

The Impact of Juryless Trials: A Comparative Look at the Diplock Courts of Northern Ireland and Jury Trial Provisions in the Leveson Review of Criminal Justice in England and Wales

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Abstract: This article examines proposals in Sir Brian Leveson’s *Independent Review of the Criminal Courts* (2025) to expand juryless criminal trials in England and Wales. Using the experience of Northern Ireland’s Diplock Courts as a comparative case study, it evaluates the implications of removing juries for trial dynamics, evidential assessment and fair-trial guarantees. The analysis considers how judge-alone trials, even when formally grounded in a defendant’s “jury waiver”, may operate in conditions of structural or tacit pressure and thereby affect the quality of consent. It further assesses the potential impact of an expanded non-jury jurisdiction on perceptions of legitimacy and public participation in criminal justice. The article concludes by exploring alternative reform pathways, including greater use of Magistrates’ courts, aimed at addressing current systemic pressures while preserving the centrality of jury trial within the common law tradition.

Keywords: *Juryless trials; Diplock Courts; Leveson Review; Criminal Reform; Common Law; Constitution.*

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I. Introduction

Sir Brian Leveson’s highly anticipated review (*Independent Review of the Criminal Courts: Part 1*) into the criminal courts in England and Wales was published on the 9th of July 2025. Its publication has attracted much commentary, particularly with respect to Sir Brian Leveson’s recommendations outlined in Chapter 9 of his review, titled “Trial by Judge Alone”, in which he forwards a case for the increased use of Juryless criminal trials.¹ The reception of Leveson’s recommendations has been varied and passionate, and once one has parsed the more salacious elements of reporting, has inspired much dialogue around the philosophical and moral roots of the jury system.

Potential reforms to the jury system in England and Wales as well as Scotland have been floated at different points in time previously. For example, contained within Part 6, section 65 of the Victims, Witnesses, and Justice Reform (Scotland) Bill the Scottish government outlines a trial scheme titled, “Pilot of single judge rape trials” under which Scottish Ministers would have been empowered to introduce regulations allowing rape and attempted rape trials on indictment to proceed before a single judge without a jury.² This provision was subsequently walked back by the Scottish government citing that there was not enough parliamentary support at that time to continue with the pilot.³ Such attempts to amend jury trials in this way garner robust rejoinder in their defence from both the lawyer and the lay person.⁴

However, as it pertains to Northern Ireland, juryless or judge alone trials are not a novel concept. In fact, juryless trials have been, and remain, in place in Northern Ireland since 1973 following the recommendations of Lord Diplock contained in his 1972 report. Albeit initiated with differing concerns to those motivating the Leveson review, the Diplock courts, as they have come to be known colloquially, ultimately result in a defendant standing trial without the benefit of a jury. It is true that both the nature of and extent of use of Diplock courts has changed

¹ Sir Brian Leveson, *Independent Review of the Criminal Courts: Part 1* (Ministry of Justice 2025) <<https://www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-1>> accessed 24 October 2025 (thereinafter “Leveson Review”).

² Victims, Witnesses, and Justice Reform (Scotland) Bill, pt 6, s65.

³ Kirsteen Paterson, ‘Scottish Government scraps pilot for juryless rape trials’ (*Holyrood*, 30 October 2024) <<https://www.holyrood.com/news/view,scottish-government-scraps-pilot-for-juryless-rape-trials>> accessed 12 May 2026.

⁴ David Cowan and Jonathan Geddes, ‘Juryless rape trials pilot to be axed by Scottish government’ (*BBC News*, 31 October 2024) <<https://www.bbc.co.uk/news/articles/c20n3rjp7v9o>> accessed 12 May 2026.’

since their introduction, and modern usage of such proceedings is consistently reviewed bi-annually, with the next review scheduled for July 2027.

It is clear therefore, in light of the Leveson review, that a comparative look at juryless criminal trials in Northern Ireland can illicit answers as to how, or indeed whether, England and Wales should implement some, or all, of the Leveson recommendations effectively, appropriately and, crucially, justly. Northern Ireland is a jurisdiction with innumerable similarities to England and Wales yet maintains a clear jurisprudential independence. Northern Ireland provides an example grounded in practical reality. Juryless criminal trials are not academic or theoretical in this jurisdiction; there is a long legacy of their use and thus this provides us with a pertinent window through which to view the legacy and impact of juryless criminal proceedings. Given the closeness of the two jurisdictions, it is the hope that academic and practical insights from one can go a long way to informing conduct in the other, both in the positive and indeed the negative.

This article aims to examine the legacy of Diplock courts in respect of the recent proposals contained within the Leveson review, in the hope of providing a critique of juryless trials, their efficacy, legitimacy and propensity to administer justice as well as bring some practical insight from an outside, albeit adjacent perspective to England and Wales.

In their book *Abolishing the Diplock Courts: The Case for Restoring Jury Trial to Scheduled Offences in Northern Ireland*, Stephen Greer and Anthony White forward several reasons as to why the jury should be restored, some are specific to the context of Northern Ireland and have been omitted, whereas others are universally applicable.⁵ It is these universally applicable observations of the jury, and the jury trial that inform this articles thesis. Namely that:

1. *Jury trial bestows upon the ordinary people the democratic right and public duty of direct participation in decision making which often gravely affects the lives of others;*
2. *It maintains contact between the criminal justice process and ordinary people, and sustained their confidence in it, a service which no other component of the legal system can duplicate;*

⁵ Steven Greer and Antony White, ‘*Abolishing the Diplock Courts: The Case for Restoring Jury Trial to Scheduled Offences in Northern Ireland*’ ([Cobden Trust](#) 1986) 56.

3. *In trial by jury alone the vital distinction between the admissibility of evidence and the weight which should be attributed to it is all but lost;*
4. *The separation of functions between judge and jury is particularly valuable with respect to the testing of credibility of witnesses in general;*
5. *Trial by jury provides a means by which each case is heard on its individual merits by a fresh tribunal thereby avoiding the danger of case hardening to which judges sitting alone are prone*

It is with these five components in mind that this piece seeks to demonstrate why judge-alone trials are insufficient to tackle the current backlog in the criminal courts in England and Wales, and why it is wholly inappropriate to introduce such measures in the context and circumstances (ordinary and peacetime) which presently persist.

This article will begin by first providing a background on the Diplock courts, their origin, amendments and current trajectory in Northern Ireland. Additionally, this article will devote a brief section to outlining the specific recommendations of the Leveson review, looking at the factors Sir Brian Leveson considers in his recommendations, and the extent to which those recommendations are shaped by the present pressures on the criminal courts, concerns of proportionality, and the need for greater procedural efficiency. It will then go on to look at the objections to Diplock style juryless trials both historic and contemporary, looking at how juryless trials interact with Article 6 (Right to a Fair Trial) of the European Convention on Human Rights, and then proceed to apply this to the Leveson review where applicable. The article will of course examine some of the key provisions outlined by Leveson and provide some comparative commentary as to their application. Finally, this article will conclude with an evaluation of the Leveson recommendations, their practicability not only materially but philosophically within the common law framework.

