



Independent Review of the Criminal Courts - 2025

A response by
The Chartered Institute of Legal Executives (CILEX)

February 2025

Introduction

1. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).
2. CILEX represents over 17,500 members of which 77% of the membership are female, 17% of members are from an ethnic minority background, 4% are LGBTQA+ and 6.2% have a disability. Additionally, in terms of social mobility, 64% of CILEX members attended a state-run or state-funded school and 49% have an undergraduate university degree. 15% of members come from households which received free school meals.
3. CILEX is keen to provide evidence to the Independent Review given the impact which this topic has on both members of the public, and on legal professionals. CILEX is frustrated by the sustained lack of support for the criminal courts. Despite several promises by the former Government made to committees, to the House of Commons and the House of Lords, and to the public, the backlog has not reduced. As a result, CILEX believes that not only victims, but defendants, witnesses, practitioners, judges and court staff are currently being failed.
4. When CILEX practitioners were asked: 'On a scale of 1 (being 'not at all') to 10 (being 'extremely'), what impact does the criminal court backlog have on your clients?', they responded with an average of 9.4. Additionally, when asked to use the same scale to evaluate their ability to efficiently practice, they responded with an average of 7.2. CILEX therefore wishes to highlight to the committee that the criminal court backlog is having not only a huge impact on clients and victims, but also on practitioners.

Part 1 – Extent of the criminal court backlog

5. CILEX notes the 73,105 cases which current form the criminal court backlog.¹ This is a drastic increase as a result of several factors:
 - Systemic underfunding of legal aid, creating a recruitment and retention crisis for both criminal litigation and criminal advocacy;
 - Inefficiency from stakeholders, e.g. private court cell staff failing to produce defendants from prison on time;
 - A collapsing court estate, with decisions to close, rather than maintain, historic courts;
 - A history of failing to recruit sufficient numbers of judges; and
 - A lack of court staff to increase the effectiveness of sitting days.
6. One member highlighted a myriad of reasons for the backlog, which demonstrates the wide-ranging issues: [sic] *"There has been chronic and systemic*

¹ Public Accounts Committee Oral evidence: Crown Court backlogs, HC 348, p2

underinvestment in the Criminal Justice System for nearly 2 decades. [...] Further issues are the complexity of cases, technology, social media, phone downloads, unused material considerations under the CPIA 1996 with increased burdens on investigators and prosecutors. There are also insufficient numbers of member of the judiciary who are "ticketed" to deal with rape and serious sexual offences. There are also insufficient advocates (both prosecution and defence) to deal with the sheer volume of cases. There is also inefficient listing practices by the Crown Courts."

7. Based on evidence from members, CILEX recognises that there was an increase in the criminal court backlogs as a result of the Covid-19 pandemic and the industrial action undertaken by members of the bar in 2022, but CILEX does not believe that these were the primary factors. In lieu, CILEX contends that the backlog stems from a culmination of systemic underfunding of the criminal justice system, and poor recruitment/retention of legal practitioners (amongst other reasons). As such, CILEX confines its evidence to these issues.
8. CILEX notes that the Resource Departmental Expenditure Limit for HMCTS amounted to £2,277.9m for 2023-2024.² CILEX notes that the total MoJ RDEL for 2023-2024 was £10.879b whereas only £9.8bn was planned under the previous government. Owing to substantial inflation, CILEX notes that when the £9.8bn is adjusted to £11.61bn (via the Bank of England's calculator), it appears that the department has suffered a substantial £0.73bn real-terms loss.³ This hampers operational abilities across the MoJ – but will also have had a substantial impact on the criminal courts and their ability to reduce the backlog.
9. Lastly, CILEX does not believe the assessment of the number of sitting days is representative of time actually used within each day. With 2.7, 2.9 and 2.8 hours per sitting day in 2020, 2021 and 2022 respectively, compared to 3.6, 3.5 and 3.5 hours in 2017, 2018 and 2019.⁴ This means that whilst the number of sittings days remains below that necessary to reduce the backlog, less time is also being utilised each day.

