spotlight on corruption

Lessons from the frontline:

Back of the courtroom queue

How to tackle serious delays in economic crime cases in the courts of England and Wales

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Backlogs in the courts now exceed 70,000, while more than a quarter (27%) of all trials are adjourned, and only 43% go ahead on time. The lack of judicial sitting days and barristers is primarily to blame.

These delays are having a huge impact on economic crime cases, which in the case of fraud amounts to 40% of all criminal activity. Delays incentivise suspects to drag things out longer, creating a vicious cycle of even further delays.

It is now taking two to three years for prosecutors to get a slot in the courts for these kinds of cases

The length and complexity of economic crime trials, including the huge drain of disclosure exercises, coupled with the fact that suspects in these cases are almost always bailed rather than put on remand, means these cases are at the back of the queue. It is now taking two to three years for prosecutors to get a slot in the courts for these kinds of cases.

New measures are also needed, from more credit for early cooperation, to better funding for the defence

This is leading to real frustration from victims of economic crime and jeopardising the viability of trials, with witnesses withdrawing. It is also increasing the costs of economic crime trials to prosecuting bodies, and ultimately undermining the deterrent value of economic crime laws.

Big new thinking is needed to tackle this. Better use can be made of existing measures, to ensure more intelligence-led investigations, tighter prosecution cases and better use of plea deal guidelines. But new measures are also needed, from more credit for early cooperation, to better funding for the defence and for the digital infrastructure in the courts and prosecution services.

Specialist economic crime courts should also be considered. Ultimately the government should think about setting up a Royal Commission to look at whether radical changes, including in relation to the use of juries in long complex trials, could result in justice across the board being much more effectively delivered.

Introduction

Delays in the criminal justice system are having a major impact on how economic crime cases progress through the court system and on when and how they conclude. This briefing looks at the impact and possible solutions to the various problems identified, with particular emphasis on measures to reduce court backlogs.

It is not an easy task to look at economic crime cases as a discrete category within the criminal justice system because neither the court service, His Majesty's Court and Tribunal Service (HMCTS) nor the UK's primary prosecutor, the Crown Prosecution Service (CPS), record meaningful data on economic crime. Where that data does exist, it relates to offences across the whole system, such as fraud or money-laundering, which will include a huge range of case types and sizes. This briefing is really concerned with those larger, more complex cases and that data is not currently disaggregated within either the HMCTS or CPS management information systems.

Wider causes of court delays

Backlogs

To understand the position for economic crime, it is important to appreciate the wider pressures on the court system.

At the end of 2023, HMCTS recorded that there was a backlog of cases in the Crown Courts – which hear the most serious criminal cases – totaling 67,573.[1] To put this in context, in 2019 – the year preceding the Covid-19 pandemic – the backlog of cases was 38,030, a figure that was down on previous years due to reduced numbers of cases entering the system from 2014, reflecting reduced police referrals for charge.[2]

The far lower backlog in 2019 is despite there being very similar numbers of cases entering the courts for 2019 and 2023 (104,578 and 105,464 respectively) and being concluded (99,627 and 99,304 respectively).[3] The most recent Criminal Courts statistics, just released, show that at the end of September 2024, the number of criminal cases in the Crown Courts of England and Wales was 73,105.[4]

The increased backlog suggested in HMCTS figures is consistent with data from the CPS. The CPS recorded 43,265 of its cases in the Crown Courts at the end of 2019 but this had increased to 79,294 by the end of 2023 and to 79,839 by March 2024.[5]

CPS defendant case receipts into their Crown Court teams were up by 6.9% during Quarter 4 of 2023-24, reflecting increasing investigative activity in serious criminality.[6] This may indicate an increased policing focus on crime such as rape and other serious sexual offences. With increasing numbers of cases coming to court, the problem of case backlogs is not going to abate, at least in the short-term.