II. The Origins and Legacy of Diplock Courts

“The idea of trying serious criminal cases without a jury is anathema to many educated within the common law tradition”.⁶ Yet the consensus in Northern Ireland has been for some time now that this is an undesirable, but necessary, provision given the historic circumstances of the

⁶ John Jackson and Sean Doran, *Judge without Jury: Diplock Trials in the Adversary System* (OUP 1995) 15.

jurisdiction. Diplock trials were originally established as a response to internment without trial, jury intimidation and jury bias in cases related to the ‘Troubles’.⁷ They came into effect through the Emergency Provisions Act 1973. The Belfast ‘Good Friday’ Agreement was signed in 1998 and marked the end of ‘The Troubles’ in Northern Ireland,⁸ however Diplock Courts endured and were not formally abolished until the Justice and Security (Northern Ireland) Act 2007.

However, at present the Director of Public Prosecutions (DPP) for Northern Ireland can still certify that a trial should be held without a jury, conducted in the manner of, and thereby maintaining Diplock courts as a feature of Northern Irish justice.⁹ The current provisions for non-jury trials in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 were most recently extended on the 31st July 2025.¹⁰ This decision put in place a ninth two-year extension, from 31st of July 2025 to be reviewed again on the 31st of July 2027. The Northern Ireland Office stated that these provisions are “regrettable”, but that they remain necessary because of continued paramilitary activity, despite the reduction in the Northern Ireland terrorism threat level from “Severe” to “Substantial” in March 2024.¹¹

There were 12 such cases as of the last reported year (2023).¹² Section 9(1) of the Justice and Security (Northern Ireland) Act 2007 provides that sections 1-8 and Schedule 1 of that Act, the non-jury trial provisions, shall expire at the end of the period of two years beginning with the day on which section 1 comes into force. Section 1 came into force on 1st August 2007. Further, section 9(2) provides for the Secretary of State by Order to extend or (on one or more occasions) further extend the effective period. The Secretary of State has extended the non-jury trial provisions with successive orders.¹³

⁷ ‘*The Troubles*’ refers to the violent sectarian conflict in Northern Ireland from the late 1960s to 1998, rooted in political and constitutional disputes between mainly Protestant unionists, who wished to remain part of the United Kingdom, and mainly Catholic nationalists, who sought a united Ireland.

⁸ The Belfast ‘Good Friday’ Agreement 1998.

⁹ Justice and Security (Northern Ireland) Act 2007, s 1.

¹⁰ NIO, ‘Northern Ireland Office launches consultation on the use of non-jury trials in Northern Ireland’ (GOV.UK, 9 December 2024) <<https://www.gov.uk/government/consultations/northern-ireland-office-launches-consultation-on-the-use-of-non-jury-trials-in-northern-ireland>> accessed 12 May 2026.

¹¹ House of Lords, Secondary Legislation Scrutiny Committee, *Twenty Sixth Report* (HL 2020–21, 129). <<https://publications.parliament.uk/pa/ld5901/ldselect/ldsecleg/129/12904.htm>> accessed 12 May 2026.

¹² HM Government, *Consultation: Non-Jury Trials, Justice and Security (Northern Ireland) Act 2007* (Gov.uk, December 2024) <https://assets.publishing.service.gov.uk/media/6756bccdf96f5424a4b87768/241209_NJT_Consultation_Document.pdf> accessed 24 October 2025.

¹³ The effective period was extended by [S.I. 2009/2090](#) so as to end on 31st July 2011. And the effective period was further extended by [S.I. 2011/1720](#) so as to end on 31st July 2013. Most recently this was extended to 2027 by the (Extension of Duration of Non-jury Trial Provisions) Order 2025.

Jackson and Doran note how in Diplock courts, the absence of a jury, fundamentally changed the working and atmosphere of Crown court trials, transforming them into something closer to an appellate court.¹⁴ Judges in Diplock trials wrote full and reasoned verdicts unlike a jury; these reasoned judgments were closer to appellate judgments in kind.¹⁵ Judges were required to become much more interventionist as the sole decision maker and often wrote full and reasoned verdicts unlike a jury. Jackson and Doran say that this created an ‘adversarial deficit’, one that removed the public buffer between the defendant and the state.¹⁶ Describing this they write, “this deficit occurs because many of the procedural devices built into the trial process - particularly those designed to provide the defendant with a meaningful opportunity to contest the case against him and to ensure that any determination of guilt is based solely on the evidence adduced in the courtroom – are predicated on the existence of a decision-making body that comes ‘cold’ to the contest, devoid of extraneous knowledge concerning the facts of the case or the relevant principles of law.”¹⁷ In light of this deficit, defence counsel pivoted to a focus on technical law rather than the pathotic concerns a jury may have.¹⁸

This deficit will be discussed further and in greater depth subsequently, however one thing to note is that the nature of the courts had a material effect on the outcomes of proceedings, for instance, from 1973-79 the acquittal rate dropped from 15% to 6% and saw the number of guilty pleas climb from 59% to 75%.¹⁹ The system became geared towards securing convictions rather than guaranteeing reliability or ‘safe’ convictions.²⁰ The Diplock Commission recommended a number of changes to the conduct of a trial to reduce the risk of acquittal of significant numbers of persons guilty of terrorist crimes.²¹ It is important to acknowledge that these figures cannot, by themselves, establish a direct causal link between the structural features of Diplock trials and the observed fall in acquittals or rise in guilty pleas. Any such relationship should be viewed alongside a range of confounding factors, including

¹⁴ Hannah Quirke, ‘Covid-19 and jury-less trials?’, (2020) 7 Crim LR 569, 569-71.

¹⁵ *The King v Soldier F* (Crown Court) [2025] NICC 30 is a Troubles legacy case whereas, *The King v James Bryson, Thomas O'Hara and Daithi McKay* [2025] NICC 19 is a non-Troubles related use of Diplock. *R v Crossan* [1989] 2 NIJB 72 is an example of Diplock courts used during the Troubles.

¹⁶ Jackson and Doran (n6) 15.

¹⁷ Sean Doran, John D Jackson and Michael L Seigel, ‘Rethinking Adversariness in Nonjury Criminal Trials’ (1995) 23 American Journal of Criminal Law 1 <<https://scholarship.law.ufl.edu/facultypub/309/>> accessed 12 May 2026.

¹⁸ Lorraine Toolan, ‘Administration of justice in Northern Ireland: the operation of the Diplock courts from 1973 to 1988’ M.Soc.Sci in Irish Political Studies, Faculty of Law at Queen's University Belfast 1988) ch 2, 42.

¹⁹ Kevin Boyle, Tom Hadden, and Paddy Hillyard, ‘10 years on in Northern Ireland’ (Cobden Trust 1980).

²⁰ Pieter Van Dijk, Preface to ‘The Diplock Courts in Northern Ireland: A Fair Trial?’ (Amnesty International & Netherlands Institute of Human Rights 1983) [7] <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur450041983en.pdf>> accessed 24 October 2025.