Part 2 – Methods for reforming the criminal courts

Method 1: The introduction of intermediate courts

² Ministry of Justice, Main Estimate 2023-24: Estimates Memorandum

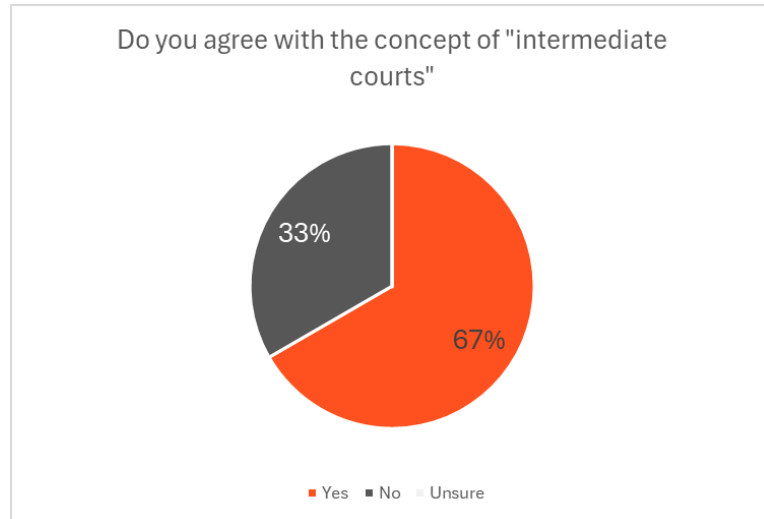
<https://committees.parliament.uk/publications/40041/documents/195520/default/> Accessed 08/05/2024

³ Bank of England, < <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator> > Accessed 08/05/2024

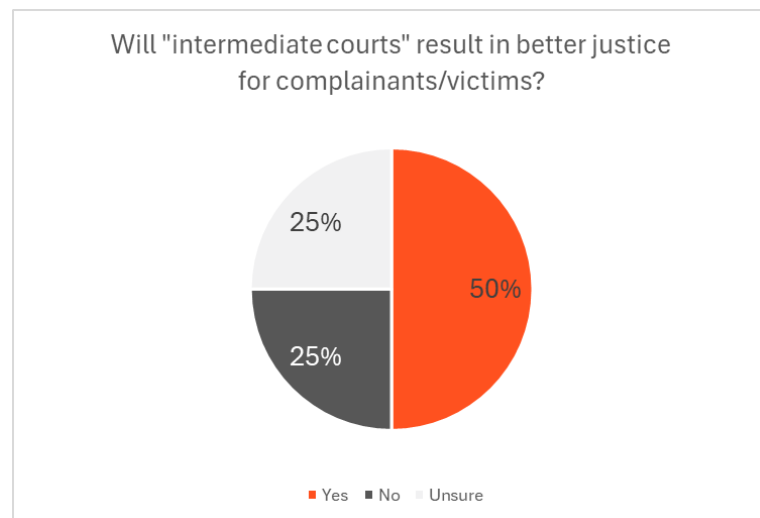
⁴ Institute for Government, Performance Tracker 2023: Criminal court

<<https://www.instituteforgovernment.org.uk/publication/performance-tracker-2023/criminal-courts>> Accessed 08/05/2024

10. CILEX does support the concept of "intermediate courts", with 66% of members surveyed supporting the concept. This support however is conditional on the proposal being successful in three areas:
- 1) Ensuring that intermediate courts results in swifter justice for complainants/victims;
 - 2) Ensuring that intermediate courts will retain access to justice for defendants, and
 - 3) That the use of intermediate courts will bring down the criminal court backlog.



11. CILEX is of the view that the introduction of the intermediate court system will not reduce the number of receipts to the criminal justice system, and therefore discussion is needed as to whether this will achieve sufficient numbers of disposals.
12. If supported by an increase to the powers of magistrates, this could lead to freeing up the time of district judges, recorders, and circuit judges. However, this plan would require an increase in the number of magistrates. CILEX therefore would be interested to know whether the Ministry of Justice is able to support the Magistrates Advisory Committee in recruiting magistrates and creating incentives for those who volunteer. CILEX recognises that there were 14,576 magistrates as of 2023/24.⁵ This is a drastic fall from 29,270 in 2010/11.⁶ CILEX believes that in order for there to be an intermediate court system in which a district judge or circuit judge is supported by magistrates, there needs to be increased recruitment of magistrates.
13. Further to this, magistrates undertaking intermediate cases are likely to be handing down sentences which are in excess of two years. As a result, they need to have been suitably qualified. This qualification could involve having sat in the magistrates' court previously for a number of years or having other legal experience such as being a paralegal or having undertaken a level 3-6 legal qualification.

