

Submission on the proposed reforms to the criminal appeals process contained in the Courts and Tribunals Bill.

Introduction and executive summary

This response is prepared by organisations with particular expertise in the appeals and the application of the criminal justice system to children, who will be particularly affected by proposed changes to the appeals process.¹

Much of the scrutiny of the Bill has focused on the removal of jury trial. This submission is made without prejudice to the grave concerns that these organisations have about that. However, any injustice arising from the restriction to the right to a jury trial must also be seen in the context of the proposal to abolish the automatic right of appeal from the Magistrates' Courts (including the Youth court) to the Crown Court which acts as an important safety net against injustice.

At present individuals wishing to challenge a conviction or sentence are entitled to a full rehearing of their case in the Crown Court as a right. The removal of this right for children and adults alike means individuals will first have to apply for permission to appeal from a Crown Court judge. Applicants would have to demonstrate that they have “arguable” grounds of appeal, which in practice would normally mean showing that the magistrates made an error in law or that there was some significant defect in the trial process. The High Court has pointed out the importance of a complete rehearing in the Crown Court given the nature of Magistrates’ Court (in that case Youth Court) proceedings.² The Bill will replicate the permission requirement that currently applies to appeals from the Crown Court to the Court of Appeal where defendants will have had the option of a jury trial. The Bill also provides Crown Court judges additional sweeping discretionary powers.

These proposals are unnecessary and risk creating significant barriers to justice, especially when combined with the restriction on jury trials and the proposed increase in magistrates’ sentencing powers to up to two years.

- (i) The changes are unnecessary and will increase pressure on the system: there is no evidence that the current appeals system from the Magistrates’ and Youth Courts are contributing significantly to the backlog and the current system works well with just under half of all appeals being successful. The appeal is to a judge and two magistrates’ (juries are not involved) and they happen quickly and take up little time (usually 2-3 hours for a retrial and less than an hour for a sentence). They also provide valuable training for magistrates.
- (ii) The proposals will increase the risk of miscarriages of justice remaining uncorrected.

¹ [APPEAL \(Centre for Criminal Appeals\)](#), [Criminal Appeals Lawyers Association \(CALA\)](#), the [Youth Practitioners Association \(YPA\)](#) and the [National Association for Youth Justice \(NAYJ\)](#).

² See *L (By his litigation friend JL) v Inner London Crown Court* [2005] EWHC 1614 (Admin), para 20 Kennedy LJ.

- a. The permission requirement will necessarily filter out cases that may nevertheless have resulted in an unfair decision that could be corrected on a “re-hearing” but may not fall within the narrower grounds for leave.
 - b. The wider proposed powers of the Crown Court on appeal are inappropriate and could have a chilling effect.
 - c. The Magistrates’ and Youth Courts are not ‘courts of record’ so there is no transcript of evidence or legal decisions and the legal advisor’s notes are often very brief, and appeals based on specific grounds will be harder to formulate and prepare.
 - d. The proposals are especially egregious for children given that very serious matters are often heard in the youth court and a finding of guilt or sentence imposed on a child is often highly influential on their immediate and later life.ⁱ
 - e. The proposals seek to fetter the powers of the Criminal Cases Review Commission when referring miscarriages of justice to the Crown court.
- (iii) There are serious implications for the sustainability of the legal profession as the changes will require significant additional work without further remuneration which will put further pressure on a legal aid system already at breaking point.
- (iv) The Law Commission is currently considering changes to appeals, including the inclusion of permission to appeal requirement, but has not yet reported: such a major change should not be made without the benefit of detailed consideration of the Commission.

If passed, the changes to appeals processes from Magistrates’ Courts will make it substantially more difficult for many defendants to challenge wrongful convictions or disproportionate sentences. Many innocent people will be denied justice. It will increase the burden on the CCRC when it is already struggling to cope.

The change is not necessary and would increase pressure on the system

We invite the Committee to question the underlying need for reform of the appeals process. The statistical evidence suggests that the current system does not generate an excessive number of appeals.

In fact, the statistics demonstrate there is a modest number of appeals, and those appeals have a significant success rate. According to a Parliamentary answer in October 2023, between 2018 and 2023 the number of appeals from the Magistrates’ Court to the Crown Court averaged 6,320 per financial year, with approximately half of these appeals relating only to sentence. By comparison, Magistrates’ Courts deal with well over 1,000,000 cases each year, meaning that appeals already represent a very small proportion of cases (just 0.6% of cases). Appeals are usually heard swiftly and do not take excessive time.

However, despite the relatively low number of appeals, around 42% of those who do appeal are successful. This data strongly suggests that the existing appeals process plays an important role in correcting wrongful convictions and inappropriate sentences. Correcting

injustices provides costs savings to HMPPS and the MOJ by freeing up prison places and reducing the overall costs of implementing imprisonment and community sentences where convictions have been overturned or sentences are reduced.