²¹ David Bonner, ‘Emergency Powers in Peacetime’ (Sweet & Maxwell, 1985) 138.

changes in policing and intelligence practices, prosecutorial decision-making, charging criteria, and the wider security and political context in which the courts operated. The statistics therefore should be understood to augment the critique advanced by Jackson and Doran: that the non-jury model, and the ‘adversarial deficit’ they adduce, risks tilting the process away from maximising adversarial challenge and towards a greater emphasis on the efficient conviction of scheduled offenders.²²

As will be discussed in greater detail subsequently only scheduled offences are tried in the Diplock courts. They are listed in parts I and III of schedule 4 of the 1978 Northern Ireland (Emergency Provisions) Act, and can be added to or reduced by the Secretary of State by order.²³ They cover all the offences which the authorities associate with terrorism, such as the common law offences of murder, manslaughter or false imprisonment and many of the statutory offences contained in the Offences Against the Person Act 1861 among others.²⁴ Crucially many of these offences are also commonly committed by ordinary criminals and so special provision had to be made in order to safeguard the ordinary criminal from being processed through the emergency system.²⁵

III. The Leveson Review: Recommendations, Reform and Jury Waivers

Sir Brian Leveson’s Independent Review of the Criminal Courts was commissioned to tackle the crippling backlog in England and Wales’ Crown Courts, standing at over 73,000 cases,²⁶ and to drive systemic reform for efficiency and proportionality. Its core aims extend beyond funding to procedural overhaul, with Chapter 9 proposing judge-alone trials via defendant ‘jury waivers’ in specified cases, aiming to cut delays and costs while safeguarding Article 6 ECHR fair trial rights.

Key provisions in Sir Brian Leveson’s review beyond jury waivers include establishing a new ‘Crown Court Bench Division’ where a judge sits with two magistrates (without jury)

²² A scheduled offence is a specific criminal act listed within a schedule to a statute (an act of parliament or legislation). These are often serious offenses, such as terrorism-related acts, severe violence, or sexual offences against children, which are categorized together to trigger specific legal procedures or penalties.

²³ Dermot Walsh, *Use and Abuse of Emergency Legislation*, (Cobden Trust 1993) 99.

²⁴ Ibid 59.

²⁵ Ibid.

²⁶ Leveson (n 1).

for cases anticipating up to three years' custody, removal of Crown Court election rights for low-level offences, and reclassification of certain either-way offences as summary-only triable in magistrates' courts.²⁷ Additional reforms encompass expanded out-of-court resolutions (OOCRs), abolition of 'release under investigation' in favour of improved bail, enhanced disclosure processes via AI tools and removal of pre-charge police redaction, national AI-assisted listing frameworks, greater remote participation for preliminary hearings and certain witnesses, and a unified governance structure with a 'Prime Minister's Criminal Justice Adviser' for cross-agency coordination.²⁸ These seek to ensure proportionality, efficiency, and resilience amid chronic underfunding and backlogs.

Geoffrey Rivlin KC, whose article on the Leveson proposals is scathing, does however note that "Sir Brian has been given a very difficult task. His review makes a number of important recommendations, and some of them, if implemented, should result in a significant contribution to easing the pressures."²⁹ Crucially, as it relates to the jury recommendations, the subject of this article, the Four Jurisdictions Conference, (a professional group that comprises of practitioners in the legal systems of England and Wales, Scotland, Northern Ireland, and the Republic of Ireland) issued a Joint statement of the Four Bars on Jury Trial in May 2026 outlined the professions shared objections to the government's post-Leveson proposals.³⁰

IV. Juryless Trials: Critiques and Human Rights Concerns

The use of Diplock courts gives rise to a number of procedural obstacles. Jennings notes the evidential issues at play when the judge must 'double hat' as both the arbiter of law and fact.³¹ In standard jury trials questions of admissibility are decided in the absence of the jury. The judge cannot decide a question of admissibility without first hearing, or at least being aware of, the evidence upon which they must rule.³² Should the evidence be ruled as inadmissible the Judge must then 'put it out' of their mind. Jennings says of this, it would be very difficult for a

²⁷ Leveson (n 1).

²⁸ Leveson (n 1).

²⁹ Geoffrey Rivlin KC, 'Leveson and judge-only trials in serious fraud' *Criminal Law Review*, 2025, 10, 604

³⁰ 'Joint statement of the Four Bars on Jury Trial' (Faculty of Advocates, 8 May 2024) <<https://www.advocates.org.uk/news-and-responses/news/2024/may/joint-statement-of-the-four-bars-on-jury-trial>> accessed 12 May 2026.

³¹ Anthony Jennings, *Justice Under Fire: The Abuse of Civil Liberties in Northern Ireland* (Pluto Press 1988).

³² Toolan (n 18).

judge genuinely not to be influenced by a confession, even if, for example, that confession was garnered through circumstances that render it inadmissible.³³ Another concern is that of ‘case-hardening’. Boyle, Hadden and Hillyard speak of how there is a danger of judges developing a ‘hardened’ stance on proceedings when they sit and hear cases of a similar nature, similar facts and where a defendant relies on similar evidence and facts.³⁴ They suggest that a jury prevents this ‘hardening’.³⁵

Furthermore Professor Walsh identifies another area of concern, he cites ‘scheduling and descheduling’ of offences as an area that Diplock fails to hold up to scrutiny.³⁶ In the context of Diplock courts as touched on above, a scheduled offence is a grave offence often of a terrorist nature,³⁷ as compared to an ‘ordinary offence’, and prosecutions for these types of offences can only be instituted by or with the consent of the DPP for Northern Ireland.³⁸ Notes 1 and 2 to schedule 4 of the Northern Ireland (Emergency Provisions) Act 1978 state that a number of scheduled offences are not to be treated as scheduled in any case in which the attorney general for Northern Ireland certifies that it is not to be treated as such, therefore the attorney general has a discretion to deschedule the offence in a case where a scheduled offence has been committed by an ordinary criminal or, indeed, for any other reason.³⁹ The power to deschedule serves as an important safeguard, ostensibly preventing the Diplock regime from extending beyond the exceptional security rationale that its usage is grounded in. Save for that safeguard, ordinary criminal cases risk being drawn into a procedure for which it was never designed.

However, there are a number of statutes that do not/did not permit the Attorney General to deschedule an offence,⁴⁰ and so gives rise to the possibility and, indeed, the probability, of ordinary criminal cases being processed through the Diplock courts.⁴¹ Walsh speaks of how the scheduling of offences, apropos of Diplock, casts too wide a net and that having it done in this way draws in ‘ordinary criminal cases’ rather than those for which Diplock was designed.⁴²

³³ Jennings (n 31) 52.

³⁴ Boyle, Hatton and Hillyard (n19).

³⁵ Ibid.

³⁶ Walsh (n 23) 59.

³⁷ Oren Gross and Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press, 2006) 188.

³⁸ Bonner (n 21) 107.

³⁹ Walsh (n 23) 59.

⁴⁰ Section 17 of The Firearms Act (Northern Ireland) 1969 by way of example.

⁴¹ Walsh (n 23) 59.

⁴² Ibid 99.

