

**///APPEAL**

Briefing  
09/21

# Conveyor Belt Justice

The case against the Single Justice Procedure



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## About

APPEAL (the working name of the Centre for Criminal Appeals) is a non-profit law practice committed to fighting miscarriages of justice and demanding reform. We provide investigation and legal advocacy for victims of unsafe convictions and unfair sentences who cannot afford to pay for a lawyer themselves. We use individual cases as leverage for system-wide criminal justice reform by educating the media, parliament, criminal justice policy makers, the legal profession and the public about how and why miscarriages of justice occur and what needs to change to stop them.

APPEAL's Women's Justice Initiative (WJI) uses strategic litigation to appeal sentences and convictions for women experiencing severe disadvantage in the criminal justice system; women who are victims of domestic abuse, whose mental health has been ill considered, and who are given damaging short or minor sentences or fines. We empower women to become advocates for reform and use casework to campaign for changes to the law. It is through this work that we came to investigate the Single Justice Procedure.

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## Endorsements & acknowledgments

This briefing has been informed by the work of Big Brother Watch, Fair Trials, Howard League for Penal Reform and Transform Justice and Commons. The following organisations have reviewed and endorsed it:



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## SUMMARY

In this briefing, we examine a criminal process known as the Single Justice Procedure (SJP). Since 2019, APPEAL has been researching the SJP in relation to prosecutions for the non-payment of a TV licence, as part of our Women's Justice Initiative. Over the course of our investigations, we have grown increasingly concerned about the extent to which the practice erodes due process rights of defendants and creates potential for widescale miscarriages of justice. Furthermore, the complete lack of oversight and accountability means that individual injustices go largely unrecognised and unremedied.

The problems were underscored when the SJP was rolled out for use in prosecutions brought under Coronavirus legislation in 2020. Since then, a spotlight has been shone on the inherent unfairness of the system by a number of other organisations including Transform Justice, the Howard League for Penal Reform, Fair Trials, Big Brother Watch and Commons. Through his investigations into potentially unlawful prosecutions brought under the procedure, journalist Tristan Kirk has also added to the pool of understanding.<sup>1</sup>

The issue has gained Parliamentary attention, including through a letter to Justice Minister Robert Buckland from the aforementioned interested organisations on 1 June 2021 and through an examination by the Joint Committee on Human Rights in July 2021.

This briefing aims to provide a comprehensive summary of the problems identified with the SJP as well as recommendations on how the system may be improved. The aim is to further inform parliamentarians of the significant risks that the process poses to human rights and the rule of law in England and Wales.

## ABOUT THE SINGLE JUSTICE PROCEDURE

### What is it?

Summary offences which are not punishable with imprisonment may be tried by a single magistrate, with a legal adviser available, under what is known as the single justice procedure (SJP). Relevant offences include common assault and battery, truancy, non-payment of TV licenses and, from July 2020, offences under emergency Coronavirus legislation. Legal aid is not available to people charged with these offences.

In 2020, SJP prosecutions accounted for 47% of all criminal prosecutions in England and Wales.<sup>2</sup>

Those prosecuted under the SJP receive a notice in the post and are asked to submit their plea within 21 days online or by post.

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<sup>1</sup> See Evening Standard coverage: <https://www.standard.co.uk/news/london/covid-rule-breakers-secret-london-prosecutions-a4571843.html>

<sup>2</sup> The statistics for 2020 show that 535,504 cases were dealt with via the SJP: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818> 1.13m individuals were dealt with by the criminal justice system in 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987892/criminal-justice-statistics-dec-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987892/criminal-justice-statistics-dec-2020.pdf)

If someone receives a notice and does not respond, or if they respond and plead guilty, they are automatically convicted on the papers, in closed court. If no evidence is submitted of their financial circumstances, they are assumed to be able to afford the standard fine and costs, which can amount to hundreds of pounds.

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***“In 2020, SJP prosecutions accounted for 47% of all criminal prosecutions in England and Wales.”***

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To date, there has been no public scrutiny by any government body of SJP prosecutors (including the police as SJP prosecutor) or prosecutions. This is in contrast to the CPS which is scrutinised by the CPS inspectorate and whose director is called to give evidence to the Justice Committee. The CPS is also undertaking an ongoing review of coronavirus prosecutions,<sup>3</sup> however this does not include coronavirus prosecutions made under the SJP.

