Response to the Independent Review of the Criminal Courts

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The state of the prisons and the current backlog in the courts call for a sweeping review and serious consideration of bold remedial strategies. I must note however, that due to the need to submit a response to the government's Sentencing Review, and the extremely tight timelines of the current review I am unable to provide more than some summary points in response to the review. In the event that the review seeks more detail or information on other issues within its mandate, and can provide more time to prepare such documentation, I would be happy to assist. I deal first with issues relating to the efficiency of the courts and then issues relating to sentencing data.

Sentencing Powers of the magistrates' courts

There has been much discussion regarding the issue of raising jurisdiction in the magistrates' courts. I have long supported raising jurisdiction to 12 months imprisonment (from six months). Although critics argued that this would have an inflationary effect, I do not think there is any evidence available suggesting that is the case.

Proposals to reduce demand on the Crown Court by retaining more cases in the lower courts

Given the magnitude of the crisis, I support the suggested approaches to divert cases from the Crown Court so they can be processed in the magistrates' courts. This could be achieved through maintaining and even potentially further expanding magistrates' powers,[1] by reclassifying triable either way offences as summary only, or possibly through a combination of both approaches.

The reclassification of triable either way offences into summary only offences could not only help reduce the backlog in the Crown Court but also reduce sentence inflation experienced over the last couple of decades (Pina-Sánchez et al., 2023). In so doing, this would help redress the ongoing prison crisis; especially if the mandatory minimum and maximum tariffs and the starting points listed in the guidelines were to be amended in accordance with the new consideration of such offences. It would be particularly effective to target either way offences

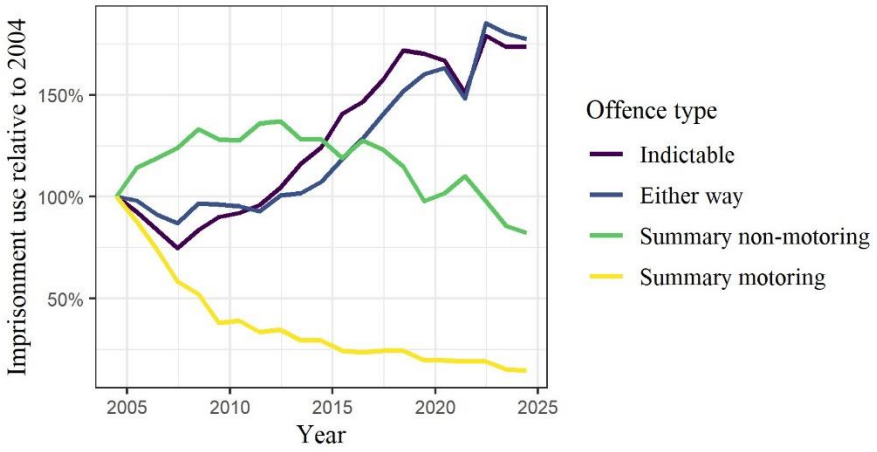
[1] This proposal has been supported by a range of commentators, e.g. The-'Wicked-and-the-Redeemable.pdf.

where we have detected a specific process of sentence inflation, such as sexual offences (Roberts et al., 2025). A careful analysis of current sentencing trends would help identify the most appropriate triable-either-way offences which could be reclassified to summary only.

Fears have been expressed that the expansion of magistrates' powers leads to an increase in sentence severity. That would be the case if magistrates were more punitive than judges. However, as far as we are aware, there is no evidence to suggest that is the case. To investigate this question, we can use the previous expansion and withdrawal of magistrates' powers to impose up to 12-month long immediate custodial sentences that was in effect from June 2022 to March 2023. In Figure 1 I use annual data broken down by offence type to explore trends in use of imprisonment (measured as the proportion of immediate custody sentences, times their average sentence length). Specifically, we should focus on changes in either way offences (the treatment group) compared to indictable offences (the control group given these are the only other offence group allowing substantial custodial sentences). We can see that the use of imprisonment for triable either way offences during the 2022 to 2023 period increased but did so following a similar trend to that experienced by indictable offences. That is, the offence types susceptible to be affected by the expansion of magistrates' powers (triable either way offences) did not experience a different trend in sentence severity than that observed amongst the closest control group (indictable offences). This suggests a wider trend of increased sentence severity for the more serious offences - a process that England and Wales appear to have experienced over more than a decade - and as such is not evidence of a specific causal effect that can be attributed to the expansion of magistrates' powers.

Figure 1

Trends in the use of imprisonment (measured as the proportion of immediate custody sentences, times their average sentence length[2]) across offence types



Further analysis is necessary to generate a definitive estimate of the causal effect of the expanded magistrates' powers on the use of imprisonment as a sanction.

The Introduction of an Intermediate Court

I support this proposal, although await more detail before providing a definitive response. The use of a single judge would be a more efficient way of processing cases without any loss of fairness. Preliminary research suggests that other common law jurisdictions reserve the superior trial court level for a smaller percentage of cases than is the case in England and Wales. A more thorough comparative study is necessary. In a similar vein, I support consideration of restricting defendant elections on mode of trial.