This sentiment is shared by Professor Aoláin who writes about the prosecution of ‘ordinary criminals’ in closed Diplock courts due to the rigidity of scheduled offences.⁴³

Amnesty International wrote extensively on the Diplock courts, and their commentary and research is still relevant and useful today. Amnesty’s report titled ‘The Diplock Courts in Northern Ireland: A Fair Trial’ principally looks at the significant departure from ordinary criminal procedure, and the serious concerns regarding human rights and fair trial standards that this raises.⁴⁴ Amnesty’s conclusions are indeed quite condemnatory. They say, the effect of the ‘emergency legislation’ meant, in many respects, a departure from minimum requirements of the English system of criminal justice and, in some areas, a departure from international standards for a fair trial.⁴⁵ The report by Amnesty is wide ranging and identifies Human Rights issues throughout the whole trial process, seeing the genesis of the issue begin at the pre-trial stage. However, for the purposes under discussion it is their writing on the abolition of the jury that is of concern.

Similar to others Amnesty stress the power, position and importance of a jury. Their review states:

*In constitutional terms, the participation of ordinary citizens in the administration of justice is regarded as an important expression of the democratic nature of the state; and the abolition of the jury consequently as a diminution of democracy. In criminal legal terms, the right to a trial by jury is considered an important safeguard in guaranteeing accused persons a fair trial. It shields the accused from abuse of the criminal justice system by the state, in that it takes away the ultimate decision on guilt or innocence from officers of the state, and places it in the hands of "peers" of the accused.*⁴⁶

Of course, the Diplock courts were instituted long before modern human rights laws were implemented. But Amnesty are right to probe at the concerns around the fairness of a trial. Since 1953, under Article 6 of the European Convention on Human Rights (ECHR) all persons have the right to a fair trial.⁴⁷ Now it is true that the absence of a jury does not preclude one from having a fair trial, as there are a number of components that go into making a trial fair (as

⁴³ Oren Gross and Fionnuala Ní Aoláin (n 37) 188.

⁴⁴ Douwe Korff, ‘The Diplock Courts in Northern Ireland: A Fair Trial?’ (Amnesty International & Netherlands Institute of Human Rights 1983) <<https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur450041983en.pdf>> accessed 24 October 2025.

⁴⁵ Ibid.

⁴⁶ Ibid, ch 5.

⁴⁷ European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, ETS No 5) art 6.

per *R v Twomey* and associated appeals to that case).⁴⁸ The right to have one's case heard by a jury is not absolute, and furthermore unpracticable given the sheer volume of cases and variance in kind.⁴⁹

R v Twomey presented the Court of Appeal of England and Wales, with the question of whether a Crown Court trial on indictment before a judge alone, ordered under section 44 of the Criminal Justice Act 2003, in light of compelling evidence of a sustained and serious risk of jury tampering, was compatible with the defendants' right to a fair trial under Article 6.⁵⁰ The Court upheld the order, emphasising that the statutory scheme was tightly drawn, required a high evidential threshold, and was directed to preserving, rather than undermining, the integrity of the criminal process.⁵¹ This case was referred to The European Court of Human Rights (ECtHR) in *Twomey, Cameron and Guthrie v United Kingdom*. The ECtHR reiterated that Article 6 does not confer a right to trial by jury and that both judge-alone and jury trials are, in principle, compatible with the Convention.⁵² However, the ECtHR's reasoning is tightly conditioned, stressing the exceptional nature of the risk, the detailed domestic assessment required before displacing a jury, and the availability of full judicial guarantees, including a public, reasoned judgment and the possibility of appeal.⁵³ Read together with Auld LJ's review, *Twomey* underscores the claim made in this article that any putative 'right' to jury trial is contingent and qualified, but crucially asserts that departures from the conventional jury model demand a particularly strong justification and careful Article 6 considerations.

To sideline juries in the way done by Diplock, and (as will be discussed) along the lines of Leveson is to row back on the national and cultural understanding of justice, and how it is administered. The concept of jury trial stretches back into the national history; Medley writes how in a proto form it was applied in the time of Henry II.⁵⁴ With this in mind any departure from standard practice is truly radical given the level of its entrenchment. Yet Parliament's ability and flexibility to derogate from standard practice is also legitimate given the uncoded constitutional settlement. This fact sees Leveson write in his review "I make clear my position

⁴⁸ *R v Twomey* [2011] 1 Cr App Rep 29 (Court of Appeal).

Twomey, Cameron and Guthrie v the United Kingdom (2013) 57 EHRR SE10.

⁴⁹ Robin Auld, Review of the Criminal Courts of England and Wales (The Auld Review) (Stationery Office, 2001) ch5, 8.

Alex Benn, 'In Crisis: the 'Constitutional' Right to Jury Trial' UK Constitutional Law Association (18 July 2025) <<https://ukconstitutionallaw.org/>> accessed 24 October 2025.

⁵⁰ *R v Twomey* [2011] 1 Cr App Rep 29.

⁵¹ *Ibid.*

⁵² *Twomey, Cameron and Guthrie v the United Kingdom* (n 48).

⁵³ *Ibid.*

⁵⁴ Dudley Julius Medley, *English Constitutional History* (B.H Blackwell 1894) 269.

that there exists no such constitutional or common law right to a trial by jury”⁵⁵ The merits and demerits of this assessment will be dealt with forthcoming but crucially this is not the common perception. Many people perceive trial by jury to be a bedrock right. Attempts to tinker with and or the wholesale removal of juries profoundly compromises public trust in the process and administration of the courts and the criminal law.

Jennings rightly comments that “within Western democracies, however, the charge of injustice is more grave, not least because it is levelled at a part of the UK, a country which prides itself on maintaining the highest standards of justice.”⁵⁶ English Common law has long been one of the UK’s most visible legal exports, with courts and practitioners abroad continuing to treat it as authoritative and commercially important.⁵⁷ Yet a charge of injustice, as Jennings says, is grave and in this instance legitimate. The sweeping curtailment of jury trials has been criticised as undermining the democratic character of criminal justice as well as public confidence in the courts, and has attracted concern from international human rights bodies in relation to Northern Ireland’s non-jury regimes.⁵⁸

V. Leveson Review: Reforming Jury Trials in England and Wales

Jackson and Doran helpfully describe an innate tension of the Diplock arrangement, it is one that would apply to the Leveson recommendation if they were implemented. That tension is this, that Diplock style juryless trials are at once extraordinary, a departure from the realm of normal criminal procedure yet they are cloaked in legal normality and orthodoxy.⁵⁹

Most people who engage with criminal proceedings never see a jury, and there exists no automatic right or obligation for them to see a jury. In a House of Commons debate *Trial by*

⁵⁵ Leveson (n1) ch 5.

⁵⁶ Jennings (n 31) 18.

⁵⁷ Ben Rigby, ‘Value of UK legal services exports surged in 2024, Law Society study shows’ (*The Global Legal Post*) <<https://www.globallegalpost.com/news/value-of-uk-legal-services-exports-surged-in-2024-law-society-study-shows-1111531162>> accessed 12 May 2026.

