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The Court System

London's Victims' Commissioner Policy Paper

Introduction

'Justice delayed is justice denied' is a phrase often-quoted, and by this metric thousands of victims in our country are being denied justice, with no end in sight. Timely and effective justice cannot simply be an aspiration, but is a cornerstone of society and the foundation of any functioning justice system.

The backlog of cases waiting to be heard, particularly in our Crown Courts, is a national crisis and should be viewed with shame. While the pandemic undeniably had a huge impact on the number of cases in the system, a substantial backlog existed long before COVID. Since 2010, 43% of courts have been closed and 20% of court staff have been lost – yet successive Governments have simply expected the wheels of justice to keep moving.

Nationally, there are now over 67,500 cases waiting to be heard in the Crown Court, with over 14,000 of these cases in London. 28% of these national cases have been waiting for more than a year, and we know many cases wait significantly longer.

The cruel impact of this wait on all those involved in the justice process cannot be overstated. Defendants, many of whom may be found not guilty, wait months or years waiting to have their case heard and can be deprived of their liberty in the process. Meanwhile, victims and their families are living in limbo, unable to move on or properly heal from their trauma. Some 40% of all victims withdraw from the justice process, rising to 50% of sexual offence victims, 58% of domestic abuse victims, and 68% of rape victims. Many withdraw for perfectly understandable reasons – an outcome offenders hope for when they enter the long court process. But victims also report that they feel forced out of a justice system which is simply demanding too much, causing a loss of trust and the confidence that they will ever see justice.

"*The length of time it took to take the case to trial, coupled with the change of court date, resulted in me questioning if I wanted to go forward with the trial"* – Sophie, rape victim/survivor

We urge victims to come forward. We need them to help bring dangerous offenders to justice to help keep the public safe. Yet we are unable to guarantee them a safe, swift, and professional service. Government must effectively collaborate with justice professionals across the system – including victims – listening to their solutions, reducing siloed working, and developing a whole systems approach. The approach to the recent riots has shown that coordination of justice partners can produce a more efficient process, and though these emergency measures are not a sustainable strategy there are no doubt lessons to be learned.

There is not one simple solution. In London, and nationally, every part of the system needs overhauling. Prisons are overcrowded and unsafe. Courts are crumbling. Cases are pulled at the last minute because they haven't been properly prepared. We can't find enough judges, advocates, or staff. But these issues are not insurmountable. We need leadership, we need ambition, we need better use of technology, and we need long-term investment and commitment. Victims, and the public, deserve nothing less.

The Court Estate

The physical buildings that make up our justice system are crucial if we are to properly support victims and witnesses, retain court staff, tackle the backlog, and at a most basic level ensure justice is done. Unfortunately, Government austerity and underinvestment over the past 14 years has left the court estate crumbling.

Harrow Crown Court has been closed since August 2023 and is not expected to reopen before the Summer of 2025 (as of writing), following the discovery of dangerous concrete used throughout the building; meanwhile Inner London Crown Court is plagued by issues including a leaking roof, unusable 'family room', and faulty boilers. These are just two examples of a court system on its knees, creating a working environment that further erodes public confidence in the justice system and that is unsuitable for the hard-working judiciary and staff who try to ensure justice is done.

The court estate has proved itself to be a barrier in addressing the backlog, with a lack of courtrooms to hear cases, and in the pandemic's peak (when social distancing was crucial) a lack of suitably sized courtrooms to hear multi-defendant cases. Early in the pandemic, through conversations with the Judiciary, we made a recommendation to establish a 'super court' in London to facilitate these larger cases. While Government acknowledged the need for such a court, these were placed in Manchester and Loughborough, and so provided little support to London, where the backlogs were most acute.

Nightingale Courts have been an invaluable lifeline throughout and since the pandemic, providing additional spaces for trials to be heard. While they cannot directly facilitate many of the most serious cases with vulnerable victims (due to a lack of custody provision), they have helped to clear up space in existing courtrooms to allow serious custody cases to be heard sooner than they otherwise would have been. Unfortunately, the short-term approach taken to setting up these courts means that, as leases expire, the rents have often increased to levels unaffordable to the public sector, leading to many of the Nightingale Courts closing.

