Ending the Justice Waiting Game: A plea for common sense

I have argued that victims are the ‘poor relation’ in the criminal justice system\(^1\) – that they all too often get subsumed into the administration of the law that concerns itself with due process and the rights of offenders, leaving victims as a sideshow.

I am told everywhere I go that the system is inefficient; that there are too many cases going through the crown court; too few incentives for defendants to plead guilty; too much delay in serious cases coming to court and too many cases without merit clogging up the system.

There are of course significant financial costs to this inefficiency. And as the Spending Review means it is imperative that the system starts doing more for less, there will no longer be any room for such wastefulness. It is galling to me that - as I explain in this report - we are spending many millions of pounds preparing for trials that do not happen whilst services for victims, even in extremely serious cases, are woefully inadequate. These victims’ services rely almost completely on volunteers, compared to the well-paid prosecutors, barristers, judges and others who run the criminal justice system. Less than 2% of the cost of our criminal justice system is spent directly on victims.

But there is another cost. The more stretched the system is, the more the ‘poor relation’ gets squeezed. Nearly every one of the many, many hardworking people in the criminal justice system has said that their capacity to do better for victims and witnesses was limited by case overload.

As an ‘informed outsider’ looking in at the criminal justice system, I do not have all the solutions to this, but it does seem to me that there are common sense reforms that can be made. But what we need now are decisions, not committees; we need action, not words. I have focused on two key initial reforms which commentators and criminal justice professionals argue need to be made. There will be more I am sure, but by taking action quickly on these two, we can both save money and improve the service provided to victims. They are: stopping defendants delaying their guilty pleas to the last minute, and restricting the right to a jury trial in some cases.

Pleading Guilty

A large proportion of defendants plead guilty at the first court date. No trial is necessary, no witness need be called. Victims of crime need not give evidence in court, public money not spent on a defence, prosecutors need not prepare for trial.

When a defendant pleads not guilty at that stage, the system gears up for a trial to be held before a magistrate or before a jury in the crown court.

\(^1\) The poor relation – victims in the Criminal Justice System: Commissioner for Victims and Witnesses, 2010
However, in nearly 50,000 of those ‘not guilty’ cases, the defendants change their plea to guilty on the day of the trial\(^2\).

The Crown Prosecution Service (CPS) estimates the costs to itself alone of preparing a case for a contested crown court trial is £2,200\(^3\). If the defendant pleads guilty at the first magistrates hearing it costs £81, or for a guilty plea at the right time in a crown court, £1,100. As the Director of Public Prosecutions has recently said, “if we are preparing one in every two cases unnecessarily, then 50 per cent of our work is being done unnecessarily”\(^4\).

**We estimate that the wasted costs of the CPS preparing cases when a defendant ends up pleading guilty on the day is around £15 million per year**\(^5\). This is a very conservative estimate as it refers only to the preparation of the prosecution case, and excludes the costs of prosecution barristers, judicial and court time.

This is bad enough. But for me, the real issue is what this says about our justice system - and in particular the impact it has on victims.

Victims and witnesses will be at court waiting to give evidence, having mentally prepared themselves for what is often a nerve-wracking experience to then be told they are not needed. Sara Payne in her report described this feeling of waiting to be called as like sitting in the ‘dentist waiting room’\(^6\).

Time and again, I have been told that defendants hold off pleading guilty until the day of the trial in the hope that victims and witnesses will not show up, which means the case will then collapse. And defence solicitors find it is in their interests as they are being funded by legal aid for case preparation.

If defendants are holding out to see if witnesses turn up, that is not justice; it is a publicly funded waiting game. It is an abuse of the system, and puts an intolerable pressure on victims and witnesses that could be called a form of witness intimidation.

We need to stop the abuse of the process which allows defendants and their solicitors to string out a case at the expense of victims and the public. I hope that the legal aid review will be looking at what role it can play in restricting such activity - for example through fixed fees for guilty pleas, whereby a solicitor is only paid a set amount if the defendant pleads guilty at any stage of the case.