⁵⁸ Carol Rasnic, ‘Northern Ireland’s Criminal Trials without Jury: The Diplock Experiment’ (1981) 16 *Annual Survey of American Law* 37 <<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1044&context=annlsurvey>> accessed 12 May 2026.

UN Human Rights Committee, ‘Concluding Observations: United Kingdom of Great Britain and Northern Ireland’ (2001) UN Doc CCPR/CO/73/UK, para 18.

Amnesty International (n 44).

⁵⁹ Jackson and Doran (n 6) 15.

Jury: Proposed Restrictions held in July 2025, junior minister in the Department of Justice Sarah Sackman MP opined “the shadow Secretary of State for Justice quotes Magna Carta, but the state’s obligation is to ensure a fair trial, and essential to a fair trial is timely justice... What the shadow Secretary of State for Justice has not read is the entirety of Magna Carta. I quote: “To no one will we...delay right or justice.” The right to a timely trial is embedded in Magna Carta.”⁶⁰

However, writing in the *Times* newspaper in 2020, Former England and Wales High Court Judge Sir Richard Henriques begins his piece by claiming that “Trial by jury is the cornerstone of the British criminal justice system”.⁶¹ If we are to take the assertions made in the previous paragraph, this seems not to be the case. There is a wealth of academic scholarship extolling the common law settlements of juries. For example, Mark Elliott and Kirsty Hughes’ book, *Common Law Constitutional*, seeks to examine the uncertainties surrounding the amorphousness of common law rights.⁶² They reference the Supreme Court in which the court states “The constitutional right of access to the courts is inherent in the rule of law: it is needed to ensure that the laws created by Parliament and the courts are applied and enforced.”⁶³ It would appear then that there is some degree of orthodoxy to the view that a jury is *a fundamental or, at least, very important feature* of our legal system.⁶⁴

In fact, Blackstone speaks of the jury as perhaps the primary feature of the British legal system, he writes “Trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law... So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate”⁶⁵ This therefore presents us with a *dialetheia*, how can it be the case that jury trials are the cornerstone of the British legal system and yet simultaneously there exists no constitutional or common law footing on which they stand?

Only 1% of criminal cases in England and Wales are decided by jury.⁶⁶ The bulk of criminal proceedings are dealt with in Magistrates courts. As referenced briefly prior, Sir Brian

⁶⁰ HC Deb 9 July 2025, vol 770, cols 949–50 <<https://hansard.parliament.uk/commons/2025-07-09/debates/E03E9092-8179-4F60-B9C4-4CEF70353EEA/TrialByJuryProposedRestrictions#:~:text=As%20I%20said%20in%20my,criminal%20justice%20system%20currently%20functions.>> accessed 24 October 2025.

⁶¹ Richard Henriques, ‘Judge-only trials would let courts get back to work’ *The Times* (London, 1 May 2020) <<https://www.thetimes.com/uk/healthcare/article/jury-trials-could-restart-next-month-as-court-backlogs-grows-says-robert-buckland-rtiq3xpd5>> accessed 24 October 2025.

⁶² Mark Elliott and Kirsty Hughes, ‘Common Law Constitutional Rights’ (Hart Publishing, 2020).

⁶³ *R (Unison) v Lord Chancellor* [2017] UKSC 51.

⁶⁴ Benn (n 49).

⁶⁵ Sir William Blackstone, *Commentaries on the Laws of England* (Clarendon Press, 1765) 379.

⁶⁶ Cheryl Thomas, ‘Are Juries Fair?’ (Ministry of Justice Research Series 1/10, Ministry of Justice 2010).

Leveson asserts, “I make clear my position that there exists no such constitutional or common law right to a trial by jury.”⁶⁷ A statement like this is deeply shocking, and yet the statistics would seem, *de facto*, to bear out the validity of this assertion. While it is true that simply because something is in the minority does not mean that there is no right to it, what once was, and remains, a *de jure* right, has, over time been weathered away and further qualified so that it is a mere residue of what it once was.

Charles Bullock’s work documents the abolition of the jury in civil cases, he writes “When, in the twentieth century, Parliament finally decided to effectively eliminate the civil jury – initially on a temporary basis, and then permanently in 1933⁶⁸ – it did so by expanding the category of cases deemed unsuitable for jury trial to include the vast majority of cases, such that the exception became the rule.”⁶⁹ The civil jury’s incremental abolition was brought about through legislative changes and on a statutory footing, by way of litigant waivers, compulsory references, and judicial defaults.

When reading Bullock, one becomes aware that the Leveson review recommendations follow a similar tac to the one that fundamentally ‘abolished’ the jury in civil matters. As will be discussed in greater depth shortly, the Leveson recommendations provide for a ‘jury waiver’ but Bullock’s commentary is strikingly applicable here when he stresses that, “it should be noted that trial by jury was never formally abolished. Instead, it was retained as one of several theoretically available modes of trial while the authority to choose between the available modes was incrementally stripped away from litigants and imparted to the trial judge... Parliament and the courts also encouraged litigants to choose trial by judge alone instead of jury trial”⁷⁰

This article’s purpose is not to probe the constitutionality of juries, albeit there are reasonable arguments to their common law status. As Diplock shows, along with the response to Covid-19 it is the case, historically, that the ‘right’ to a jury is not absolute and has often been restricted. Prior settlements on juries have been legitimately qualified when pitted against other contemporary considerations, an example from history being the Administration of Justice (Emergency Provisions) Act 1939, a wartime measure that reduced the use of juries in criminal proceedings save for the most serious cases, reflecting the pressure of national

⁶⁷ Leveson (n1) ch 5, para 42.

⁶⁸ Administration of Justice (Miscellaneous Provisions) Act 1933.

⁶⁹ Charles Bullock, ‘The Abolition of the Right to Trial by Jury in Civil Cases in England’ (2023) 63 American Journal of Legal History 281 <<https://academic.oup.com/ajlh/article-abstract/63/4/281/7477884>> accessed 12 May 2026.

⁷⁰ Bullock (n 69) 299.

emergency rather than any rejection of jury trial in principle.⁷¹ But it seems unrealistic to argue that jury trial is insignificant or that it is the nadir of the present problems plaguing the criminal courts.⁷² The basis for Leveson's recommendations stems from the 'crisis' in the criminal courts in England and Wales. It is indeed no secret that the criminal courts are in disarray, Leveson devotes chapter 2 of his report to assessing the current landscape of the courts. By way of preface to this section Leveson stresses that it is not exclusively a financial issue that burdens the court system and notes "without systemic reform, [we] cannot solve this crisis."⁷³ He is aware therefore of a need to reform procedure and practice rather than exclusively petition for further funding.

Leveson's proposals are different from Diplock proceedings. Leveson forwards what he terms a 'jury-waiver' and introduces it at paragraph 44. His 'jury-waiver' is a mechanism whereby defendants in specified Crown Court cases, may elect for judge-alone proceedings to alleviate backlog and costs. The idea of allowing defendants to elect to be tried by a judge alone has been floated previously.⁷⁴ There is a crucial procedural difference here between Leveson and Diplock, under Leveson a defendant can opt out of a jury trial (opting in to judge-alone), whereas under Diplock this choice is non-existent at all.