While this short-term thinking saw the system through the pandemic, it is clear that longer term options to increase capacity are needed. Tana Adkin KC, former Chair of the Criminal Bar Association, rightly expressed the Ministry of Justice's "*ongoing failure to put into effect a long-term strategic plan and related funding to a tried-and-tested formula: that every defendant charged and brought to trial in the Crown Court requires, under one roof at the same time, properly qualified and available counsel both to prosecute and defend a case, a judge, a jury, and a working courtroom.*"

Recommendations:

- A programme of capital investment is needed, not only to maintain and improve the current court estate but also to expand it, ensuring sufficient capacity for cases and creating working conditions which may better attract and retain staff.
- Funding and longer-term planning for 'Nightingale Courts' is needed to continue their pivotal role in tackling the backlog while also providing value for money.

Technology in the Courts

As set out above, the limitations of the court estate can often present a barrier to better ways of working, increasing the need for urgent investment in better audio and video technology to provide a platform for more transformative ways of working. There need to be more ways for victims and family members to be able to view proceedings remotely, such as in a separate room or building within the court, an alternative controlled environment, or even from home.

Some Magistrates Courts are struggling with their significant caseload, caused by high police charge rates. In these areas, half of CPS magistrate court advocates are just dealing with overnight remand cases, leading to inefficiency and delay. Many of these remand cases and simple guilty pleas could and should be heard virtually by benches of magistrates sitting elsewhere in England and Wales, where the pressure of case volumes is less acute.

More robust and advanced technology could also be used to deliver a virtual remand court, operating for longer hours than traditional courts which work roughly seven hours per day, five days per week. A virtual remand court could operate on a sophisticated rota basis for significantly longer hours. Such a court would deliver significant benefits, freeing up police custody space of cases likely to be bailed but with defendants currently held over the weekend as courts are not sitting. This kind of transformative thinking is needed if we are to tackle the problems in our court system.

Currently, Magistrates Court cases are not even recorded. Recording these cases would not only provide transparency and benefits for victims, but would also open up for discussion the automatic right of appeal against conviction for defendants in Magistrates cases. Currently, victims caught in this process must give evidence twice – once in a Magistrates trial and then later, and at far more length, in a second trial in the Crown Court.

Finally, a significant number of trials are delayed because defence solicitors and barristers cannot have a conference with clients held on remand. In three months in 2023/24, 230 Crown Court trials were ineffective because a prisoner was not delivered to court or the defence could not obtain instructions. In many areas the technology in the prison estate is already in place, but the underpinning logistics are needed to facilitate this.

Recommendations:

- Investment should be made the technology, alongside appropriate guidance and implementation, to bring our justice system into the 21st Century, including to:
    - Enable remote hearings where appropriate.
    - Allow cases to be heard by Magistrates in other parts of England and Wales, where the backlog may be less acute.
    - Facilitate conference between defendants and barristers.

- Scoping and costing should be undertaken to understand the resources required to operate a virtual remand court.

- Magistrates Court cases should be recorded, to enable records to be requested by a victim or other parties, and to allow the reconsideration of a defendant's automatic right of appeal.

CPS, The Legal Profession, and Staff

The CPS and legal professionals are under intense pressure from a shortage of staff and high volume of cases, many of which are complex and taxing to take on. Although they will take time to come through the system, thought is needed now as to how to drastically increase the number of criminal barristers. Limited pupillage places in Chambers hampers the prospects of those who may wish to pursue such a career, and I would welcome ways in which these places could be further encouraged, such as through match funding.

More radical ideas could also be considered to increase the flow of criminal barristers coming through the system, such as mandating that all barristers qualifying must undertake a limited time at the public's service before moving into private practice, if this is what they wish to do.

Even with increased prosecution counsel numbers, the shortage of specialist counsel who are able to take on RASSO cases will remain an issue. In a survey from the Criminal Bar Association, 64% of prosecutors and 66% of defence counsel said they no longer wanted to conduct these cases. This is due to low remuneration, diary complications, and the emotional toll that working on RASSO cases takes. Counsel need to be incentivised to take on certain cases, such as RASSO work or Section 28 hearings, though with an awareness of the vicarious trauma that can come from undertaking back-to-back cases of this nature.