The availability of statistical data about sentencing

Individual data is necessary if we are to accurately estimate the causal effect of policy changes such as the expansion of magistrates' powers. The publicly available Ministry of Justice Criminal Justice Statistics are aggregated at the quarterly level. As a result, research designs such as time-series analysis lose much of their accuracy, while even more refined analyses such as regression discontinuity become impossible. Ideally, we should be able to monitor sentence trends at the daily level. The fact that sentencing statistics are presented as a form of aggregate

[2] This is the 'Imprisonment Index' used by the Sentencing Academy to measure the use of custody in a score which captures both changes in the probability and length of custodial sentences.

data (i.e. combining sentence outcomes across pre-defined offender or offence variables, such as average sentence length by offenders gender, across years, or offence types) as opposed to their original individual format (i.e. as a different record for each sentence imposed or offender processed), severely limits the type of analyses that can be carried out. For example, we cannot undertake multivariate analyses to consider ethnic disparities, trends in crime seriousness and other key issues.

The Sentencing Council used to produce (and openly share) individual level sentencing data from their own Crown Court Sentencing Survey (CCSS), including the main case characteristics and sentence outcomes of offences sentenced in the Crown Court. Sharing this data with the academic community led to a rapid expansion of sentencing research in the UK.[3] The CCSS was used to conduct research to inform ongoing sentencing debates. Roberts & Bradford (2015) for example have explored sentence reductions for a guilty plea while Pina-Sánchez & Linacre (2013) and Lightowlers & Pina-Sánchez (2018) explored aggravating factors such as being part of a gang, or committing the offence while intoxicated. However, the CCSS survey was discontinued in 2015, leaving a large gap of resources available to sentencing researchers.

In 2021 Administrative Data Research UK released made individual level sentencing data from Ministry of Justice available under the ONS secure servers. This data has been recently used by academics to explore various sentencing questions. Specifically, this data has helped advance substantially our understanding of the extent and nature of unwarranted disparities in sentencing (Lymperopoulou, 2024; Pina-Sánchez et al., 2025). The potential of this new administrative datasets is vast. However, the numerous hurdles researchers face in accessing and using it have limited its use (Pina-Sánchez & Guilfoyle, 2025).

Some of the frictions introduced in the process include: (i) lengthy application processes; (ii) mandatory research accreditation requiring a data security course and examination; (iii) limited access to IT infrastructure, available only at a few selected universities; (iv) reliance on slow servers for analysis; (v) re-application requirements to address research questions not outlined in the original plan; and most frustratingly, (vi) publication clearance from three separate gatekeepers - Office for National Statistics, Ministry of Justice, and Judicial Office - causing unnecessary delays and uncertainty.

As far as I am aware, only researchers who receive external funding to buy out their time from their institutions have been able to find the time - and patience - to access and use these data. My own personal experience after having recently completed a research project using this

[3] See Roberts (2015) for a collection of essays containing empirical analyses of sentencing patterns in England and Wales drawing upon the Crown Court Sentencing Survey (CCSS).

data, is that the time that needs to be invested and the uncertainty that surrounds the process are both so significant that it is unlikely I will use it again.

To advance our understanding in sentencing, these stringent data security protocols should be reconsidered. Arguments for maintaining these protocols typically cite confidentiality concerns, but these can easily be addressed, e.g. simply redacting the specific variables deemed to be too sensitive, while making the rest available. Information about legal and extra-legal factors influencing decisions, as well as the sentencing outcomes themselves, should be in the public domain. The public nature of sentencing communicates the consequences of wrongdoing transparently. It is worth noting that other jurisdictions demonstrate that greater transparency in the use of sentencing statistics is feasible. U.S. Federal Courts and states like Minnesota, Florida, and Pennsylvania have openly shared detailed sentencing data for decades, often including information about the judges involved. More recently, countries like China, the Czech Republic, Slovakia, France, Germany, Russia, Poland, the Netherlands and Finland have adopted similar practices.[4] England and Wales should not remain an exception.

The current barriers to access severely limit the range of researchers equipped to work with these datasets as well as the quality of research in this area. In practice, only those with sufficient funding to dedicate their time exclusively to navigating these obstacles have used the data. This not only slows the research process but undermines its integrity, as replication of analyses becomes prohibitively time-consuming or practically infeasible. It is our view that the administrative sentencing datasets should be made open to all researchers without restrictions, in their current format. Alternatively, at the very least, trimmed versions of those dataset where variables deemed particularly sensitive (e.g. court identifiers, or offenders' area of residence) are dropped should be published.

I conclude this brief submission by urging the Independent Review of the Criminal Courts to take a bold approach to reforms of the criminal courts and increasing the quality and accessibility of sentencing data. Nothing less can be justified in light of the current situation.

[4] We are currently drafting an article where we document all the individual level datasets that are open to researchers across Europe. The recording of the symposium, presentation slides, and follow up discussions that informed that paper are available here: https://empiricalresearchonsentencing.wordpress.com/presentations/

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