Whether many defendants would exercise this waiver remains in question, given the perceived advantages of jury trials. However, Bullock's chronology of the civil jury's decline provides a striking analogue for the concerns surrounding Leveson's recommendations. In the nineteenth and early twentieth centuries, pressures (both procedural and cultural) gradually eroded a litigant's right to choose jury trial in civil cases. Bullock shows that what began as a voluntary waiver under the Common Law Procedure Act 1854 evolved, through successive statutory and procedural changes, into a system in which judges determined the mode of trial almost exclusively.⁷⁵ Although the right to request a jury never vanished from the statute book, litigants were both *formally permitted* but *practically discouraged* from exercising it. As Bullock observes, "Parliament and the courts also encouraged litigants to choose trial by judge alone instead of jury trial ... facilitating the *de facto* prohibition of jury trials in civil cases."⁷⁶ With this history in mind Leveson's 'jury-waiver', while framed as defendant-driven, could

⁷¹ Administration of Justice (Emergency Provisions) Act 1939.

⁷² Ibid.

⁷³ Leveson (n1) *Executive Summary*, para 9.

⁷⁴ Lord Justice Auld, 'Review of the Criminal Courts of England and Wales' (2001) <<https://www.criminal-courts-review.org.uk/auldconts.htm>> accessed 24 October 2025.

⁷⁵ Common Law Procedure Act 1854.

⁷⁶ Bullock (n 69).

similarly evolve into a *de facto* norm where backlog and other pressures discourage opt-outs, mirroring Bullock’s account of civil litigants facing “formal permission yet practical discouragement” until juries became vestigial. While unforeseen, this procedural creep might entrench judge-alone trials without repeal, eroding jury centrality as efficiencies override voluntariness.

At paragraph 104 the review makes its sole reference to the Diplock courts. Leveson writes “it is difficult to rely on data from the judge-alone courts in Northern Ireland where the trials in the ‘Diplock courts’ were not by defendant election and must be seen in the particular context of the sectarian conflicts and the types of offence that would be tried in that forum.”⁷⁷ It is surprising that a review of this magnitude and scope only references Northern Ireland and Diplock once, given that there is a variation of the model the review seeks to recommend historically and currently in place in that jurisdiction. A jurisdiction of staggering similarity, given both the historic development and introduction of laws in both jurisdictions through parliament in Westminster, and the fact that the UK Supreme Court is the highest and binding authority on both jurisdictions. This is perhaps indicative of a failure of the review to engage fully with the secondary, tertiary and fourth order effects as it pertains to the issue of non-jury trials. For example, Jackson and Doran observe that at the height of Diplock court usage, there was greater pressure on defence counsel to plea bargain and to plead guilty.⁷⁸

Leveson cites research on how litigant confidence in the process enhances perceptions of satisfaction in the outcome of the trial.⁷⁹ The review then applies this to defendants electing for judge only trials, detailing how their participation in the decision making could potentially lead them to feel greater confidence in the process, however it omits to apply the research in the reverse, that defendant’s confidence can and does also come from the jury. If they, the defendant, find their trial is before a judge alone, they may understandably feel that they have not been dealt with fairly.⁸⁰ Now it is true that the defendant under Leveson would have the power to ‘opt in’, the Review contains limited inquiry into the possible pressures defendants would face in terms of making that decision and the perceived ramifications on them if they negate to opt in.

⁷⁷ Leveson (n1) ch 9, para 104.

⁷⁸ Jackson and Doran (n 6).

⁷⁹ Tom Tyler, ‘Procedural Justice and the Courts’ (2007) 44(1/2) Court Rev J American Judges Assoc 26–31 <<https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1254&context=ajacourtreview>> accessed 24 October 2025.

⁸⁰ Hannah Quirke, ‘Editorial: Independent Review of the Criminal Courts’ (2025 9) Crim LR 515–17.

This article is not suggesting that Leveson's Review does not consider at all the potential pressure placed on defendants, in fact Leveson engages with this concern directly writing "I am not intending to place what might be considered improper pressure on defendants to plead guilty inappropriately."⁸¹ Yet this 'improper pressure' is precisely what the research from Northern Ireland implies is the case of such courts and such a settlement.⁸² As discussed previously, Jackson and Doran draw the conclusion that Diplock proceedings create an 'adversarial deficit';⁸³ that the jury-less proceedings fundamentally change how counsel approach and advocate in a case. They speak at length, in broadly value neutral terms, about steps to overcome this 'deficit' weighing up the differences in kind between lay triers and professional triers of fact, looking acutely at the effect this has upon both defendant and counsel.

The Diplock courts of Northern Ireland arose out of a breakdown, or perceived breakdown, of the jury system. French academic Christian Mailhes provides a good overview of the history and rationale of Diplock courts from an outsider's perspective.⁸⁴ In his piece he acknowledges the complex backdrop of Diplock, looking at both the political and social ramifications of jury trials at the time. He writes "several cases had shown that jurors, intimidated by fear of reprisals, did not dare to convict suspects or that some Protestant-majority juries had delivered a biased verdict in favor of one of their own."⁸⁵ The threats to juries, the un-safe nature of the convictions, the general socio-political atmosphere of the time put the British state and the judiciary in a compromising position. Diplock proceedings were an attempt to address this, an attempt that has a long legacy and still endures today.

However, unlike Diplock, the need for the Leveson Review recommendations, and crucially here not the review itself, appears to emanate from crass utilitarianism. Cassia Roland writes of the review, "Leveson's argument is ultimately pragmatic rather than principled. He doesn't try to make the case for judge-led trials on their own merits... His focus is on the current dire state of the courts system and the need for reform to stave off system collapse."⁸⁶ Furthermore, Leveson's own framing of the need for the Review's recommendations speaks to

⁸¹ Leveson (n1) Ch 7, Para 53.

⁸² Greer and White (n 5).

⁸³ Jackson and Doran (n 6) 293-294.

⁸⁴ Christian Mailhes, 'Les 'Diplock courts', Une procédure pénale d'exception en Irlande du Nord' (1999) 24(1) *Etudes irlandaises* 163-77.

⁸⁵ Ibid.