Trials not going ahead

HMCTS data also shows a worrying trend on whether criminal trials are going ahead when they are due to do so. During 2023, less than half – just 41% – of all criminal trials went ahead when listed.[7] This was an improvement on 2022, when only 37% of all trials went ahead when listed – a figure distorted by the impact of strikes by the Criminal Bar between June and October 2022.[8] The figure has improved marginally in Q3 of 2024 to 43%.[9]

During 2023, less than half of all criminal trials went ahead when listed

Ignoring 2020 and 2021, whose data will also have been affected by Covid-19, it is apparent that the 2023 figure is markedly down on previous years. Between 2013-2019, the number of trials going ahead when listed was consistently above 50%, a period during which there was a positive impact from the introduction of the Crown Court Better Case Management (BCM) initiative.[10]

The obvious question that arises is what happens to the remaining 59% of cases which did not go ahead as listed? They are recorded as either "ineffective" ie, adjourned,[11] or "cracked" – ie, resolved on the day they are listed or before.[12]

During 2023, over a quarter of all criminal trials were adjourned (27%),[13] an extraordinarily high figure. Between 2013-2019, the rate of adjourned trials in the Crown Court varied between 14-16% which means the rate of "ineffective" trials has nearly doubled.

The cause of the increase is not revealed in the HMCTS data and is often the subject of dispute between parties, including the Crown Court administration who record the reasons. A lack of prosecution and defence trial readiness has been the main cause of adjourned Crown Court trials in the past. However, the judiciary can usually manage and mitigate this which explains why the rate of such trials was relatively steady between 2013-2019.

The most likely cause of this increase however post-Covid is due to more recent non-availability of courtrooms – through reduced sitting days – and the insufficient numbers of judges and barristers, as the Criminal Bar has reduced. According to the Victims' Commissioner, Baroness Newlove, during 2023 nearly 8,000 trials were unable to proceed and the unavailability of legal professionals stopped more than 1,400 cases.[14]

Cracked (or resolved) trials account for the remaining 31% of all trials during 2023. This compares with rates for such trials of 34-35% between 2013-19. Along with limiting the number of adjourned trials, reducing the number of trials which resolve on the day of trial is a key priority for judicial case management – which would avoid clogging up the courts unnecessarily. Judges are rightly concerned that the prosecution makes early decisions to end cases which are not going to proceed and that defendants who plead guilty should do so early in the proceedings, rather than waiting for the day of trial.

The delay in trials coming to court due to pressures on judicial availability, or a lack of barristers, creates strong incentives for defendants who might otherwise plead guilty not to do so. They are more likely to wait and see what happens. If their trial is subsequently adjourned to another date, witnesses may withdraw (as is reportedly happening in a number of rape cases[15]), or some other complication may arise for the prosecution. Existing delays therefore build further delay, as is shown by the decreasing numbers of cases that get resolved on the day.

Specific causes of delays in economic crime cases

The most substantial economic crime cases are brought to court by four particular prosecuting bodies:

- the Serious Fraud Office (SFO),
- the Financial Conduct Authority (FCA),
- the Insolvency Service and
- the CPS Serious Economic, Organised Crime and International Directorate (SEOCID).

The SFO, FCA and Insolvency Service have both investigative and prosecutorial functions, with the FCA and Insolvency Service also exercising wider regulatory functions. The CPS SEOCID prosecutes most large economic crime cases on behalf of a range of government agencies, police forces and enforcement bodies.[16] Economic crime cases brought to court by these agencies are generally substantial and complex. Investigations frequently take years to conclude. There are a range of reasons for this including:

A. International cooperation

Criminal use of the internet, web-based communications and simple international money transfer systems mean that many cases require evidence from other jurisdictions. Although international data sharing is constantly improving, formal Mutual Legal Assistance (MLA) is a relatively slow process with levels and speed of co-operation varying enormously between jurisdictions.

Meanwhile, the UK's withdrawal from the European Union has meant that Europe-wide improvements in transferring evidence at an EU level generated by the European Investigation Order[17] (EIO)[18] are no longer available to UK investigators. No new EIOs have been issued since 31 December 2020 and the UK has had to return to former procedures of Mutual Legal Assistance with EU member states.[19] The UK withdrawal from the European Convention 2000 and related protocol on Mutual Assistance in Criminal Matters also meant the removal of the European Arrest Warrant which was replaced by a similar mechanism (TaCA warrant) under the EU-UK Trade and Co-operation Agreement. The TaCA process has worked effectively but has added some difficulties in securing the return of fugitives from jurisdictions where a nationality bar exists, for non-EU States.

