***‘In a Post-Covid World, should we consider limiting the rights to trial by jury?*’**

In England and Wales, any person accused of a “triable either way" offence may be tried by magistrates, if appropriate, or elect trial by jury in the Crown Court. In light of the unmanageable court delays caused by Covid-19 threatening to collapse the criminal justice system, it has been suggested that a defendant pleading not guilty to an either-way offence could be tried by a judge and two magistrates rather than by a jury.

The Lord Chief Justice, Lord Burnett of Maldon, proposes that ministers should legislate to limit the rights to trial by jury as a “short term” solution. This radical approach has been endorsed by the Secretary of State for Justice and Lord Chancellor, Robert Buckland QC, who believes that drastic measures are required to prevent lasting delays to the substantial backlog caused by the pandemic.

In any event, being tried by the judiciary and being tried by a jury are very different trial experiences, each with their own set of advantages and disadvantages.

The right to trial by jury has been enshrined in English law since Magna Carta in 1215. There are very exceptional circumstances to depart from this; for the purpose of ensuring justice. Evidently “expedition” does not fall into this exception. Albeit important, expedience does not simply mean that it is in the interests of justice.

Jury trials are both constitutionally and democratically relevant. They help the justice system reflect the values and standards of the general public, namely what the ordinary person would deem to be reasonable in the circumstances. Judges are unelected and therefore do not represent the values of society as a whole. It is more legitimate for a life-changing verdict to be delivered by a collection of ordinary people, rather than unrepresentative judges, especially in relation to community standards. Opinion polls and studies over the years show strong public support for jury trials, finding that over 84% of the public trusted a jury to come to the right decision and felt jury trials were fairer than bench trials.

Twelve randomly selected people represent a cross-section of society on race, age and socio-economic background, whereas the judiciary and magistracy do not; only 30 circuit judges identify as black, 84% of magistrates are over the age of 50, and there is also an apparent socio-economic divide. Therefore, there is a risk of decisions being made by people who may be considered out of touch, biased or far removed from the people being tried. Whilst the jury do bring their own personal biases, the collective opinion of twelve is far better than one.

Jury trials allow the legal system to be more accessible for lay people as the prosecution, defence and judge must present information in a user-friendly way that the jury can follow. If trials were judge-only then there is the risk of increased use of complicated jargon and legalise ostracising the public. This in turn would undermine trust and confidence in the criminal justice system by removing public participation in the application of justice, which is particularly important now in light of the BLM movement and the disproportionate negative impact of the justice system on BAME groups.

In addition, to make the judiciary the judge of law and fact carries an inherent risk of perceived or actual unfairness and partiality, as judges would be unable to wholly put aside prejudicial evidence that they have ruled inadmissible.

Needless to say, removing trial by jury could offer limited, short-term benefit. It has potential to offer speedier trials, reduce the backlog and provide significant costs savings for the privately paying defendant and the Government.

Also, it is worth noting that this ‘right’ does not exist in most other jurisdictions so it could be sensible to try a new approach post-Covid.

Some either-way offences carry heavy sentences, so jury trials may not always ensure the best outcome for every case. It has been argued that jurors, as laymen, do not generally have a legal background and it is possible that they may not entirely understand complex legal issues or in-depth forensic evidence. Further, as juries are not required to give reasons for their verdicts, there is no way to mitigate this risk other than using bench trials.That being said, restricting jury trials could have the opposite intended effect ofbeing resource intensive. Judges and magistrates, unlike juries, would be required to give reasons for their decisions, with appeal as of right on fact and law, thus resulting in more appeals and increasing the backlog.

Jury trials have existed for over 800 years. Proposals to limit trials by jury are nothing new. This was previously proposed by Auld, LJ in 2001 and branded “an assault on jury trial” by the Bar Council and rejected by Parliament.

The Lord Chancellor now proposes their removal as a last resort. Therefore, given the risks highlighted above, other options should be considered to reduce the backlog in the first instance. Aside from arguably the most obvious one (proper funding for the criminal justice system), better use of technology through fully virtual trials is an option. Another solution could be to allow defendants in appropriate cases to re-open mode of trial at their first Crown Court hearing. Those who prioritise expedient justice over their right to trial can therefore choose to have a judge and two magistrates instead.

Lord Devlin notably described the jury system as “the lamp that shows that freedom lives”. Limiting jury trials would be a regressive step and could set precedence for juries to be removed forever. Therefore, we need a solution that is not just about the quickest way to do things but the effective, efficient and fair application of justice. In the absence of such a solution, trial by jury should remain as the cornerstone of our criminal justice system.

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