⁸⁶ Cassia Rowland, 'The Leveson Review: Cutting jury trials is not the only option' (Institute for Government, July 2025) < <https://www.instituteforgovernment.org.uk/comment/leveson-review-courts> > accessed 12 May 2026.

both the financial and efficiency-based considerations that inform it. Justice Minister Sarah Sackman, speaking in parliament noted, “Sir Brian Leveson and his team have told us, greater financial investment—namely sitting days on their own, without systemic reform—cannot solve the crisis. The Government will heed that lesson... looking at how we might divert demand away from the system in the first place through making greater use of out-of-court disposals.”⁸⁷ Reflecting on the suspension of juries during the Covid pandemic, academic Hannah Quirke writes “Judge-only trials are speedier and cheaper, which will appeal to the Treasury and Ministry of Justice. If judges sit alone, it seems unlikely that metrics will not be devised to record and ‘improve’ trial length and conviction rates.”⁸⁸

VI. Legislative Distinctions Between NI and England and Wales

“From a constitutional perspective, Northern Ireland has been described as a kind of laboratory in which the strengths and weaknesses of different models of practice may be gauged”⁸⁹ This, for a great many reasons, is a reductive view of Northern Ireland as a jurisdiction. Yet the smaller size of the jurisdiction and procedural closeness to England and Wales does facilitate better scrutiny of rules and practice, and the ability to better gauge the merits and de-merits of a given model. As noted above, it is regrettable that the Leveson review has failed to significantly engage with the Diplock style system. The review is right when it observes that its recommendations differ substantially from Diplock in origin, but materially they both result in a defendant standing alone before a single judge. Under the Leveson recommendations, defendants will undoubtedly be placed in either pressuring or compromising positions regarding their plea. As Leveson notes, one of the necessities for the review is to increase efficiency in the court system. If, as was the case in Northern Ireland, the use of non-jury trials is implemented, it is possible and potentially even probable that the number of guilty pleas and plea bargains will rise; not out of the legitimacy of the plea but coming from the tacit pressure applied to the defendant by the very nature of the new system. It is for the reasons outlined above that to press on with the recommendations forwarded in the review is to essentially offer Hobson’s Choice to a defendant.

⁸⁷ Hansard (n 60).

⁸⁸ Quirke (n 80) 569-571.

⁸⁹ Jackson and Doran (n 6) 13.

Writing in 2009 John Jackson comments “In recent years, the Criminal Cases Review Commission has referred a number of early Diplock cases to the Northern Ireland Court of Appeal and the court has quashed the convictions of a number of defendants.”⁹⁰ We see here then the risks associated with non-jury trials. The risks surrounding the ‘safety’ of convictions are factored into the Justice and Security (Northern Ireland) Act 2007 which facilitates an automatic right of appeal for defendants convicted in this way. It has been suggested that consideration of the CCRC’s Northern Ireland cases raises the question whether these cases represent the tip of an iceberg of wrongful convictions secured on the basis of coerced and/or unreliable evidence.⁹¹

Yet the fact that the Court of Appeal has since moved to quash some of these earlier convictions in the light of modern practice standards, demonstrates the seriousness with which the court views such convictions and the willingness of the court to scrutinise Diplock and therefore the non-jury settlement as a whole.⁹² While steps have been made at different junctures in the past to reform, amend, and modify the Diplock proceedings to ensure their human rights compliance, there is an appetite to abolish Diplock proceedings altogether. One of the principal reasons why the Diplock system has survived would seem to be because its procedures have been adjusted to take account of human rights norms over the years.⁹³ The Diplock courts have only been able to maintain its sense of legitimacy due to the level of oversight devoted to them and the constant state of review.

Jackson notes how The Criminal Justice Act 2003 has exported the Diplock mode of trial to England and Wales in cases where there is a danger of jury tampering. “Even if it is considered necessary to invoke this mode of trial on broader grounds in Northern Ireland than in the rest of the UK, the decision to do this in a particular case should be the subject of a full judicial determination accompanied by a robust special advocate procedure where sensitive information forms the basis of the prosecution’s case for nonjury trial.”⁹⁴ The spectre of security considerations overriding the rule of law will continue to cast a shadow on the Diplock system in Northern Ireland, and the introduction of a similar framework in England and Wales will make that spectre’s shadow even larger. It is troublesome that the jury provisions in

⁹⁰ John Jackson, ‘Many years on in Northern Ireland: The Diplock legacy’ (2009) 60(2) NILQ 213–29.

⁹¹ Laurie Elks, *Righting Miscarriages of Justice? Ten years of the Criminal Cases Review Commission* (Justice 2008) 301.

⁹² Jackson (n 90).

⁹³ Ibid 228–229.

⁹⁴ Ibid 229.

Leveson would, in all likelihood, make the juryless exception pivot to become the standard. The Leveson Review recommendations would see it that trial by jury in the criminal courts would become an anomaly and that professional, judge only trials become the practice norm.

VII. Public Trust, Efficiency, and the Future of Jury Trials

Beyond the Article 6 considerations, and in a way more profoundly, it is the symbol of the jury, the depth of meaning and sentiment with which it is regarded that gives it its power in the public consciousness. It is not merely that justice is done but as Lord Hewart famously opined, “justice must be seen to be done”.⁹⁵ The jury occupies a lofty place in the minds of the professional and the layman alike it is the visual manifestation of justice being seen to operate. It is gravely erroneous to misunderstand the symbolic importance and procedural significance of the jury trial, and its significance is underestimated at the peril of the present legal structure itself.

For Lord Devlin, the jury is a symbol of freedom.⁹⁶ More precisely, he asserts “trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives”.⁹⁷ Taking this assertion the Leveson recommendations therefore pose a significant threat to the legal norm in England and Wales. To implement them in the way outlined would be, as Devlin alludes to, like turning out the light. Since the Middle Ages, the principle [of jury trials] has allowed ordinary citizens to intervene directly in the resolution of a dispute between the state and the citizen.⁹⁸ It is crucial to note that jury trials are not a panacea. There is a need for reform and amendment of the current settlement, and indeed throughout British history there has been changes.

Lord Denning, in response to Lord Devlin’s, remarks writes “One must not suppose from all this that trial by jury has remained unchanged. It has been altered beyond recognition. It is still retained in criminal cases of any consequence, but it has defects which cause concern.”⁹⁹ Lord Denning is in concurrence with Sir Brian Leveson in his recommendations to

⁹⁵ *R v Sussex Justices, ex p McCarthy* [1924] 1 KB 256.

⁹⁶ Lord Patrick Devlin, *Trial by Jury* (Hamlyn Trust Stevens & Sons 1956) 164.

⁹⁷ *Ibid* 164.

⁹⁸ Lord Denning, *What Next in the Law* (Butterworths 1982) 33.

⁹⁹ *ibid* 35.

amend juries in complex and serious fraud cases. Sir Brian Leveson recommends his modification in chapter 9 and Lord Denning concludes part Two of his work *What Next in the Law* writing, “Complicated cases of fraud or accounts tried by special jurors of the City of London; Or alternatively by a judge with assessors.”¹⁰⁰ We see from this consensus that members of the bench have felt the need for changes to the current jury trial settlement for some time. However, it is clear from the history and legacy of Diplock that the wholesale removal of juries, be that explicit or implicit, overt or tacit, is a sledgehammer approach to a very delicate and cornerstone issue in British jurisprudence.

There are other methods available to assuage the criminal court back-log in England and Wales. Again, drawing from Northern Ireland for example, the Magistrates’ Courts transfer cases to the Crown Court much less frequently than those in England and Wales. In Northern Ireland 90% of criminal cases are dealt with in the Magistrates’,¹⁰¹ with only 6% of cases being transferred to the Crown Court,¹⁰² compared to 8% in England and Wales.¹⁰³ The reason Northern Ireland Magistrates’ courts transfer a slightly lower proportion of cases to the Crown Court compared to England and Wales is due to a combination of legislative, judicial practice, and jurisdictional size differences. Setting aside the size of the jurisdiction,

Northern Ireland statutes define certain offences as summary-only, limiting the number of ‘either-way’ offences¹⁰⁴, a category much more prevalent in England & Wales.¹⁰⁵ Local reforms and judicial policy have retained a larger proportion of cases as summary-only, especially motoring, minor assaults, and regulatory offences, keeping them out of the Crown Court.¹⁰⁶ Therefore, statute law in Northern Ireland creates more offences that are summary-

¹⁰⁰ *ibid* 78.