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\(^2\) Judicial statistics 2009 (MOJ)
\(^3\) Figures are based on CPS average national case preparation costs, using their ‘Activity Based Costing’ (ABC) model. Costs should be viewed as indicative, as they do not reflect all associated case costs outside of activity based costing. In terms of Crown Court costs in particular these can be quite significant as the cost of advocacy and preparing for advocacy is excluded
\(^4\) Crisis in the Courts The Times: 23/10/2010
\(^5\) Based on CPS data (see footnote 3)
\(^6\) Redefining Justice – Sara Payne, MOJ 2009
Either way offences and the right to trial by jury

Some criminal cases can only be heard in the magistrates’ courts, some only in the crown court. But a significant proportion of cases (one in five) can be heard in either court. These are known as ‘either way’ offences – the decision to be committed to the crown court rests with the magistrate or with the defendant who can elect to have a trial by jury.

While 81% of either way cases stay in the magistrates’ court, there are nearly 60,000 cases a year where magistrates refer cases to the crown court. And in a further 9,000 cases, the defendant them self elects to go to the crown court. Figures show that more and more cases are being heard in the crown court while the volume of cases in the magistrates’ court has been declining.

The results are plain to see. Expensive crown courts are full to bursting and magistrates’ courts are at only two thirds capacity; yet 42% of crown court business is taken up with trials of either way offences; cases which in theory could be taking place in magistrates’ courts. The average daily cost of running a trial in the magistrates is £800 compared to £1700 in crown courts.

In the majority of cases it is magistrates who are committing either way cases to the crown court. There are a range of reasons for this, but in some cases it will be because the sentence that could be imposed is beyond the sentencing power of the magistrate. The Magistrates Association has called for magistrates’ sentencing powers to be increased to one year so they can avoid referring cases to the crown court for this reason, and I support this call.

If just half of the either way cases which currently end up in the crown court could be kept in the magistrates courts, we could be saving £30 million a year in CPS case preparation costs alone.

There is also a significant cost for victims when crown courts are clogged up. It is known that waiting for a criminal trial often means that victims put their lives on hold; bereaved families of murder victims cannot grieve until the trial is over. And despite guidance to the contrary, counselling for victims about the impact of a crime - for example, for child victims of sexual abuse or witnesses in murder cases - is still frowned upon before a trial in case it interferes with the evidence. Victims have no control over the length of time it takes for a case to come to court, yet it seems that it is victims who suffer most as a result of delays in the court process.

And worse, the figures show that nearly two thirds of defendants (63%) who choose to opt for a crown court trial in either way cases actually plead guilty when they get to court. Why would someone elect trial by jury if they are going to plead guilty anyway? Again, is it because they are hoping this serves their own purposes?

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7 CPS caseload data from their Case Management System (CMS)
8 Judicial statistics 2009
9 Hansard, HC Deb, 20 July 2010, c172
10 Based on CPS data (see footnote 3)
The right to trial by jury is regarded as a sacred cow, but if two thirds of those who do elect for one then plead guilty instead, we have to ask if this is again a waiting game - this time with higher stakes.

Back in 1994, the Royal Commission on Criminal Justice called for restricting the right to trial by jury so that crown courts could concentrate on more serious cases. Lord Runciman who chaired the Commission warned then that one of the three main objectives for defendants opting for trial by jury was to put off the trial. This was sometimes to enable defendants to have part of their sentence counted while they were on remand in a softer prison regime, which includes the right to wear their own clothes.

The current average waiting time for crown court trials is 28 weeks from the time it is decided a trial is needed to it actually getting underway. In London, it is common to wait a year for a trial to be held.

Some victims may decide to give up on the trial ever being heard, deciding they cannot keep their lives on hold indefinitely, and may no longer be willing to testify in court. And the longer the period between the crime and the trial, the less reliable that witness' evidence is likely to be regarded. Is this a gamble that some defendants take?

This is not justice. We should not view the right to a jury trial as being so sacrosanct that its exercise should be at the cost of victims of serious crimes. And we are surely not suggesting that justice cannot be dispensed fairly by magistrates, or we would not have magistrates’ courts at all.

Defendants should not have the right to choose to be tried by a jury over something such as the theft of a bicycle or stealing from a parking meter. I see week after week in the crown court listings in my local papers trials being held over thefts of mobile phones or one I saw just last week of a trial over the theft of tea bags and biscuits worth £24, while serious crimes are being stacked up waiting for court time. This cannot be right.

The Spending Review has focused minds on saving money within the system and any money saved will have many calls upon its use. But it is hard to look victims in the eye and say we must spend money preserving sacred cows such as trial by jury for petty offences when, for example, victims of child abuse are not getting dedicated help in court, or families of loved ones murdered are waiting years to see justice done.

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