

EVIDENCE TO THE HOUSE OF COMMONS JUSTICE COMMITTEE REGARDING CLAUSE 7 AND SCHEDULE 2 OF THE COURTS AND TRIBUNALS BILL

Written evidence of Professor Penney Lewis, Criminal Law Commissioner

- 1.1 I am the Law Commissioner for Criminal Law at the Law Commission of England and Wales.
- 1.2 The Courts and Tribunals Bill, introduced into Parliament on 25 February 2026, overlaps with work that the Law Commission are currently undertaking in our review of the law governing criminal appeals.

Background

- 1.3 The Law Commission of England and Wales is an independent, statutory body established in 1965 to keep the law of England and Wales under review and recommend reform to ensure it is fair, modern, simple and cost-effective.¹ There are four Commissioners who each have responsibility for separate areas of the law, and the Commission is chaired by a fifth Commissioner who is a judge of the Court of Appeal.
- 1.4 The Commission operates independently of Government and consults widely prior to making any recommendations for reform.

The Law Commission's project on Criminal Appeals

- 1.5 In July 2022, the Government asked the Law Commission to review the law governing criminal appeals, with a view to ensuring that courts have powers that enable the effective, efficient and appropriate resolution of appeals. We launched the Criminal Appeals project in 2023,² and in July 2023 we published an Issues Paper seeking views on potential areas for reform.³ We received over 150 responses to this Issues Paper from a wide range of stakeholders. On 27 February 2025, we published a consultation paper where we considered issues such as appeals from magistrates' courts, appeals to the Court of Appeal Criminal Division ("CACD") and the Supreme Court, the role and powers of the Criminal Cases Review Commission, and other

¹ See [About us – Law Commission](#).

² For further details, see our [project page](#).

³ Law Commission, Criminal Appeals: [Issues Paper](#) (July 2023).

issues relevant to the criminal appeals system.⁴ The consultation closed on 27 June 2025, and we received over 190 consultation responses.

- 1.6 We are now analysing consultation responses and developing our final recommendations, with a view to publishing a final report later in 2026. Our final report will also summarise the responses that we received in relation to each issue that we have considered.
- 1.7 The terms of reference agreed with the Ministry of Justice included “whether the rights to appeal and processes for appeals in summary matters are an efficient and effective use of court resources and judicial time, while serving the interests of justice”. Accordingly, we consulted on the possibility of reforms to appeals in summary proceedings and had planned to include the results of this consultation in our Final Report.
- 1.8 Appeals against conviction and sentence in summary proceedings are currently heard by way of rehearing in the Crown Court (although there are also routes for challenging magistrates’ decisions in the High Court). The Crown Court hearing an appeal against conviction or sentence must consist of a judge and at least two magistrates who did not take part in the original proceedings.
- 1.9 The Courts and Tribunals Bill will reform appeals to the Crown Court against conviction or sentence in summary proceedings. Schedule 2 of the Bill replaces the current right to a rehearing with procedures closely modelled on the provisions of the Criminal Appeal Act 1968 governing appeals to the Court of Appeal against conviction and/or sentence in trials on indictment.

Removing rehearings in the Crown Court

- 1.10 The Bill’s removal of the right to rehearing overlaps with our ongoing work. We consulted on possible reforms to the right to a rehearing and the majority of consultees considered that it was important to retain the right to a rehearing. In addition, several consultees argued that in order to enable appeals by way of review in the small number of cases that are appealed, changes in practice in magistrates’ courts would be required in all trials (including, but not limited to routine recording of proceedings, for which the Bill provides). Several consultees expressed concern that the additional burden this would place on magistrates’ courts could have serious consequences for the administration of justice.
- 1.11 In the Issues Paper, we acknowledged that the right to a rehearing has implications for victims and witnesses, who may be required to give evidence again. Concerns were raised during the subsequent consultation, including by the Chief Magistrate, about attrition rates where victims, complainants or other witnesses no longer wish to participate in the rehearing.⁵
- 1.12 We asked Question 2:⁶

⁴ [Criminal Appeals](#) (2025) Law Commission Consultation Paper No 268 (“CP 268”).

⁵ CP 268, para 5.52.

⁶ Law Commission, Criminal Appeals: [Issues Paper](#) (July 2023), paras 3.59-3.60.

Is there a need to reform the processes by which decisions of magistrates' courts in criminal cases can be appealed or otherwise reviewed?

In particular:

... Should a leave requirement be introduced in respect of appeals from the magistrates' court to the Crown Court? If so, should the grant of leave to appeal be followed by a rehearing or a review of the magistrates' court's decision by the Crown Court?