## **What are the problems with it?**



***People are being convicted without their knowledge or engagement***

71% of those who receive a SJP notice letter in the post do not respond.<sup>4</sup> In the case of offences prosecuted under Coronavirus legislation only, this rises to almost 90%<sup>5</sup>. Thousands of people have therefore been convicted and fined for Coronavirus offences in their absence, without any checks or balances (see below).<sup>6</sup>

It is not clear why so few respond to postal charges. Some may not receive the notice (it is considered to be ‘served’ once posted and there is no record of whether it arrives), or may not receive it within good time to respond (you must respond within 21 days, a period which starts when it is posted, not received), and some may not understand the letter or its seriousness and do not know how to respond. Others may have mental health problems or learning difficulties which prevent them from responding (see ‘vulnerability’ below).

Whatever the reasons, it is clear that the SJP system does not support effective participation in the criminal process, as is required by Article 6 ECHR, the right to a fair trial.

The high ‘no response’ rate also calls into doubt whether the SJP is compliant with the Article 6 obligation to inform a defendant “*promptly, in a language which he understands and in detail, of the nature and cause of the accusation*”.

If someone is unaware that they have been found guilty they may also be unaware of the requirement to pay a fine, putting them at risk of imprisonment<sup>7</sup> for non-payment and of

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<sup>3</sup> <https://www.cps.gov.uk/cps/news/cps-announces-review-findings-first-200-cases-under-coronavirus-laws>

<sup>4</sup> See PQ 143756, <https://questions-statements.parliament.uk/written-questions/detail/2021-01-26/143756> - data directly available here: <https://drive.google.com/file/d/1rLowWjhJ4suAF-hrPEOM4VVT5inXIesk/view>; Also <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818>

<sup>5</sup> *ibid*

<sup>6</sup> As of March 2021, 4,432 coronavirus prosecutions have been made via the SJP, with around 90% of prosecutions receiving no plea. See also: *ibid*

<sup>7</sup> As per section 82 of the Magistrates’ Courts Act 1980

acquiring a criminal record. A criminal record is a huge barrier to employment and affects individuals' long-term career prospects and financial stability. Almost 50% of employers state that they would not hire someone with a criminal record.



### *The vulnerable are not protected*

The procedure has a disproportionate impact on young or otherwise vulnerable defendants who are unable to engage with a post- or digital-based prosecution process.

Unlike in a police station, no screening mechanism exists to identify defendants with disabilities and no reasonable adjustments are made as required under the Equality Act.

In 2019, 73% of all prosecutions for TV licence fee evasion were against women, despite women only accounting for 49% of licence holders. All of the women that APPEAL have represented on these cases have language, health or financial vulnerabilities.



### *The SJP opens the door to large-scale miscarriages of justice*

Due to a lack of transparency and oversight, as well as no Legal Aid to allow meaningful representation, there is both a higher likelihood that prosecutions will be unlawful and a lower likelihood that they will be identified and rectified.

#### Coronavirus offences:

This is clearly demonstrated in the context of SJP prosecutions brought under Coronavirus legislation – a particularly complex area of the law. An investigation by Fair Trials and Big Brother Watch (using the latest government statistics<sup>8</sup>) shows that, as of March 2021:

- There had been 4,432 SJP prosecutions brought under the Coronavirus Regulations.<sup>9</sup> Applying the CPS review's rate of unlawful prosecutions,<sup>10</sup> we can estimate that at least 800 of these prosecutions may be unlawful.
- 37 SJP prosecutions were brought under Schedule 22 of the Coronavirus Act. Given that these offences were in relation to "events and gatherings", i.e., Schedule 22, which has never been activated in England, these prosecutions cannot be lawful.
- 8 SJP prosecutions were brought under Schedule 21 of the Act. The CPS review has found that 100% of charges they have reviewed under the Coronavirus Act were unlawful, meaning it is likely these prosecutions were also unlawful.<sup>11</sup>

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<sup>8</sup> Criminal Court Statistics Quarterly: <https://questions-statements.parliament.uk/written-questions/detail/2021-05-26/7818> and Freedom of Information Act requests.

<sup>9</sup> Source: Freedom of Information Act request to the Ministry of Justice, 16 July 2021.

<sup>10</sup> This refers to the Crown Prosecution Service's regular review of prosecutions under Coronavirus legislation. So far, 100% of all prosecutions under the Coronavirus Act 2020 have been found to be unlawful and 18% of charges under the Regulations. This means that almost a third of prosecutions have been overturned. These reviews do not include prosecutions brought under the SJP.