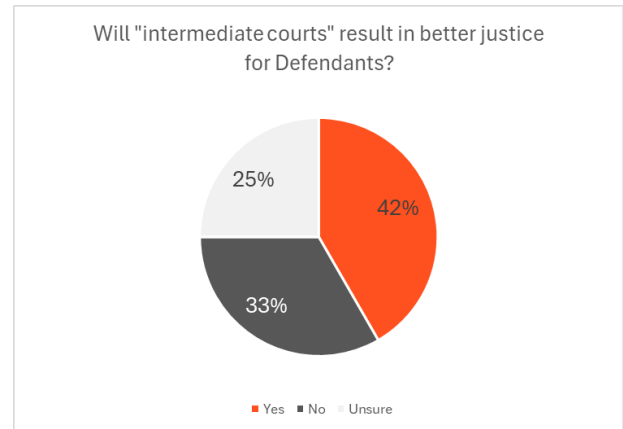


⁵ House of Commons Library, Court Statistics for England and Wales (HoC Library 2024) p26

⁶ Ibid

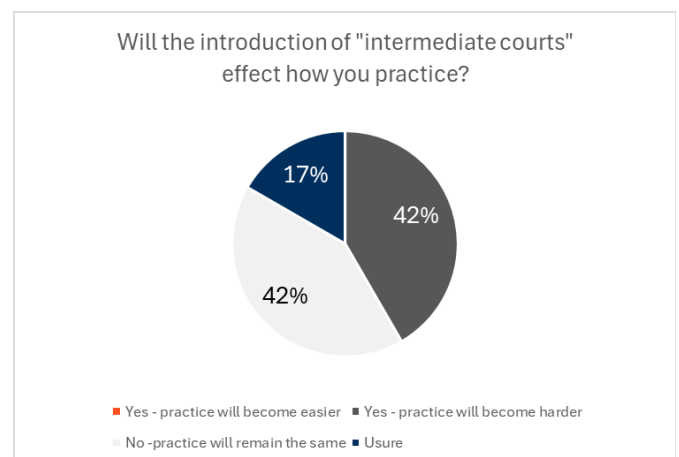
14. Additionally, of the members surveyed, 50% believe that intermediate courts will result in better justice for complainants. One member surveyed commented that if, as a result of intermediate courts, trials occur sooner, then it *"will lessen the likelihood of memories fading and mean that access to justice is enhanced."* CILEX however is of the view that in order for justice to be maintained through the use of intermediate courts, continued support is needed for victims.

15. Additionally, CILEX is concerned that intermediate courts are not guaranteed to result in better justice for defendants. With only 42% of members of the view that defendants will have better access to justice, CILEX believes that assurances and safeguards would be necessary to ensure that access to justice is maintained or increased.



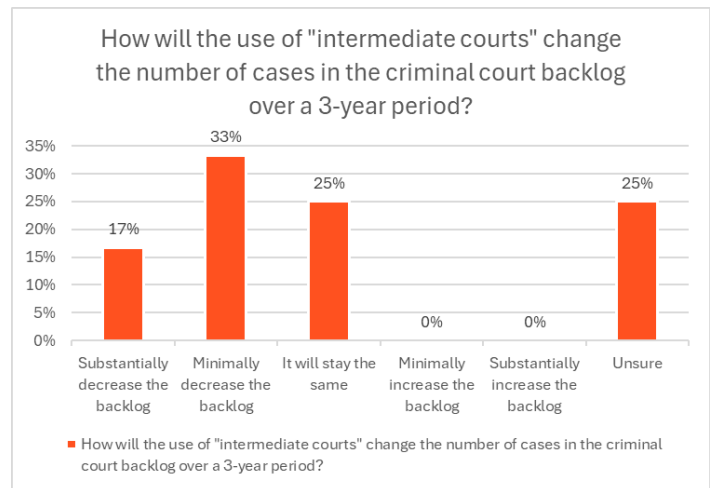
16. Jury trials have been shown to provide a more equitable, and therefore more just, conviction. This was demonstrated best in the Lammy Review of 2017, where it was considered that jury trials are more equitable for BAME individuals.⁷ Additionally, anecdotally it is recognised that defendants are treated more leniently by professional judges than by magistrates. This is on the basis that district judges have been both trained and have experience of serious offenders, and therefore an offence meriting a 12-month sentence is likely to be perceived as worse by magistrates who mainly have experiences where this is the most serious form of offence they deal with, whereas it remains low for professional judges.

17. Lastly, for criminal practitioners, 0 practitioners surveyed were of the view that practice will become easier. In lieu, 42% of practitioners believe that practice will remain the same, and 42% believe that practice will become harder. As a result, if intermediate courts are introduced, CILEX is of the view that adequate funding for training should be provided and incentives given to firms who provide training to practitioners. Items such as pilots, and lead-in training before wider rollout will ensure that any impacts on already struggling practitioners and firms are minimised.