- 1.13 In responding to the Issues Paper, three consultees considered that a review-only appeal with a leave requirement should be introduced. These included the Crown Prosecution Service and the Serious Fraud Office. Paul Goldspring, the Chief Magistrate, also supported the proposal in pre-consultation discussion. However, the position of most respondents was that no leave requirement should be introduced and the right to a rehearing ought to remain. These included the Magistrates' Association and various organisations and practitioners who regularly engage with magistrates' courts.⁷
- 1.14 One of the primary arguments against introducing a leave requirement was the lack of empirical evidence indicating that such a measure is necessary. Ministry of Justice statistics suggest that there are around 6,000 appeals against conviction and/or sentence, out of approximately 1.3 million cases dealt with by magistrates' courts annually.⁸
- 1.15 Several stakeholders suggested that the impact on magistrates' courts themselves would be profound. There was a concern that the system would collapse if magistrates were required to provide detailed reasons for their decisions, including their verdicts, and legal advisers were required to provide robust written advice that would withstand judicial scrutiny on appeal. Stakeholders expressed concern that this would need to be done in respect of all cases, even though only a very small proportion would go on to be the subject of an appeal.⁹ Magistrates' courts' proceedings would also need to be recorded to enable transcripts to be available for an appeal (something for which Schedule 2 to the Bill provides).
- 1.16 Some consultees also raised concerns about the summary nature of justice in magistrates' courts and felt that the automatic right to a rehearing provided an additional layer of protection from the "speedy" justice required in magistrates' courts.¹⁰ The Magistrates' Association conceded that¹¹

⁷ CP 268, paras 5.50-5.54.

⁸ CP 268, paras 5.55-5.58.

⁹ CP 268, paras 5.59-5.66.

¹⁰ CP 268, paras 5.67-5.70.

¹¹ CP 268, para 5.68.

While speedy summary justice is efficient, it may occasionally result in rough edges and potential errors. Retaining the option to appeal is seen as a crucial safeguard, enabling individuals to seek redress and a comprehensive review of their cases.

- 1.17 In the Consultation Paper, we acknowledged that because a rehearing will often require witnesses to attend and give evidence a second time, this is capable of being exploited by an offender who appeals in the hope that the victim and/or witnesses may not attend for the rehearing.¹² However, we provisionally concluded, given concerns as to whether the summary trial system as it currently stands would be able to withstand the changes necessary to enable appeals by way of review, that the small number of cases appealed to the Crown Court should not, of itself, drive such a large and potentially disruptive change.¹³
- 1.18 While we are still in the process of developing our policy positions ahead of publication of the Final Report, the majority of respondents to the Consultation Paper were – for similar reasons to those articulated in responses to the Issues Paper – strongly in favour of retaining the right to a rehearing in the Crown Court.

The application to summary appeals of the current arrangements for appeals in cases tried on indictment

- 1.19 As noted above, Schedule 2 of the Bill makes arrangements, by way of new provisions in the Magistrates' Courts Act 1980, for appeals to the Crown Court from summary trials to be heard by way of review. The new arrangements are modelled on provisions in the Criminal Appeal Act 1968 governing appeals to the Court of Appeal from trials on indictment in the Crown Court. These provisions, and how they operate in the Court of Appeal, have themselves been a prime focus of the Criminal Appeals project. Many consultees expressed concern that aspects of the current system for criminal appeals in trials on indictment can hinder the correction of miscarriages of justice. Indeed, last year the Supreme Court, in the cases of *Hayes* and *Palombo* observed that “the history of these two cases raises concerns about the effectiveness of the criminal appeal system in England and Wales in confronting legal error”.¹⁴
- 1.20 In our Consultation Paper, we expressed concerns over several aspects of the current arrangements. These include the “safety” test governing appeals against conviction,¹⁵ the “substantial injustice” test used for appeals based on a change in the law,¹⁶ the rules governing the admission of fresh evidence,¹⁷ and the power of the Court of Appeal to make a “loss of time” order against a prisoner where an appeal is unsuccessful.¹⁸ Schedule 2 to the Bill largely replicates these arrangements in the Crown Court, where they will be applied by a single judge.

¹² CP 268, para 5.80.

¹³ CP 268, para 5.81-5.86.

¹⁴ *R v Hayes; R v Palombo* [2025] UKSC 29 at [1].

¹⁵ CP 268, paras 8.1-8.89.

¹⁶ CP 268, ch 10.

¹⁷ CP 268, paras 6.34-6.116, 8.90-8.127.

¹⁸ CP 268, paras 6.128-6.157.

- 1.21 Our eventual findings in respect of the current arrangements for appeals to the Court of Appeal may well apply equally to the new arrangements for summary appeals modelled on them and proposed in the Courts and Tribunals Bill. It is possible, therefore, that we will need to consider aspects of the new arrangements in our final report, and potentially make recommendations for further reform in line with any recommendations we make in respect of the provisions for appeals to the Court of Appeal.

Further enquiries

- 1.22 If further information is required, please email criminal@lawcommission.gov.uk.

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Commissioner for Criminal Law

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