Of course, remuneration remains a key point of contention in the discussion over attracting advocates and staff. In 2022 the justice system ground to a halt once again after the Criminal Bar Association made the decision to take industrial action over pay, with the revelation for many that – after expenses – barristers earn a medium of just over £12,000 in their first three years. The Times reported that 83% of criminal barristers incurred personal debt or used savings during the pandemic. Thankfully barristers voted to end the strike in October 2022 following an improved offer from Government.

These strikes were the most visible demonstration of the low pay and poor staff retention that plagues the justice system, particularly those who work in the court system. HMCTS court staff are poorly paid, with a London Court Usher role currently paying just over £24,000 and an Administrative Team Leader in the Royal Courts of Justice earning little more than £31,000.

Recommendations:

- New ideas are needed to increase the number of legal advocates taking on cases, alongside a long-term plan to attract, train, and retain people in the profession.
- The grading and pay scales of court staff should be reviewed to ensure they attract and retain the necessary talent.
- The CPS should explore options for incentivising prosecution counsel to take on RASSO cases.

The Court Experience

Giving evidence in court can be a brutal and de-humanising experience for victims, who are still very much treated as bystanders in a process which will likely be among the most difficult moments in their life. Our criminal justice system repeatedly fails to adequately involve and support victims, and as long as we keep treating victims in this way, we will struggle to tackle the high proportion of victims withdrawing, to deliver justice, and to keep the public safe.

Preparing yourself to give evidence in court takes an enormous mental and physical toll, knowing you will have to face your perpetrator while being scrutinised by twelve of your peers. Cross examination in particular can cause victims significant trauma, and more work is needed to manage this. Recent Court of Appeals rulings have rightly required that advocates 'adapt to the witness, not the other way round'.

"During trial, I had four cross-examinations. The first lawyer insisted on using the word sex. When I corrected her to say it was rape, she said we'd be unbiased - let's call it intercourse. Another lawyer accused me of being drunk, having lost my inhibitions, and mourning that things had gone beyond my control. That I was embarrassed of own my actions. She showed me pictures of the flat, the window I climbed out of, and the bed, this was the first time I had seen these images in 5 years - all in front of an audience. One lawyer told me I had done a striptease and recounted in graphic detail how I had taken one person into the bedroom, making noises until he orgasmed inside me. This is the kind of explicit storytelling and questioning that I consider to be a form of violence and intimidation. I was surprised to find the lawyers and judge passive." – Violet, rape victim/survivor

In some jurisdictions; such as Quebec, Canada; witnesses are prepared to give evidence. In Quebec, this is not considered coaching as it never deals with the facts of the case, but instead focuses on developing a witness' practical skills and confidence. This might include teaching the witness to speak loud enough, or that they shouldn't just say what they think the jury wants to hear. They will even conduct a mock trial with the victim on an unrelated event; the specifics of the case are never discussed. The programme was developed in conjunction with their Crown Prosecution.

Special Measures can better support victims and witnesses to give their best evidence, but these are often poorly explained by justice agencies, resulting in victims - who would benefit from them - missing out. Equally, because these measures are not well understood or explained to victims, those that do choose them can be upset afterwards. For example, victims who have given evidence via video link have been upset to find out that the defendant is able to see the screen, as this was not properly explained in advance.

Lastly, Ground Rules Hearings – particularly in rape and sexual offence cases – can be hugely beneficial. These Hearings, when they happen, address key issues such as questioning on a complainant's past sexual history, control of comment, stereotypes, insulting vocabulary, and management of questions accusing the witness of lying. Ground Rules Hearings should be mandatory in all rape and sexual offence cases as a means of enabling witnesses to give their best evidence – by setting expectations, reducing anxiety, and ensuring the remit of defence questioning is fair and appropriate.

Recommendations:

- Exploratory work should be undertaken to scope the provision of a 'witness preparation programme' in England and Wales.
- The CPS should ensure prosecution counsel meets with the victim in advance of the trial.
- Relevant justice agencies need a greater understanding of special measures, so that these can be properly explained to victims and witnesses, allowing them to make an informed decision.
- Ground Rules Hearings should be made mandatory in rape and serious sexual offence cases, to allow the cross examination of vulnerable victims while recognising and adapting to their trauma.