Europe-wide improvements in transferring evidence at an EU level generated by the EIO are no longer available to UK investigators

B. Disclosure in a digital age

Economic crime cases also frequently involve the seizure of numerous digital devices. The datasets held in modern digital devices and in cloud storage are colossal and ever-increasing in size. This poses enormous difficulties for both investigators and prosecutors who are required both to identify evidence against suspects but also any relevant material which might become disclosable to those suspects in any future criminal proceedings.

The datasets held in modern digital devices and in cloud storage are colossal and ever-increasing in size

The disclosure exercise is the single most time-consuming aspect of any economic crime investigation and soaks up significant resources. In its evidence to the Home Affairs Select Committee fraud inquiry, the SFO reported that one of their cases had a disclosure schedule of 200,000 items which took six months to produce.[20] A CPS SEOCID case recently required around 50 HMRC staff to be deployed to schedule unused material items.

Disclosure is also the area of greatest vulnerability for criminal prosecutions and the most common route for defence attack. Different law enforcement agencies have very different technical capabilities and software systems to assist them in the search and sifting process.

That also has the potential to cause investigation and review delay because prosecutors have learned, from bitter experience, that they need to front-load disclosure exercises ahead of charge. However, it is very difficult for prosecutors to secure defence engagement in that process at an early stage.

In legally-aided cases, there is no financial provision to support pre-charge defence engagement and there is no real culture of discussion, to resolve issues ahead of a charging decision.
The outcome of a government-initiated review of disclosure, conducted by Jonathan Fisher KC, was submitted to the government in late November 2024. Preliminary findings already published[21] focused on the following points:

- The current statutory framework for disclosure (CPIA 1996) is largely sound but has problems in its practical application;
- Consideration of narrowing or clarification of what constitutes "relevant material" in investigations;
- Consistent and effective use of technology and artificial intelligence;
- Effective early engagement between prosecution and defence on disclosure, both pre and post-charge;
- Possible bespoke solutions for volume cases;
- Improved disclosure training and culture; and
- Consolidation of guidance.

Back of the queue for listings

These wider points also provide background to the difficult environment in which economic crime cases traverse the criminal justice process. Due to all the factors laid out above, it is unsurprising that these cases take a long time to reach trial, with prosecutors reluctant to charge until they are satisfied all reasonable lines of enquiry (as far as they are known) have been completed and all relevant material gathered.[22]

Pressures on courts mean that economic crime trials are frequently listed far in the future

This means that suspects often have a long wait before charges are brought and are usually released under investigation during that process. Once charged, they tend to be bailed (sometimes with conditions attached) during the court process.

Pressures on courts mean that economic crime trials are frequently listed far in the future because defendants in these cases are usually on bail rather than on remand. Crown Courts have been struggling to manage the volume of cases relating to those in custody particularly given the time limits set on how long someone can remain there.[23]

Understandably, cases where someone is remanded in custody are a listing priority because they will include the most serious criminality, including homicides and serious violence, with defendants who pose a potential threat to wider society.

Added to this listing problem, the size and length of economic crime cases means that they are now being listed for trial two or three years after the cases are sent to the Crown Court. Southwark Crown Court, the leading economic Crown Court in the country, has historically tended to allocate specified judges to large trials and provide fixed listing slots. Resident Judges at Southwark have recognised the difficulty of finding new trial slots for these cases and always stressed the importance of parties being trial-ready.

Anecdotally, however, Southwark Crown Court is starting to see the impact of listing pressures, with cases losing trial slots and being re-listed some distance in the future. According to a recent Freedom of Information response from the Ministry of Justice, the average waiting time for a defendant's first appearance at Southwark Crown Court and their trial during 2023 was 460 days. For larger, more complex cases with defendants on bail, the wait could be closer to 700 days – or nearly two years.

For other courts around the country, including some of the biggest courts, trial slots for economic crime cases have increasingly been moved because of a lack of court time. For instance, HMRC cases involving individuals on bail and where there are generally no individual victims, have been especially vulnerable to being moved at short notice.