Conversely, the proposals will increase pressure on an overburdened system. As the Law Commission paper states:³

“It is clear that a minute proportion of cases are appealed from magistrates’ courts to the Crown Court. In 2023, only 5,817 appeals were disposed of by the Crown Court, out of well over a million magistrates’ court cases. The available empirical data would, therefore, suggest that very few defendants are in fact exercising the right to a rehearing. Given that a number of consultees have raised the overburdening of magistrates’ courts, and that more detailed reasons would be required if the right to a rehearing were removed, a leave requirement could possibly cause significant delays to the system.”

The permission requirement will add in a whole new layer of work for lawyers and judges before an appeal can be heard. In addition, the Crown Court will hear the appeal and then may remit the matter back to the initial court. Thus, a simple right of appeal that currently involves one form and a re-hearing will be converted to a potentially three-layered process of (i) an application to appeal (ii) a decision on the appeal and (iii) a re-hearing in the court of first instance.

Increased risk of miscarriages of justice remaining uncorrected

Removing the automatic right of appeal substantially increases the risk of miscarriages of justice remaining uncorrected. Wrongful convictions have a long-lasting and devastating effect on individuals and there are wider implications, for example, they can affect employment prospects for life. They can also have collateral damage on families and children creating hidden costs to the system in welfare benefits and the provision of childcare.

The permission requirement will filter out meritorious cases and will be especially harmful to children. Schedule 2 of the Courts and Tribunals Bill will make it significantly more difficult to appeal a decision of the Magistrates or Youth court, unfairly discriminate against those with protected characteristics (including children) and vulnerable members of the community as well as unrepresented defendants.⁴

They provide the Crown Court with broad discretionary powers such as the power to substitute a quashed conviction with an alternative offence or impose a loss of time order.

³ Law Commission, Appeals Consultation, §5.79, available at <https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/02/Criminal-Appeals-Consultation-Paper-1.pdf>

⁴ Nearly half of all defendants in the Magistrates’ Court are unrepresented.

Permission requirement will filter out cases of injustice

The proposals require that an application for permission to appeal is lodged with the Crown Court setting out the grounds for appealing against the conviction or sentence. At present, there is no permission requirement, the application process is a simple form which requires no particular legal acumen to complete. Given the number of unrepresented defendants in the Magistrates' Court, in a large proportion of cases this burden will fall upon the individual acting as a litigant in person requiring them to demonstrate what legal or factual error has occurred to justify the Crown Court granting permission.

The application for permission to appeal will be considered by a Crown Court judge who will decide whether to grant permission and whether an appeal hearing in the Crown Court is 'necessary'. Unlike appeals to the Court of Appeal where there is a right to renew a refused application for permission orally, there is no guarantee that arguments relating to permission or the issues around the appeal itself will be allocated an oral hearing in the Crown court. The general rule of thumb appears to be that the decision to grant permission to appeal is to be dealt with without a hearing⁵. In our experience, valid grounds for appeal may not always be articulated in a paper application, especially if the defendant is unrepresented. It is self-evident that a person's chances of securing permission to appeal will be greatly improved if they have been able to access legal advice in the preparation of the appeal.

The grounds for permission to appeal will be much narrower than the present right to request a re-hearing and will require significant additional work to articulate and prepare, which will be especially difficult for those who are vulnerable and unrepresented. It is inevitable that miscarriages of justice will stand uncorrected as a result.

Powers on appeal too wide and will have a chilling effect

If permission to appeal is granted, the Crown Court has the discretion to order a retrial and remit the case back to the Magistrates' or the Youth Court. A retrial may be ordered if the Crown Court decides that the interests of justice require it⁶. The court has the power to direct a retrial on that offence or *any other offence* which the convicting court could have found the appellant guilty. This gives the court very broad and unprecedented discretionary powers. Moreover, the Crown Court may at the same time as ordering a retrial provide its 'opinion' on the matter to the Magistrates' Court. This has the potential to introduce judicial bias into the process which should otherwise be a fresh rehearing and at the very least risks the Crown Court entering the trial arena which in our view is extremely problematic.

If a rehearing has been ordered this is likely to involve a further hearing in the Magistrates' Court so a trial date can be fixed and witnesses warned for trial. The complexity and increased administrative burden of these proposals are in stark contrast to the simplicity of the current practice where upon receipt of an application to appeal a Magistrates' conviction

⁵ S108A(2).