Section 28 Pre-Recorded Evidence

Given the often-traumatic courtroom experience for victims of crime, any attempts to lessen this trauma and create a better experience for victims should be welcomed. Section 28 provides a calmer and less intimidating experience for victims and witnesses, and is a valuable measure in improving the anxieties of survivors who face uncertainty regarding their court appearances.

Although providing evidence at an earlier opportunity than the trial provides some benefit (victims are more able to move on, and feel able to safely access counselling), the scale of the backlogs at every stage of the system still result in significant waits for victims, with Section 28 hearings often only scheduled a matter of weeks before the full trial. Where a Section 28 hearing cannot be accommodated until shortly before the trial, and where a victim is content to give evidence on the day, consideration could be given to the video recording of this evidence. This would provide a record of the evidence should there be a retrial, sparing the victim from going through the process once more.

A crucial element that may undermine the victim experience of Section 28 is any indication that this format of evidence will lessen the impact on the jury. Despite the positive impact of Section 28, support services have reported a reluctance among police officers to utilise this provision due to a prevailing mindset that Section 28 may not be as effective as having the victim on the stand for the jury to see in person. These concerns are often communicated by the police to the victim, and we have seen this discourage them from opting for Section 28, fearing that it might negatively influence the outcome of their case.

While the Ministry of Justice's evaluation of the use of Section 28 did provide some helpful insight into victims and practitioners' experience, it did not draw any conclusions about the effectiveness of Section 28 with regard to trial outcomes. Further research is clearly required, however change is also needed in order to make the policy a success. It is important to underline the benefits of a Section 28 to professionals, to support them in providing the right information, guidance, and reassurance to victims who want to understand more about attending court, the uncertainty of the day, and being in close proximity to the defendant.

Although the provision of technology in the court estate has improved over time, we know there are still significant issues and constraints. While remote access to trials is now possible, Section 28 hearings generally need to be conducted within the Court where a fixed camera is installed. Even with this setup, there are issues of filming, with cameras poorly positioned, and Section 28 hearings scheduled without consideration for the victim. In one case we were made aware of, a Section 28 hearing for a child was scheduled late in the evening after school, with the victim being tired and unresponsive and so not giving their best evidence.

We spoke to members of the Judiciary who believe that more remote cameras are needed to allow people to give their evidence from other locations, particularly children and those with disabilities. We have heard of courts hiring remote cameras at huge expense in order to make Section 28 a workable policy.

Fortunately in London, the Lighthouse – a Child House service for victims of abuse – is able to facilitate these hearings for children and young people, and we hear the majority of children and young people want to give evidence remotely rather than being in the court building. The facility to remotely undertake Section 28 hearings is, however, not available for adults.

Ultimately, there remains an unfortunate conflict with regards to Section 28 hearings. Whilst the benefit to the victim is clear, the hearings take time and are difficult to arrange logistically, creating further pressure on the backlog.

Recommendations:

- Greater instruction should be given to juries in Section 28 cases, to clearly explain why a victim may choose to pre-record their evidence, allowing them to better understand the challenges that witnesses face.
- Robust guidance on Section 28 hearings is needed, alongside training, to ensure that hearings are conducted in a way that is appropriate for the victim and enables them to give their best evidence.
- Furthermore, investment in the rollout of technology to enable Section 28 is crucial in making this a workable policy.
- The Lighthouse model should be expanded upon, ensuring more sites are available for the use of victims and witnesses to provide evidence remotely.

Open Justice

"*Open justice is a fundamental principle at the very heart of our justice system and vital to the rule of law – justice must not only be done but must be seen to be done. Its history and importance in law can be traced back to before the Magna Carta. It is a principle which allows the public to scrutinise and understand the workings of the law, building trust and confidence in our justice system.*"

This sentiment was [rightly] articulated in Government's consultation on Open Justice, and yet for victims, justice is far from open and transparent. The public must have confidence that when they participate in the justice system, it will be accessible, fair, and transparent.

However, victims tell us they are consistently advised by police and prosecutors not to attend a trial after they have given their evidence, and/or not to attend sentencing hearings. Victims have said to us "I was told I couldn't watch the court case after giving evidence as I'd look like I wasn't scared of the perpetrator and it could harm the jury's decision" and "We were advised not to attend [the sentencing] because it may make us look bitter.

