a second time.
 - In at least 11 cases where the appeal was dismissed, victims and witnesses gave evidence a second time.
 - Across all 3 categories (appeals allowed, dismissed and abandoned) there was evidence as to why a permission stage would be of benefit. For instance, in

relation to appeals allowed, a complainant gave evidence for a second time but the court's decision – about the drafting of protective orders – could have resolved the appeal without that happening. In other cases, the CPS accepted the basis of the appeal or that the defendant was guilty of a lesser offence which also did not require a rehearing. For appeals dismissed, in some cases it was plain no objection was taken to the magistrates' court trial and the same issues were being pursued.

- For appeals abandoned, a number of these (more than 10) were abandoned on the date of hearing or the defendant did not attend without explanation.

10. The overall figure of appeals was less than 100 upon analysis because some in fact became appeals against sentence.

11. We will work through the practicalities of reform with criminal justice partners to ensure it is a material improvement on the current position. That means addressing both the opportunities and consequential challenges of recording magistrates' courts proceedings; whether appellants can renew leave to appeal; and issues concerning respondent's notices in appeals.

Clauses 8-11: Measures relating to sexual offences and domestic abuse

12. We welcome Clauses 8 to 11 in the Bill and the intention to improve the experiences of victims of rape and serious sexual offences and domestic abuse within the criminal justice system. These measures have the potential to strengthen victim confidence. In particular Clauses 8 to 10 reflect our long-standing view that any evidence of sexual behaviour, compensation claims or false complaints which:

- a. has substantial probative value, or
- b. is important explanatory evidence and;
- c. has a proper evidential basis may be admitted in a trial.

13. However, it is appropriate to apply real caution to these categories of evidence and to put in place safeguards to ensure such material is not admitted on the basis of misconceptions and assumptions but, rather, because it is evidence of genuine probative value.

Clauses 12-16: Special measures

14. The CPS welcomes the provisions in Clauses 12 to 16, which will provide clarity and certainty for victims and witnesses in relation to special measures. The availability of special measures is essential to enabling vulnerable and intimidated victims to participate in criminal proceedings and provide their best evidence.

15. We think there is merit in considering whether more can and should be done and looking at automatic entitlement to special measures rather than automatic eligibility. The Law Commission in their 2025 final report "evidence in sexual offences prosecutions" identified the following arguments which we consider are compelling:

- a. first, an entitlement model is more consistent with the broader rationales of humane treatment and witness engagement, as well as Article 8, compared to the current model which require the special measure to improve the quality of the witness' evidence
 - b. second, an entitlement model and indeed procedural justice recognises that the complainant is the best judge of what will help them to give their best evidence and ensure they are treated humanely when giving evidence, giving them greater autonomy and control over how they give evidence
 - c. third, an entitlement model will facilitate humane treatment by limiting disproportionate stress caused to complainants by the current model, which requires complainants to provide evidence about the impact on the quality of their evidence, often unnecessarily – many applications are successful, but there is a doubt about them until they are granted
 - d. fourth, an entitlement model better reflects the nature of the vulnerability of complainants to which measures to assist with giving evidence can respond i.e. that the nature of the allegation justifies a special measure regardless of individual circumstances
 - e. fifth, an entitlement model should ensure consistent practice – in some areas particularly (pre-recorded cross-examination and combinations of measures) there is greater scope for consistency.
16. There should remain an individualised assessment according to each victim or witness' needs and a judge should be able to disapply a special measure if it interferes with the right to a free trial. In principle however we support automatic entitlement and, although the Law Commission's observations relate to its report on sexual offences, we think this should be considered more generally across the range of victims and witnesses who are vulnerable in specific contexts e.g. domestic abuse.