⁶ S108F(2)(a)to(b).

or sentence, a retrial or sentencing hearing is listed at the Crown Court, allowing any defects in the summary justice process to be quickly and effectively corrected. There is also an immediate right to bail being reinstated where a custodial sentence has been imposed (the current accepted view is such sentences do not work and yet magistrates continue to impose short sentences). That is significant as often summary sentences can be of a short duration which means that the appellate process can be undermined or seen as a waste of time if the appellant serves the sentence before their conviction is overturned.

The Bill proposes to extend the powers of the Crown Court to allow it to substitute the original offence with a conviction of an alternative offence, if it appears to the Crown court that the Magistrates' Court must have been satisfied of facts which proved the appellant guilty of the alternative offence. Although the Court of Appeal has the discretion to substitute for an alternative offence this is rarely exercised in practice and, when it is being considered, all parties have the ability to make representations to guard against injustice, prejudice and abuse of process. Such discretionary power should only be exercised with great caution, and this again risks the Crown Court entering the arena when such reforms are without justification.

With regard to appeals against sentence, the proposals again give much wider powers to the Crown Court when dealing with an appeal against sentence. Whilst we understand that the Crown Court should not be able to impose a sentence which is more severe than the one passed at the Magistrates' Court we are deeply concerned that other 'connected' sentences are 'at large' allowing the Crown Court to amend or quash connected sentences and impose a different sentence from that which was imposed at the Magistrates' Court. However, yet by far the most concerning aspect of these sentencing proposals to give the Crown Court the power to impose a 'loss of time' order, namely an order that the time spent in custody whilst awaiting an appeal is not to count towards an overall sentence. In our experience, this power operates as chilling effect in the Court of Appeal and dissuades many would-be appellants from appealing otherwise unfair sentences. It would be wholly inappropriate to introduce this power into the Magistrates' appeals process given that custodial sentences are much shorter in nature and an appellant is likely to have served a large proportion of the custodial part of his sentence before the appeal is heard.

The proposals also seek to fetter the powers of the CCRC which has a statutory duty to refer miscarriage of justice cases to the Crown Court. Currently, the CCRC can refer summary wrongful conviction and unfair sentence cases to the Crown Court for a rehearing, where errors have occurred in the Magistrates court or fresh evidence or arguments render the conviction unsafe. Under the new provisions⁷ the Crown Court has the power to dismiss an appeal following reference by the CCRC if the grounds of appeal relate solely to a change of law and the Crown Court decides that it would not be appropriate to grant leave (out of time). The CCRC acts as a safety net against miscarriages of justice, and we are concerned about the Crown Court having the power to fetter the power of the CCRC - there is good reason to

⁷ S108J.

preserve the duty to make a referral in cases where the law has been changed and prior to the correction, the application of the law has resulted in injustice.

As the Lord Chancellor previously stated in 2020 there is an important balance to be made in the power of the judiciary and what cases remain within the preserve of magistrates as part of our ‘democratic settlement’. To interfere with summary justice with these provisions cements an imbalance against citizens brought within the new preserve.

Not a Court of Record

The proposals are additionally problematic because the Magistrates’ Court is not a “court of record”. Proceedings in the Magistrates’ Court are not routinely recorded and therefore do not generate an official transcript or detailed record of what occurred during the hearing.

While the Government proposes to introduce audio recordings, this is different from a reasoned and detailed judgment and will add additional burdens and delays an already overburdened system. However, the Magistrates’ and Youth court are not yet courts of record so appellants would either need to identify arguable legal errors without access to a transcript or other reliable record, or additional costs will be incurred to the public purse by introducing audio recordings to Magistrates’ courts in England and Wales. The Parole Board recently introduced audio recordings for its hearings. Yet it is very difficult (and expensive) for those who wish to challenge decisions of the Board to obtain transcripts to assist them in formulating appeals.

Although magistrates generally provide reasons for their decisions, these explanations are often brief and do not contain detailed legal analysis. The current right of appeal to the Crown Court to be followed by a re-hearing serves as an important safeguard against these limitations. It allows the case to be heard again in full before a judge and two magistrates, ensuring that defendants are not required to identify specific technical errors in proceedings that were never formally recorded.

By contrast, the reforms proposed in the Bill would require individuals to demonstrate arguable legal grounds for appeal despite the absence of any reliable record of the original hearing. In practice, this would make it extremely difficult to demonstrate that a legal error occurred at the Magistrates. Unrepresented defendants cannot be expected to take a detailed note of the proceedings and identify and articulate in a written application what may have gone wrong at first instance to enable them to formulate grounds of appeal quickly.