Wider impact on law enforcement agencies, prosecutors and cost

For prosecutors more broadly who deal with general crime cases in the Crown Court, the enormous number of additional cases in the system creates huge pressures. Sometimes individually managing a caseload in excess of 100 Crown Court cases, these lawyers and paralegals face an extraordinarily difficult task to keep on top of cases, particularly with so many defendants in custody. HM Crown Prosecution Service Inspectorate (HMCPSI) identified in their 2023-24 Annual Report that caseload pressures on prosecuting agencies are the *"most extreme"* in over 20 years of reporting.[24]

The pressures on prosecutors dealing with larger, more complex cases where bail is granted is different. Their cases will often be well prepared ahead of charge, so the immediate impact on lawyer and paralegal workloads is usually less intense.

There are four main issues in these long-running complex economic crime cases:

1. Impact on victims

Victims and witnesses face huge frustration at the time taken to investigate cases. If cases are delayed, there are real risks that memories may fade and elderly victims may no longer be in a position to give evidence at trial. As a result, they may never see justice delivered or any prospect of recovering their defrauded funds. This is a problem highlighted in the HMCPSI 2023-24 Annual Report which reported an increase in victims withdrawing from the criminal justice process, particularly in *"more complex cases"*.[25]

2. Viability of trials

The delays pose an increasing risk to the viability of the trials themselves, particularly where there are issues with continuity of personnel in the investigative, legal and advocacy teams. Loss of experience and case knowledge increases the risk that cases may fail. If new investigators, disclosure officers and lawyers are unfamiliar with often very substantial files and unused material, that lack of knowledge can be exploited by defence teams, who invariably raise disclosure issues just before a trial goes to court. The impact of losing experienced staff was also highlighted by HMCPSI in their 2023-24 Annual Report.[26]

3. Increased prosecution costs

Court delays can significantly increase prosecution costs. Whilst courts are generally sympathetic to the availability of counsel, the pressures on listing also means that trials that are cancelled at short notice may unavoidably be relisted when counsel are already booked out. There can be a significant cost to instructing new counsel, including paying them to get up to speed on a new case. This represents bad value for the taxpayer, who end up paying twice for counsel to get on top of a case.

4. Deterrence of crime

Finally, the delays seriously undermine the deterrent effect of the criminal law. Prosecutions that have been carefully selected in order to have an impact on wrongdoing and deter criminality lose their power to do so if they take years to come to fruition. For example, successful concluded prosecutions of fraudulent behaviour during the Covid crisis, which were designed to prevent further fraud to the public purse, are relatively limited in number. Such cases have taken time to investigate and prosecutions that have been launched find themselves still sitting in the Crown Court backlog of cases, awaiting trial in 2025 or 2026.

Measures tried or proposed so far

Many of the measures introduced to address problems in criminal justice tend to be short term in nature. The crisis during the summer of 2024 involving extreme right-wing violence illustrates the problem. Inevitably, officers and prosecutors will have been removed from their normal duties to ensure justice was swiftly dispatched and send a strong message about law and order. The CPS, for instance, reportedly deployed a team of 70 prosecutors to deliver quick charging decisions, while the courts expedited cases dramatically.

The response to this crisis, while important and necessary, will have inevitably increased court backlogs. Investigators and prosecutors will also still have to tackle their previous catalogue of work while the numbers of defendants in the system will have grown significantly.

Court space isn't the problem

Other temporary measures to address backlogs included the use of "Nightingale Courts" set up during the Covid pandemic.

These became essential when social distancing limited the operative ability of traditional courtrooms, providing bigger spaces, where social distancing could be observed. As a short-term measure these enabled trials to proceed in difficult circumstances, reducing backlogs to a limited extent. This was particularly true of economic crime cases, with defendants on bail and who posed no flight risk or threat of violence. Cases which involved defendants in custody, serious violence or where victim protection made court security arrangements essential, were less suitable.

However, the real issue is not courtroom capacity – there are many available courtrooms not currently being used – but limited "sitting days" and a shortage of barristers.