I am very pleased that – as a result of our campaign for open justice, the CPS has recently refreshed its witness guidance, which now has clear instructions for prosecutors in how to approach these conversations with victims, clarifying their right to attend trial if they wish, and offering the possibility of observing remotely if possible. It is important that police officers are also brought up to speed with this change in guidance so that it is implemented effectively and that victims are not given contradictory advice.

Allowing victims and bereaved family members to observe proceedings via a livestream could enable them to be a part of the proceedings when they don't feel able to attend in person, however many victims and their families don't know this is available to them, and so don't proactively ask for it. Alongside this, police officers or those in the Witness Care Unit often don't discuss this option with the victim or will not know how to go about arranging it if requested.

Where victims do request transcripts of proceedings, the cost – delivered through contracts with private profit-making companies – can be prohibitive. While the average sentencing remarks may 'only' be £45-60 according to Government, many complex cases can be significantly higher (£200+), and Judge's summing up higher still, having heard figures over £500. Where victims request a transcript of the court case, we have seen figures including ~£7,500 and ~£22,000.

In May 2024, as a result of our Open Justice for All campaign, Government commenced a pilot offering free transcripts of sentencing remarks to all rape and serious sexual offence victims stretching back to March 2012. This is a welcome step in the right direction, and this pilot needs to be well advertised to ensure eligible victims are made aware, and that the benefits can be well-evidenced.

Recommendations:

- Transcripts of Crown Court cases – at minimum sentencing remarks and Judge's summing up – should be provided to victims swiftly upon request, at no cost.
- Police forces should update their guidance and training for Witness Care Units and officers attending court, so that they are made aware of the CPS' new guidance on victims attending their trial.
- Government should further investigate whether audio recordings of court cases can be provided to victims, recognising the cost of producing a full-trial transcript.
- The Victims' Code should be amended to clarify a victim's right to attend trial after giving evidence, and to attend the sentencing hearing.
- Juries should be given directions on a victim attending trial after giving evidence, that this not be considered in their judgement.

Rape and Serious Sexual Offences

Rape and serious sexual offences are some of the most vulnerable cases in the court system; often deeply traumatised victims have experienced a lengthy investigative process and then face an agonising wait for court. Many are unable to cope with these delays, meaning the risk of victim withdrawal is high in these cases. Government has made positive progress, investing in its Rape Review and in the work of Operation Soteria to transform the police and CPS response to rape. While this is driving progress, it is also pushing more cases into a jammed court system, undermining efforts to better respond to victims.

Unfortunately, wait times for these vulnerable victims have increased as a result of the pandemic, putting many cases at risk of collapsing through victims withdrawing. This risk is further increased by last-minute, unexpected changes to court schedules. We have seen numerous examples of serious sexual offences being put on "floater" lists and victims only being made aware that their trial is not going ahead at the very last minute.

To help combat this, we have called on judiciary to introduce a prioritisation protocol for rape cases. We believe that Rape and Serious Sexual Offence cases should be given the same priority in court listing as custody time limit cases where the defendant is on bail. In March 2024, the Senior Presiding Judge, Lord Justice Edis, announced that 181 rape cases which have been waiting more than two years would be prioritised and heard before that Summer.

Since then, I have welcomed Government's commitment to establishing specialist rape offence courtrooms which deal solely with rape and sexual offences. This is a concept which I have long advocated for and hope to see progress made to ensure the court process for these victims is more timely and effective. The impact would be increased victim confidence and support for the trial process and ultimately improved justice outcomes.

The previous Government commenced a specialist sexual violence project in three courts, including in Snaresbrook Crown Court, and we are closely following the project to advocate for a roll out of these reforms more widely.

Recommendations:

- Specialist courtrooms should be established to hear rape and serious sexual offence cases, to more effectively address the backlog of cases with some of the most vulnerable victims who are likely to withdraw. A roundtable of experts should be held to determine the scope and detail of these plans.

The System of Courts

It is openly known in the justice system that offenders are gaming and manipulating the backlogs to their advantage. As mentioned above, the automatic appeals process in the Magistrates Court is adding to the Crown Court backlog, and forcing victims to significantly extend their ordeal, delaying justice being done.