⁷ David Lammy, 'The Lammy Review' (David Lammy, 2017) p33

18. However, CILEX is concerned that the benefits of the intermediate courts will still be impeded by the existing systemic issues. For an intermediate court system to work, this will require funding for training court staff on procedure, and time to make the transition. Further to this, funding is needed for legal aid to assist with the recruitment and retention of criminal practitioners, and there also needs to be more investment in HMCTS to allow them to reopen courtrooms (removing the need for the Nightingale courtrooms) and to recruit more staff. As a result, CILEX believes that the use of intermediate courts will decrease the backlog, but that this will be minimal and will take a period of 3 years before even a minimal decrease is noted.



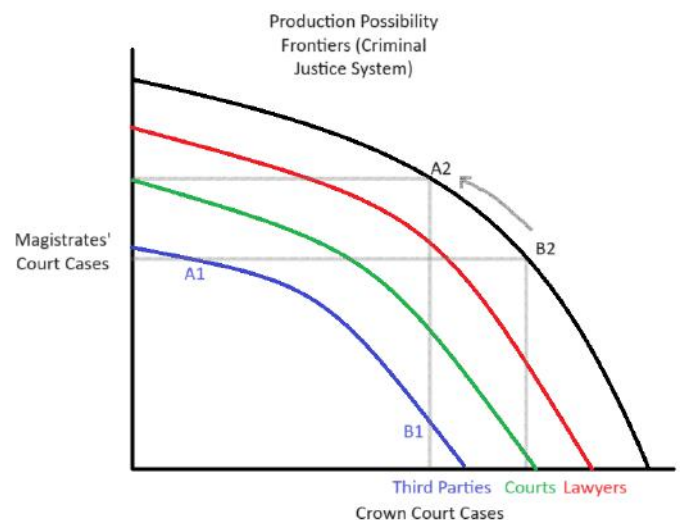
Method 2: Increasing magistrates' sentencing powers

19. CILEX does not believe that magistrates' should have more sentencing powers. When surveyed, 42% of members believe that the maximum custodial sentence which magistrates should be able to hand down is 6 months, with a further 25% of the view that 12 months should be the maximum. As a result, only 33% believe that magistrates' should have sentencing powers which exceed the current 12 month maximum.
20. As highlighted above, CILEX recognises that the higher the potential sentence (as determined by the sentencing council guidelines starting points) the worse the offence. As a result, more sentencing powers for magistrates would merely be a way of shifting serious trials which should be tried on indictment from the crown court backlog to the magistrates' backlog. This would be a disservice to both defendants and to victims.
21. Finally, magistrates may not receive adequate training on the more serious offences. Given the already limited budgets experienced by HMCTS, magistrates' clerks / advisors are already expected to provide extensive support and assistance to magistrates on the law and procedure, given a magistrates' lack of professional training and legal knowledge. As a result, this would further stretch existing resources and could impede justice.

Part 3 – Ensuring the criminal courts operate as efficiently as possible

22. CILEX does not believe that any of the aspects of the criminal justice system are able to operate at their maximum capacity as a result of policy decisions which the Ministry of Justice and the Government control.

23. Demonstrated below is a production possibility frontier chart. This outlines the proposed policies of increasing the number of cases undertaken in the magistrates' court. This demonstrates that regardless of where cases occur, there will still be limitations for the three core sectors.
24. The three core sectors are lawyers (i.e. advocates, litigators, and paralegals), the courts (including the number of available judges, courtrooms, and court staff), and third parties (e.g. private companies who arrange for the transportation of defendants). Excluded from this chart are variables which the government cannot control, e.g. defendants who may refuse to attend, and complainants. The curves which represent the three sectors are not to scale.
25. The below chart demonstrates that these three sectors are limited in their capacity for well-established reasons, e.g. a lack of ability to recruit and retain lawyers, a lack of funding for court space, and a failure to enforce service level agreements which third parties are expected to comply with. This prevents the maximum productivity level for the criminal justice system (namely the black curve) being achieved.
26. Until lawyers and the courts are given the adequate resource to increase productivity, maximum productivity (and by extension efficiency) cannot be achieved. For third parties, there needs to be a serious assessment undertaken of their ability to provide the function they are contracted to do, as this seriously hampers the criminal justice systems ability to operate.
27. In order to create this productivity, efficiencies are needed. However, these can only occur where there are sufficient staff and resourcing put into place to allow capacity in these sectors to expand. Merely transferring files from the crown court to the magistrates / intermediate court as a result of increasing sentencing powers and removing jury trials will not lead to increased capacity. It will merely shift the strained capacity from the Crown Court (at B1) to the Magistrates (at A1).



Further details

Should you require any further information, please contact:

The CILEX Policy Team
policy@CILEX.org.uk