Impact on children

Miscarriages of justice affecting children are the gravest injustices in our legal system. The effect that these proposals will have on children appealing from the Youth Court is particularly alarming.⁸ Most children’s cases are heard in the youth court and any changes

⁸ For a detailed consideration of the issue of appeals for children, see the NAYJ submission to the Law

affecting the appeals process will disproportionately impact on children. As the Law Commission notes, in 2023, 11,911 children were sentenced in criminal courts, but just 4% of all sentencing occasions of children that year were in the Crown Court.⁹

The Youth Court hears incredibly serious cases which can result in up to two years detention for a child and often involve serious offences including sexual assault and robbery. A finding of guilt and sentence as a child can have a profound effect on their life-chances.¹⁰

We have a criminal age of responsibility of 10 which is well below the average in Europe. Some of our members have personal experience of findings of guilt and/or sentences of detention being overturned on appeal. This can be lifechanging for children and young persons.

There have been ongoing concerns about the standards of advocacy which are currently being addressed by way of creating a specialised panel, but this is in its infancy.

The ability to have a swift and simple rehearing operates as a fundamental safeguard to mitigate against the errors that can and do occur in the Youth Court. The criticisms above should be considered with children in mind.

Whilst the proposals give the Crown Court the power to remit cases back to the Youth Court for a rehearing (when permission is granted), in cases where the appellant has turned 18 during or since the original proceedings, the court can direct that the retrial be heard in the Magistrates' Court. Any subsequent conviction following the retrial would in the Magistrates would deprive the appellant from receiving a sentence that only the Youth Court could impose, such as a referral order.¹¹

Funding and legal aid impact

There are serious implications for the sustainability of the legal profession as the changes will require significant additional work without further remuneration which will put further pressure on a legal aid system already at breaking point.

It is of great concern that the impact assessment has been unable to quantify the cost of legal aid related to the proposed changes to appeals:

" The financial impact of reforms to the appeals process on legal aid is challenging to quantify. While we anticipate no significant change in the appeals

Commission, June 2025, available at:

https://thenayj.org.uk/cmsAdmin/uploads/law_commission_nayj_2025_06_27.pdf

⁹ Law Commission, Appeals Consultation, §5.209 available at

<https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/02/Criminal-Appeals-Consultation-Paper-1.pdf>

¹⁰ By way of an example: see L (By his litigation friend JL) above at footnote 2 where a Detention and Training Order was replaced by ISSP for an offence of robbery and the 15 year old avoided a custodial sentence.

¹¹ s108F(4).

caseload within the magistrates' courts, practitioners may spend more time on cases during the permission stage. The extent of this impact remains uncertain and is therefore difficult to monetise. In the Crown Court, appeals hearings are expected to be shorter; however, the impact is also difficult to quantify."

The impact assessment seems to ignore the cost of re-hearings in addition to appeals. The legal aid system is already at breaking point and changes to the appeals process will need to be properly funded.

Proposals should be suspended pending the Law Commission's review

The Law Commission is currently considering changes to appeals, including the inclusion of permission to appeal requirement, but has not yet reported.¹² It is noted that the consultation, which followed a call for evidence, and set out detailed evidence on this very point at Chapter 5 of its 725 page report, provisionally proposed that the right to an appeal against conviction and/or sentence by way of rehearing following conviction in summary proceedings should be retained.

Such a major change should not be made without the benefit detailed consideration of the Commission.

Conclusion

These proposals risk undermining a vital safeguard within the criminal justice system.

The changes would lead to many innocent people being unable to access legal advice and representation to demonstrate that they have arguable grounds of appeal. Those seeking to appeal would be expected to prove legal errors despite having no reliable record of the proceedings in which those errors allegedly occurred. The Crown Court would have greater powers to interfere with convictions and sentences which would operate as a chilling effect, creating a barrier preventing those who have been wrongfully convicted or unfairly sentenced from exercising the right of appeal. This would have a disproportionate effect on the marginalised communities and the most vulnerable individuals in society.

In light of the additional proposals in the Bill to add to the burden of work at the Magistrates' court, it is more important than ever to preserve the fundamental right to an appeal by way of a re-hearing.

There are obvious differences between the work of the Crown Court and the Magistrates' Court. The former is a formal court presided over by an experienced judge, assisted by specialist advocates, where matters of law and fact are kept separate and the fact finders have the benefit of a lengthy summing up. The latter is a rapid 'summary' court designed to achieve speedy, summary, justice presided over by unqualified magistrates' (or lesser

¹² <https://lawcom.gov.uk/project/criminal-appeals/>

qualified judges) and with many litigants in person or defendants assisted by recently qualified advocates where matters of law and fact are conflated with often scant reasoning on matters of law or fact. The automatic right to appeal these decisions reflects that. It was created by the Summary Jurisdiction Act 1879 and reinforced by the Magistrates' Courts Act 1980. It would be a grave error to abrogate those rights one hundred and fifty years later and without the benefit of the Law Commission's report.

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