In 'triable either way' offences, the defendant can choose whether to go to a Magistrates Court or a Crown Court, and many are electing for the case to go to the Crown Court knowing the huge delays it will face and the likelihood the victim will withdraw. This is particularly prevalent in cases of assaulting an emergency worker, and protest-related cases, which add significantly to Crown Court case loads. Consideration should be given to the offences considered as triable either way, to understand whether – in the context of the backlog facing the courts – this system can continue in its current form. There are other offences, such as TV license evasion, that could even be considered by a different division of the court system – the Civil Courts, given similar offences such as the evasion of council tax, parking fines, and more are considered by the civil courts.

In 2001, the Criminal Courts review by Sir Robin Auld made a recommendation for a three-tier criminal court system, to replace the current Crown and Magistrates. A new middle division – known as the district division – would try cases where the penalty is likely to be two years or less. Such a Court would take a significant caseload away from the Crown Courts.

Even without full reform of the court system, the effectiveness of the existing estate and processes should be scrutinised. There are many days where cases crack and courtrooms lie empty, while on other occasions cases cannot be listed due to lack of court space. There are therefore wasted resources which are not properly utilised. A centralised system could be considered whereby cases could be transferred between local courts, and a better approach to listing would see a greater proportion of effective trials.

Listing could also prioritise the sentencing of cases, at least in the short term, to deal with the significant backlog of cases where the offender is waiting to be sentenced. Many of these offenders will be remanded in custody – taking up prison space – when their sentencing may well see their release from prison on time-served. A sentencing 'blitz' could help to clear this backlog and free up space in the prison estate.

The effectiveness of Pre-Trial Preparation Hearings' (PTPHs) is also in question, with limited information often available about a victims availability, the need for special measures, or even key evidence in the case not yet ready. This is making it harder to secure early guilty pleas, with offenders knowing that if they hang on and draw out the process the victim may withdraw and they may never see the inside of a courtroom. The proportion of suspects pleading guilty pre-trial or at the first crown court hearing has fallen from 71% in 2019 - when the backlog was at its lowest – to 48% in the year to September.

The Bar Council chair recently said "young criminal men, who should be pleading guilty at an early stage, become more aware that their day of reckoning is getting pushed back further and further and, because of the high rate of ineffective trials, perhaps may never come at all," "Victims and witnesses are becoming ever more disillusioned or simply give up. My concern is of a complete collapse in public confidence in the system."

Recommendations:

- Government should consider reclassifying certain offences where, in the context of the court backlogs, it is inappropriate for them to be heard in a Crown Court.

- A review of court efficiency should be undertaken, with exploratory work undertaken into the recommendation for a third tier of court.

- Cases waiting to be sentenced should be prioritised to quickly clear this backlog.

- Further work is needed to ensure cases are ready in advance of pre-trial hearings, allowing the defendant to see all the evidence and hence encourage early guilty pleas. Greater cooperation is also needed with the police in these hearings, to understand victims' availability and potential vulnerabilities.

Conclusion

It is clear that, following more than a decade of underinvestment; mismanagement; and inaction, and a pandemic that crippled its operations, the justice system is on its knees. There is no single, simple solution to the problems in our justice system, but Government must urgently act to change the course of justice in England and Wales, ensuring it is open to victims, closed to exploitation by offenders, properly resourced, and can maintain the public's trust.

There are a number of smaller components of the justice system that can be tweaked which, in combination, will deliver significant benefits. These include more sophisticated listing practices, better communication between agencies, and guidance and training to make better use of the resources currently available. Investment in certain areas, particularly technology, has the potential to rapidly tackle the backlog, from enabling more remote hearings, to more transformative proposals such as an entirely remote court.

What is clear is that issues – some simple and others complex - exist across the entirety of the justice system. Leadership and ambition are required to modernise the way in which our courts and agencies operate, to effectively tackle the backlog, and ensure justice is administered in an open, transparent and fair way.

A Royal Commission would provide a much-needed opportunity to consider the justice system as a whole, putting an end to piecemeal changes which often push problems to other parts of the system. A Commission would identify the structural issues that prevent progress, and would highlight the reforms needed to make our system effective and efficient. It has been more than 20 years since the last such Commission, and the decay of our justice system since then necessitates we look again.

Recommendations:

- A Royal Commission on Criminal Justice – with clearly defined parameters – should be established to investigate and identify the failings of the court and justice system, and to make swift and appropriate recommendations for reform.