<sup>11</sup> <https://www.independent.co.uk/news/uk/home-news/coronavirus-act-prosecutions-wrongful-cps-review-b1847194.html>

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***“71% of those who receive a SJP notice letter in the post do not respond.”***

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Investigations by reporter Tristan Kirk have provided further evidence of unlawful prosecutions including two people who had been both convicted and fined under the Welsh coronavirus regulations for offences in London.<sup>12</sup>

The Joint Committee on Human Rights remarked:

*“We are concerned that the single justice procedure is an inadequate tool to provide the necessary fair trial protections for people accused of offences that are so poorly understood and lacking in clarity and where so many mistakes have been made by enforcement authorities”<sup>13</sup>*

Most recently, the Justice Select Committee also commented:

*“A lesson learnt from the pandemic is that the Ministry of Justice should review the transparency of the single justice procedure and consider how the process could be made more open and accessible to the media and the public”.<sup>14</sup>*

TV Licensing offences:

Of the total SJP prosecutions from January to September 2020, approximately 9% were in relation to the offence of the non-payment of TV licences.<sup>15</sup>

In all of the TV licensing ('TVL') cases that APPEAL have acted, the charges have been dropped following representations made on the defendant's behalf that the prosecutions were not in the public interest as, in all cases, the defendant had serious vulnerabilities and mitigation.

The vast majority of people do not have the benefit of pro bono legal representation. It is impossible to know how many vulnerable defendants are being prosecuted unfairly.

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<sup>12</sup> See Kirk's Twitter thread on potentially unlawful cases:

<https://twitter.com/kirrkorner/status/1429721360704606210>

<sup>13</sup> 'The Government response to covid-19: fixed penalty notices', 14 July 2021

<https://committees.parliament.uk/publications/6752/documents/72006/default/>

<sup>14</sup> 'Covid-19 and the Criminal Law', 21 September 2021

<https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/71/7102.htm>

<sup>15</sup> See PQ 143756, <https://questions-statements.parliament.uk/written-questions/detail/2021-01-26/143756> - data directly available here: <https://drive.google.com/file/d/1r1owWjhJ4suAF-hrPEOM4VVT5inXIesk/view>

## OLA'S STORY

Ola (not her real name) was a young student when enforcement officials called at her family home. Her name was on the TV licence because her parents didn't speak English. Her own language skills meant she struggled to use online systems to enter a plea, and her attempts to contact TV Licensing were unsuccessful.

The family moved house and Ola then did not receive the offers of an out-of-court disposal, sent to the old address. She contacted us when she opened a letter informing her she had been

convicted in her absence. We were able to make a strong case to the Magistrates' Court that Ola's case should be re-opened,

and to TV Licensing that charges should be withdrawn against her. We were successful on both counts.

It felt really horrible. I had tried to be clear with the Enforcement Officer that I pay all my bills. When I got the letter telling me I was being charged with not paying, I got very depressed. When I told my friends about it they said it would not look good for me for jobs in the future. I was also worried if it could affect my immigration status. Before I contacted APPEAL, I found the process really, really confusing.

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Ola

Finally, financial and other incentives given to defendants to plead guilty are resulting in guilty pleas, even where the defendant does not in fact believe they have committed the offence or where they might have a viable defence. Defendants are given a discount of up to 33% on their fine if they plead guilty. They are also told they can have the process behind them in minutes, rather than having to go to court in person. While it may seem efficient to process guilty pleas in this manner, cost-savings cannot come at the price of wrongful convictions.



*The victim should not also be the prosecutor*

Many SJP prosecutions are brought not by the CPS but by bodies such as TV Licensing or Transport for London, where they are not only the state-sponsored prosecutor, but the 'victim' in the case. While technically not private prosecutions, the scandal of the Post Office prosecutions have demonstrated serious concerns in cases where victims are in charge of prosecuting those who are believed to have financially wronged them. On the publication of a Justice Committee inquiry on private prosecutions,<sup>16</sup> the chair, Sir Robert Neill, pointed out that:

“The power to prosecute individuals, and potentially deprive them of their liberty, is an onerous power which must be treated with the utmost seriousness... the Post Office cases show the potential danger of the power to prosecute being misused.”

<sup>16</sup> <https://committees.parliament.uk/work/401/private-prosecutions-safeguards/publications/>



## WHAT NEEDS TO BE DONE

We believe that in its current form, the SJP is not fit for purpose and that safeguards must be urgently implemented to rectify the problems.

A moratorium should be placed on the SJP process until necessary reforms have been made to create a fairer and more transparent system.

