

Criminal court reform: diversion welcome but no need to curtail trial by jury, warns Bar Council

The Bar Council has welcomed the focus on diversion from the criminal justice system in the new report by Sir Brian Leveson but warned against proposals to remove jury trials.

The Bar Council has given its initial response to Part I (the policy review) of the 'Independent review of the criminal courts', by Sir Brian Leveson, commissioned by the Ministry of Justice.

Amongst the 45 recommendations in the report, Sir Brian proposes:

- Increased use of out of court resolutions and greater use of rehabilitation programmes and health intervention programmes (recs 1-10) – this echoes the Bar Council's recommendations on diversion
- Removing the right to elect to be tried in the Crown Court for offences that carry a maximum sentence of two years and reclassifying some either way offences as summary offences (recs 14 and 18)
- A new division of the Crown Court (the 'Crown Court Bench Division') with a judge and two magistrates to hear either way offences allocated to it by a judge (recs 30-42) – this proposal has previously been described as 'intermediate courts' which the Bar Council does not support
- Allocation of sitting days in the Crown Court to be increased, when it is possible, to 13,000 per year (rec 34) – the Bar Council continues to call for the cap on sitting days to be lifted
- A Ministry of Justice match-funding scheme for criminal barrister pupillages (rec 41) – in line with the Bar Council's 2024 manifesto ask
- Measures to encourage those intent on pleading guilty to do so at the earliest opportunity including increasing the maximum reduction for entering a guilty plea at the first opportunity to 40% (recs 23-29) – broadly in line with the Bar Council's recommendation for credit to be given for early guilty pleas
- Trial by judge alone for serious and complex fraud cases on election by the defendants and subject to the trial judge's consent (recs 43-45) – the Bar Council's firm view is that juries should be retained for fraud cases

In the executive summary, Sir Brian identifies the causes of the current crisis in the criminal courts as "the long-term constraints and reductions in funding and investment in criminal justice" – exacerbated by the disconnect between different agencies within the system – and "the increasing complexity of criminal law". He points to increases in proactive policing that have not been accompanied by sufficient increases in funding for other parts of the system.

Commenting, Barbara Mills KC, Chair of the Bar Council, said:

“Changing the fundamental structure of delivering criminal justice is not a principled response to a crisis which was not caused by that structure in the first place. As Sir Brian recognises, it is the failure to invest properly in the justice system over decades that has led to the crisis we see in the criminal courts today.

“We recognise the pressures facing the criminal justice system and the need for reform to tackle the backlogs. We very much welcome the report’s focus on out of court disposals and greater investment in rehabilitation programmes to reduce the number of cases going into the Crown Court – suggestions that we put forward in our submission to the review. These proposals must be considered alongside the recommendations of the Gauke review on sentencing.

“However, we continue to argue that there is no need to curtail the right to trial by jury – from both a principle and practical position. Juries represent society and are a fundamental part of our system. And on a practical level, it remains unclear how the current resources in the system – magistrates, judges, court staff and courtroom capacity – will be able to meet the demands of the proposed new Crown Court Bench Division.

“The report rightly identifies the importance of considering and addressing disproportionality in the criminal justice system. If the Ministry of Justice chooses to adopt the proposals to remove jury trials, we agree with Sir Brian that it must undertake detailed modelling of the recommendations before consulting on changes, as well as impact assessments on both equality and justice. At the very least, it should be piloted with a clear end date for review.

“We will consider the detail of the report and provide a full response in due course.”

ENDS

Notes to editors

1. The Leveson report will be published on Wednesday 9 July. The news release and report are embargoed to 00.01hrs, Wednesday 9 July.
2. The Bar Council submission to the Leveson review can be reviewed on our website:
 - a. Full submission: <https://www.barcouncil.org.uk/static/86b0f6fe-6fcd-4463-ae9cbb172f3e4a3d/Bar-Council-Submission-to-the-Independent-Review-of-the-Criminal-Courts-Final-Draft-a-002.pdf>
 - b. Summary of our submission: <https://www.barcouncil.org.uk/static/95d286ad-5d6b-4763-91107a71970c4140/52fe483e-e633-4550-9cc6b01c057bc1bc/Bar-Council-Leveson-Review-Submission-Executive-Summary-May-2025.pdf>
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