On 31 October, *The Times* reported that Truro Crown Court could only sit four days a week because of budget reductions. The Lady Chief Justice, Baroness Carr, reportedly told the Lord Chancellor that 5,500 more sitting days were required if the backlog was to be brought under control.[27]
The current figure of 106,500 sitting days is widely regarded as insufficient to solve the problem, even if increased by 2,000, as outlined by the Lord Chancellor this week.[28]

The Criminal Bar meanwhile has been steadily reducing in number for some time. Written evidence from the Criminal Bar Association (CBA) to Parliament in December 2001 reported a crisis in retention and recruitment because of low remuneration and poor working conditions. They reported that the total number of full practice criminal barristers was 2,273 in 2019-20, out of a total of 3,680 practising some criminal law. That is an 11% reduction since 2016-17 when there were 2,553 full practice criminal barristers.

The Criminal Bar Association reported a crisis in retention and recruitment because of low remuneration and poor working conditions

The demographic profile of the criminal bar is also increasingly ageing, with 45% of full practice criminal barristers aged over 45. Younger entrants, the CBA told Parliament, were increasingly seeking other practice areas with more lucrative remuneration.[29]

There is no doubt that trend is continuing, as evidenced by the recent push by the CPS to recruit more young barristers.[30] That should be seen as a positive move but it reflects the wider recruitment problems in the system and will take time to have an impact on the wider availability of trial counsel.

More systematic handling of cases

Better Case Management (BCM) has proved a successful measure in improving case management and progression. BCM is a judicially led initiative superintended by the Senior Presiding Judge. It was piloted in a handful of Crown Courts during late 2015 and rolled out nationally from January 2016.

BCM aims to introduce a consistent approach to Crown Court business, helping cases to progress through the system more efficiently by eliciting early guilty pleas, reducing the number of hearings, maximising participation and engagement from every criminal justice system agency and ensuring compliance with the Criminal Procedure Rules. The underpinning principles, derived from Sir Brian Leveson's "Review of Efficiency in Criminal Proceedings" (2015) were absolutely sound:

- A single national process.
- Getting it right first time.
- Case ownership with an identifiable person responsible for the case.
- Serving material on a proportionate basis.
- The duty of direct engagement and participation from everyone.
- Earlier resolution of pleas where they are to be guilty and the identification of the issues in the case where the pleas are to be not guilty.
- Fewer and more effective hearings.
- Consistent and robust judicial case management.
- Compliance with the Criminal Procedure Rules, Criminal Practice Direction and Court Orders.
- Digital working and making use of technology.

Moreover, the implementation of BCM demonstrated that, where all parties engaged with the principles effectively, effective trials were more likely and guilty pleas were entered earlier in the process. During the Covid-19 crisis, a cross-agency Crown Court Improvement Group, led by the

judiciary, was set up to consider ways to encourage recovery and improve backlogs. It concluded that BCM remained a valid and worthwhile approach, resulting in the Senior Presiding Judge, Sir Andrew Edis, issuing a revised BCM Handbook in January 2023.[31]

But BCM still relies upon the parties actively engaging in the above principles, which does not always happen. Putting them into practice in the context of complex fraud remains a challenge. The Resident Judge at Southwark, HHJ Baumgartner, issued a Practice Note on 1 July 2024, following consultation with practitioners and with the agreement of the Senior Presiding Judge, which addresses some of these issues.[32] The Practice Note sets out in detail the expectations around judicial case management of complex fraud trials at Southwark Crown Court. It makes requirements of the prosecution bringing manageable cases to court with advanced preparation, using a standard approach to providing early disclosure and detailed disclosure management documents. The Practice Note highlights that lengthy, complex cases will be allocated a trial judge at an early stage, so that cases can be managed consistently throughout the pre-trial and trial process.

New money?

Additional funding for criminal justice was referenced in the recent budget, with an increase of 5.6% spending for the Ministry of Justice each year for 2024-25 and 2025-26. The Law Officers' Department is to benefit by increases of 7.5% for both years.[33] Whilst these increases are welcome, it remains to be seen whether they are primarily covering existing shortfalls in departmental budget commitments or genuinely able to support new initiatives.