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*“The power to prosecute individuals, and potentially deprive them of their liberty, is an onerous power which must be treated with the utmost seriousness”, Bob Neill MP*

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Specifically, we recommend the following reforms:

1. Legal advice / assistance to be extended to these offences so that everyone prosecuted under the SJP is given the advice and representation to adequately defend themselves.
2. Conduct investigation into the high rate of non-responses and develop concrete policies and practices to raise response rates based on the evidence.
3. A legal duty should be placed on prosecutors to ensure that letters are delivered and received by the defendant. This is to avoid prosecutions going ahead without prior knowledge of the defendant.
4. In order to provide an adequate inspectorate and oversight of SJP prosecutions, the remit of the Crown Prosecution Service Inspectorate should be expanded to include all "state sponsored" prosecutors, including those bought under the SJP.
5. The SJP Notice and information pack should be improved in the following ways:
  - a. To provide greater transparency about the process, there should be open access to blank online and postal forms.
  - b. SJP notices should include an explicit question about any vulnerabilities a defendant has that may make it not in the public interest to proceed with prosecution.
  - c. The SJP Notice should also be made available in an 'easy read' format and be accessible in multiple different languages.
6. For security and protection from fraud, defendant responses to the SJP Notice, either online or by post, should meet the verify.gov standard.<sup>17</sup>
7. For reasons of transparency, there should be regularly published statistics on how many people are being prosecuted under the SJP, for which offences, including the number that have pleaded guilty, not guilty or entered no plea. Currently this information is obtained piecemeal via Parliamentary Questions.

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<sup>17</sup> For more detail on this proposal, see 'Briefing on the criminal justice aspects of the Judicial Review and Courts Bill', September 2021, Transform Justice

## CONCLUSION

Fairness, transparency and safeguards to protect vulnerable defendants are the hallmarks of a healthy justice system. They must not be sacrificed for the sake of efficiency. The SJP is an instance of this happening on a large-scale.

Many of the concerns given here also apply also to the introduction of online pleas and the expansion of the online conviction processes proposed in the Judicial Review and Courts Bill, introduced in July 2021<sup>18</sup>. There are hints that all SJP prosecutions might eventually be subsumed under these digital court reforms. We urge government to tread carefully. These are major proposals and they should must be based on careful testing and evaluation via a public consultation before being introduced.

We urge Members of Parliament to increase pressure on the government to implement a moratorium on the Single Justice Procedure until reforms have been made to ensure that the system does not fundamentally erode fairness and justice on a large scale.

We also request a review of coronavirus-related prosecutions under the Single Justice Procedure, due to the high rate of prosecutions overturned or withdrawn by the CPS during their review of coronavirus related prosecutions.

### ***Further reading***

Written submissions to the Justice Committee, April 2021, from Transform Justice, Fair Trials and Big Brother Watch all of which can be downloaded from the Justice Committee website.<sup>19</sup>

Law Commission consultation responses, July 2021, from APPEAL<sup>20</sup> and the Howard League.<sup>21</sup>

'Big Brother Watch and Fair Trials briefing on the Single Justice Procedure ('SJP'): unlawful Coronavirus prosecutions', June 2021

'Briefing on the criminal justice aspects of the Judicial Review and Courts Bill', September 2021, Transform Justice<sup>22</sup>.

Joint letter to the Justice Secretary on unlawful coronavirus prosecutions and convictions behind closed doors, from Fair Trials, Big Brother Watch, Transform Justice, Howard League for Penal Reform, APPEAL, Commons Law CIC<sup>23</sup>

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<sup>18</sup> <https://www.transformjustice.org.uk/wp-content/uploads/2021/08/Briefing-on-the-criminal-justice-aspects-of-the-Judicial-Review-and-Courts-Bill.pdf>

<sup>19</sup> <https://committees.parliament.uk/work/1106/covid19-and-the-criminal-law/publications/written-evidence/>

<sup>20</sup> <http://appeal.org.uk/policy-briefings-and-submissions>

<sup>21</sup> [https://howardleague.org/wp-content/uploads/2021/08/2021\\_07\\_31\\_Law-Commission-response.pdf](https://howardleague.org/wp-content/uploads/2021/08/2021_07_31_Law-Commission-response.pdf)

<sup>22</sup> <https://www.transformjustice.org.uk/wp-content/uploads/2021/08/Briefing-on-the-criminal-justice-aspects-of-the-Judicial-Review-and-Courts-Bill.pdf>

<sup>23</sup> <https://www.fairtrials.org/sites/default/files/Single%20Justice%20Procedure%20-%20Joint%20letter%20%28June%202021%29.pdf>