¹⁰¹ Public Prosecution Service for Northern Ireland, ‘Statistical Bulletin 2022/23 1 April 2022 to 31 March 2023’ (NISRA 29 June 2023) <<https://www.ppsni.gov.uk/files/ppsni/2023-06/Statistical%20Bulletin%202022-23.pdf>> accessed 24 October 2025.

¹⁰² Northern Ireland Statistical and Research Agency, ‘Number of Crown Court cases and defendants increased from previous years’ (NISRA 27 June 2025) <<https://www.nisra.gov.uk/news/number-crown-court-cases-and-defendants-increased-previous-year>> accessed 24 October 2025.

¹⁰³ Ministry of Justice, ‘Criminal court statistics quarterly: April to June 2025’ (Gov.uk 30 September 2025) <<https://www.gov.uk/government/statistics/criminal-court-statistics-quarterly-april-to-june-2025/criminal-court-statistics-quarterly-april-to-june-2025>> accessed 24 October 2025.

¹⁰⁴ A hybrid offence (officially termed an offence triable either way) is a criminal charge that, depending on its severity and the defendant's choice, can be heard in either the Magistrates’ Court or the Crown Court. An example of some ‘either way’ offences are, Possession of a Controlled Drug as per Section 5(2) of the Misuse of Drugs Act 1971, Assault Occasioning Actual Bodily Harm (ABH) as per Section 47 of the Offences Against the Person Act 1861 and, Theft as per Section 1 of Theft Act 1968.

¹⁰⁵ Wilson Nesbit, ‘Categories of Offences in Northern Ireland’ (5 October 2019) <<https://wilson-nesbitt.com/categories-of-offences-in-northern-ireland/>> accessed 24 October 2025.

¹⁰⁶ Fiona O’Connell, ‘Sentencing Comparisons in Northern Ireland and England and Wales’ (Northern Ireland Assembly, 20 April 2012)

only, thereby meaning a greater proportion of cases remain in magistrates' courts and fewer get transferred upwards. As England and Wales has a wider 'either-way' classification, this legally enables more cases to move upwards for jury trial or higher sentencing powers, resulting in a comparatively greater rate of transfers and need for jury trial.

A move to mimic the scope of the Magistrates in Northern Ireland may better facilitate the preservation of Jury trial as it currently stands while addressing the criminal court backlog. Combined with some of the other provisions in Leveson, particularly his writing and recommendations on complex fraud, this, it would seem, is a far more appropriate and practicable step to take rather than the current recommendations. It is more congruent with human rights provisions, procedural efficacy, and British jurisprudence, whilst recognising the very real need for change and flexibility.

VIII. Conclusion

"In the Diplock court, a form of trial is practiced which many in the United Kingdom would find alien and unacceptable, and yet which has subsisted for over 20 years within the same broad legal framework"¹⁰⁷ What began as an emergency provision has endured long after those who set it in motion would have foreseen it to. Diplock proves that there is nothing more permanent than a temporary solution, given a version of the original juryless trial provisions persist in Northern Ireland. Speaking to this in the context of civil juries, Bullock notes as much, citing what began as a temporary measure ultimately became permanent. In fact he goes further writing "the *de facto* prohibition of jury trials in civil cases [occurred] without ever requiring an admission that Blackstone's "palladium of our liberties"¹⁰⁸ was being eliminated."¹⁰⁹ This sadly, one imagines, would be the case even when/if the crisis in the criminal courts is abated in England and Wales.

Sir Brian Leveson is conscious of striking the balance between the rights of a defendant and the increasingly difficult and thorny nature of the ever changing and evolving crisis in the

<<https://www.niassembly.gov.uk/globalassets/documents/raise/publications/2012/justice/9412.pdf>> accessed 24 October 2025.

¹⁰⁷ Jackson and Doran (n 6) 13.

¹⁰⁸ Blackstone (n 65).

¹⁰⁹ Bullock (n 69) 299.

criminal courts. He is explicit about this concern, and he speaks to it when he says “One of the overarching principles guiding this Review is the right to a fair trial: this is one of the pillars of the justice system in England and Wales and must be upheld. I am keenly aware of the risk of coercive pressure on defendants to plead guilty and have borne it in mind in formulating these recommendations.”¹¹⁰

Debate about juries, their nature, efficacy and so on, have percolated in the minds of many eminent judges and lawyers throughout legal history. Lord Devlin, Lord Denning and Sir Brian have all grappled with this and come to varying degrees a similar conclusion, albeit with differing views on how to address it. There is clearly then an argument for a revision in how trials are conducted. But it is not and cannot be the case, that jury trials are an anachronism of a bygone age which should be curtailed in favour of professional trials on a wholesale basis.

When concluding his piece on the abolition of civil juries, Bullock writes “The jury was revered in ancient times as a sacred constitutional safeguard against tyranny and was gradually replaced by more efficient and rational decision-makers as this attitude receded”,¹¹¹ Blackstone warned against methods that hamper jury trials “however convenient these may appear at first (as doubtless all arbitrary powers, well executed, are the most convenient)”¹¹² For Blackstone “trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law... So that the liberties of England cannot but subsist so long as this palladium remains sacred and inviolate; not only from all open attacks (which none will be so hardy as to make), but also from secret machinations, which may sap and undermine it; by introducing new and arbitrary methods of trial”¹¹³ The present iteration of the Leveson recommendations ‘sap and undermine’ the jury, and while they may be consistent with an individual’s right to a fair trial, broadly speaking, assail the very bedrock of British jurisprudence.

One appreciates the true depth of the quagmire that Sir Brian is having to navigate with the competing interests of finance, politics and judicial practice. Yet this article has sought to forward a compelling case against the ‘jury-waiver’ provisions of the current tranche of recommendations. Blackstone acknowledged that the issues faced by Leveson would arise however he is emphatic when he says these inefficiencies and costs are the price of a legal system such as Britain’s; “yet let it be remembered, that delays and little inconveniences in the

¹¹⁰ Leveson (n1) Ch 7, Para 8.

¹¹¹ Bullock (n 69) 299.

¹¹² Blackstone (n 65).

¹¹³ Ibid.

forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads into the sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution”¹¹⁴

Part I of the Leveson review contains a number of excellent recommendations, well-reasoned and necessary. The review is so wide ranging and vast that this article simply cannot engage with it in any useful and fanciful way beyond the concerns of the piece. Part II of Sir Brian Leveson’s review is due to be published in the very near future, and it will be interesting to see what changes, responses and new recommendations he gives in light of the response to Part I.

¹¹⁴ Ibid.