Nine key measures to drive improvements

This briefing primarily concerns measures which might improve the handling of economic crime – although some of the suggested measures will have wider application across general crime. Some are already available and could be used to improve case handling immediately. Others are not yet in place but could easily be addressed by the government and would see early benefits. Some require more long-term government consideration.

1. Intelligence-led investigations

The Government should focus investigative resources on a proactive, intelligence-led response to addressing economic crime. Given that one key economic crime – fraud – alone accounts for around 40% of all criminal activity, it is clearly not possible to investigate and prosecute every allegation or complaint. Investigative agencies need to identify cases where a prosecution will have a wider impact, whether because of the seriousness of the crime or the impact a prosecution may have on driving behaviours and raising public awareness.

Intelligence-led investigations allow the nature of the threat to be understood and both investigators and prosecutors can be clear on desired outcomes and case strategy. Ideally, investigators should have available to them and to use the whole investigative toolkit commonly used to deal with organised crime. Proactive investigations allow for early intervention and quick resolution because they can gather compelling evidence of ongoing criminality. Examples include the recent National Crime Agency investigation of bribes demanded by the former Chief of Staff to the Madagascan President[34] and the Met Police investigation and take down of the I-Spoof website.[35] Both cases resulted in early guilty pleas.

2. More manageable cases

Prosecution teams should bring cases to court which are manageable, in terms of the number of defendants, the counts on the indictment and the scale of material which is served and considered for disclosure purposes. Some economic crime cases are very substantial but managing them carefully, in order to achieve key outcomes, is more likely to result in success. The Southwark Crown Court Resident Judge's recent Practice Direction is a good guide in that respect.[36]

3. Regular use of plea deals

There should be regular use by the prosecution of the Attorney General's Guidance on plea discussions in cases of serious or complex fraud.[37] These were introduced in 2009 but have not been utilised as fully as they might. Defence reluctance has centred on an inability to subsequently tie the hands of the sentencing tribunal but that is less of an issue since definitive sentencing guidelines were introduced in 2014.[38] If the guidelines are followed, there is no reason why the

negotiation process should not be able to produce a plea agreement which is very likely to find judicial support. This suggestion requires something of a culture change but it is available to use immediately.

4. Greater credit for early co-operation with investigators

At present, defendants who plead guilty at the first available opportunity[39] are entitled to a maximum of one-third reduction in the likely sentence, had they contested the matter at trial.[40] There is a sliding scale of credit thereafter, as cases approach trial, with 10% reduction available ahead of the trial. If the sentencing council were to adjust their guidelines, to formally make 50% credit available to defendants who made admissions when questioned by investigators, it would significantly incentivise early guilty pleas. The potential benefits are enormous:

- investigations would be significantly shortened with financial savings;
- victims would see early case resolution with the potential for negotiated compensation under the Proceeds of Crime Act 2002;
- prosecution files could be prepared for sentencing alone, with huge savings in time and preparation;
- witnesses would be relieved of the anxiety about giving evidence;
- a significant reduction in future trials which would reduce court backlogs; and
- a reduction in prison remand numbers, shorter sentences for those imprisoned and greater prospect of working to rehabilitate offenders who admit their guilt and express remorse.

Greater credit was something which was under consideration but not implemented by the previous government's Justice Secretary, Alex Chalk KC.[41] It could be easily introduced by the Sentencing Council, with clear government support and direction.

5. Better defence funding

Improved funding for defence solicitors representing defendants in police stations when being questioned about serious offences is needed. This has been promised but not yet delivered[42] and is a vital measure for defendants to understand their position and receive reasoned advice, when interviewed about alleged offences.

At the same time, realistic defence funding should be provided to support pre-charge engagement on plea discussions and reasonable lines of enquiry. At present, this type of engagement remains limited to suspects who are privately funding their legal representation. There is no reason why a scheme could not be introduced to fund such discussions, particularly if wrapped in a framework such as the Attorney General's Guidance on plea discussions which relates to serious fraud. Properly funding defence advice work in serious cases could deliver enormous potential savings across criminal justice, by reducing trial listings.

6. More use of technology

More consistent use of technology to assist and improve the handling of digital disclosure is essential. Very few law enforcement agencies have access to e-discovery systems, such as Relativity, which are commonplace in commercial legal practices. Such systems require investment but enormously simplify the handling and searching of large datasets. Ultimately, the saving of time and the greater likelihood of success in handling large e-disclosure exercises makes the investment worthwhile. Technological investment is likely to be a key issue that will be highlighted by the review of fraud cases and the criminal justice system by Jonathan Fisher KC, which was completed recently but has not yet been published.[43]

7. Use of specialist courts for large and complex economic crime cases, with judges who have expertise in that type of work

Southwark Crown Court currently performs that function in London, taking the largest economic crime cases, including many from around the country. The new City of London Law Courts due for completion in 2026 will deal with high-level fraud, cyber and economic crime[44] and it will be essential that these courts are used alongside and not as a replacement for Southwark Crown Court to ensure additional court capacity for economic crime cases. This model should be rolled out more widely in large cities such as Birmingham, Manchester and Leeds to hear the large volume of economic crime cases across the country and ensure such cases do not lag behind other cases.

8. The new government should look to negotiate with the EU to give the UK the same criminal justice partnership benefits it enjoyed when an EU member

That is an easy proposal to put forward but may be a much more difficult measure to deliver, particularly as negotiations with the EU will invariably cut across different areas. However, the UK remains a vital and valued criminal justice partner in Europe, so should have some leverage to negotiate an improved position.

9. A Royal Commission to take a long-term view across the whole system

This was proposed by the Bar Council in May 2024[45] and considered by a previous Conservative government in 2019. As the Bar Council suggested, short-term measures will not address the widespread problems. Nor is this simply a matter of more funding for every area of criminal justice, particularly as government resources are currently so stretched. The Government needs to consider radical changes in how criminal justice is delivered and managed. This should include looking at proposals made by Lord Justice Auld in his Review of the Criminal Courts of England and Wales in September 2001,[46] for a unified Criminal Court, separated into divisions; the removal of the defendant right to elect jury trial in the middle tier of cases (as recently promoted by the former Lord Chancellor, Alex Chalk KC[47]); and providing defendants with the option to choose trial by judge alone

or by senior judges sitting with lay members in complex fraud. Trial by judge-alone in complex fraud was already on the statute book, under section 43 of the Criminal Justice Act 2003 but the provision is not in force.[48] Some of these issues may now be addressed in reviews very recently underway (see below) but there remains a wider need for a holistic review of criminal justice.

Conclusion

There is no doubt that immediate action is needed to address structural problems in criminal justice and the problem of overflowing prisons. Rather like the National Health Service, however, the problems are not simply an issue of under-funding, although that has played its part.

Investment is needed but it needs to be targeted and accompanied by creative thinking and reforms which will modernise the system, reduce overall numbers and speed up case progression. The Government's very recent announcement that Sir Brian Leveson is to lead an independent review of the Criminal Courts is therefore welcome news.

The scope of that review is to consider longer term options for criminal court reform with the aim of reducing demand in the Crown Court by retaining more cases in the lower courts (reporting by late Spring 2025). It will also consider efficiency and timeliness processes through charge to conviction or acquittal (reporting by Autumn 2025).[49] Allied to the David Gauke-led Independent Sentencing Review,[50] also announced recently, there appears to be greater impetus to effect meaningful reform to criminal justice.

Endnotes

1. Criminal courts - Courts data - Justice Data
2. Criminal courts - Courts data - Justice Data
3. Criminal courts - Courts data - Justice Data
4. Criminal court statistics quarterly: July to September 2024 - GOV.UK
5. CPS data summary Quarter 4 2023-2024 | The Crown Prosecution Service
6. CPS data summary Quarter 4 2023-2024 | The Crown Prosecution Service
7. This may include cases which are marginally delayed by a range of preliminary issues but go ahead broadly within the existing listing window.
8. Barristers in England and Wales to go on indefinite strike from September 5 (ft.com)
9. Criminal court statistics quarterly: July to September 2024 - GOV.UK
10. BCM is a judicially led initiative superintended by the Senior Presiding Judge that aims to introduce a consistent approach to Crown Court business, helping cases to progress through the system more efficiently by eliciting early guilty pleas, reducing the number of hearings, maximising participation and engagement from every criminal justice system agency and ensuring compliance with the Criminal Procedure Rules.
11. This will be because one of the parties, or the court, is unable to proceed with the trial.
12. This may be because the defendant(s) pleads guilty on an acceptable basis or the prosecution withdraws or concludes the case in some form.
13. Criminal courts - Courts data - Justice Data
14. 'Open courtrooms seven days a week to clear chronic trial backlog'
15. Jonathan Ames in *The Times* 25.07.24
16. These include HM Revenue and Customs (HMRC), the National Crime Agency (NCA), Department for Works and Pensions (DWP), and various other government agencies and police forces across England and Wales.
17. European Investigation Order | Eurojust | European Union Agency for Criminal Justice Cooperation (europa.eu)
18. The EIO is a judicial decision issued in an EU member state to use investigative measures to gather and secure evidence in another EU country, based on mutual recognition. It came into effect in May 2017.
19. European Investigation Orders - GOV.UK (www.gov.uk)
20. https://committees.parliament.uk/writtenevidence/125719/pdf/
21. Preliminary findings and direction of travel (accessible) - GOV.UK (www.gov.uk)
22. The Criminal Procedure and Investigations Act 1996 requires investigators to pursue all reasonable lines of enquiry, whether these point towards or away from the suspect. This enables investigators to gather all relevant material which is scheduled and categorised to highlight disclosable material.
23. Crown Court custody time limits require that each defendant is held in custody, ahead of trial, for no longer than 182 days after their first appearance. Unless a judge is satisfied that the criteria for extending the time limits is met, the defendant should be released on bail once 182 days has elapsed.
24. 2024-10-28-Annual-report-2023-4-Final.pdf
25. 2024-10-28-Annual-report-2023-4-Final.pdf
26. 2024-10-28-Annual-report-2023-4-Final.pdf
27. Truro crown court forced to adopt four-day week
28. 2,000 extra sitting days to help address courts crisis - GOV.UK
29. https://committees.parliament.uk/writtenevidence/41490/html/
30. Prosecutors launch recruitment drive for young barristers
31. Better Case Management Revival Handbook – January 2023 - Courts and Tribunals Judiciary
32. 2024-07-01-Southwark-Practice-Note-No.1-FINAL-INCL.-DMD.pdf (criminalbar.com)
33. Budget '24: Justice spending to rise by £1.9bn | Law Gazette
34. Former Chief of Staff to Madagascan President convicted of bribery - National Crime Agency
35. SENTENCE UPDATE: Man jailed for role in running website involved in multi-million-pound fraud | The Crown Prosecution Service (cps.gov.uk)
36. 2024-07-01-Southwark-Practice-Note-No.1-FINAL-INCL.-DMD.pdf (criminalbar.com)
37. Plea discussions in cases of serious or complex fraud - GOV.UK (www.gov.uk)
38. Fraud-Bribery-and-Money-Laundering-offences-definitive-guideline-Web.pdf (sentencingcouncil.org.uk)
39. An indication given in the Magistrates' Court for either-way offences or at Plea and Trial Preparation Hearing (PTPH) in the Crown Court for indictable-only offences.
40. Reduction-in-Sentence-for-Guilty-Plea-definitive-guideline-SC-Web.pdf (sentencingcouncil.org.uk)
41. What is the Government doing to reduce pressure on prison capacity? (parliament.uk)
42. Criminal legal aid solicitors to get £16m 'pay boost' for police station work | *Law Gazette*
43. Preliminary findings and direction of travel (accessible) - GOV.UK (www.gov.uk)
44. Construction begins on brand new flagship London court in the Square Mile - GOV.UK (www.gov.uk)
45. Bar Council calls for 'whole system' review through royal commission | *Law Gazette*
46. Criminal Courts Review - Contents - pdf version (criminal-courts-review.org.uk)
47. Conservative Party Conference: former justice secretary says Crown court should hear only most serious cases | *Law Gazette*
48. Criminal Justice Act 2003 - Explanatory Notes
49. Independent Review of the Criminal Courts - GOV.UK
50. Independent Sentencing Review 2024 to 2025 - GOV.UK

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