

# The 'Right to Elect' and Reform of Mode of Trial

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# Introduction

- What is the problem with mode of trial?
  - Focus today on elections to CC
- A brief history of the ‘right to elect’
- Recent proposals
  - ‘Breaking the Cycle’
  - ‘Swift and Sure Justice’
- Opposition to removing the right to elect
  - Jury trial condensed into the right to elect

# The Evidence Base

- Magistrates' sending too many cases to CC?
  - Cases sentenced in the Crown Court within the powers of magistrates
    - Hedderman and Moxon; 52 per cent given immediate custodial sentence in Crown Court
    - 62 per cent sentenced within powers of magistrates, according to Flood-Page and Mackie (1998)
    - In 2010, a minimum of 35 per cent of cases received a sentence within powers of MC: MOJ Court proceedings database (from Moreton (2012))

# The Evidence Base

- Electing jury trial only to subsequently plead guilty
  - Riley and Vennard (1988); 74 per cent of defendants pleaded guilty to all charges after election
  - Hedderman and Moxon (1992); of those who elected, 70 per cent pleaded guilty to all charges, and a further 14 per cent offered mixed pleas.

# The Evidence Base

- Elections as a proportion of all committals
  - 1987-8, 50 per cent
  - 1997-8, 28 per cent
  - 2005-6, 9 per cent
  - 2010-11, 14 per cent

# Why elect?

- Better chance of acquittal
- Fairer trial
- Distrust of magistrates
- Play the system?
  - Serve portion of sentence on remand
  - Delay proceedings

# Why then plead guilty?

- Some charges dropped
- Plea bargain
- Indication of sentence discount
- Legal advice
- Futility of contesting charges
  
- Why worry?
  - Costs and delays in the CC
    - Easy ‘problem’ to fix?

# A brief history of the 'right to elect'

- Focus on cost and efficiency
- The creation of summary trial for indictable offences
  - Larceny if D under 14
    - An Act for the more speedy Trial and Punishment of Juvenile Offenders, 10 and 11 Vict. c. 82
- The principle extended, i.e.
  - Administration of Criminal Justice Act 1855
  - Summary Jurisdiction Act 1897
  - Criminal Justice Act 1925



# A brief history of the 'right to elect'

- Report of the James Committee
  - Major restructuring and creation of current classification
  - Refrained from recommending removing right to elect
  - Proposed to treat low value theft and criminal damage as summary only offence
  - Enacted in Criminal Law Act 1977
    - Except for low value theft proposal

# A brief history of the 'right to elect'

- Further proposals to remove the right to elect
  - Royal Commission on Criminal Justice
  - The Narey Report
  - Criminal Justice (Mode of Trial) Bills, 1999 & 2000
  - Auld Review
- None successful
  - CJA 2003 took a different approach

# Criminal Justice Act 2003

- A nuanced response?
  - Increase in sentencing powers (will they ever be implemented? – LASPO, clause 71)
  - Statutory charging scheme
  - MC have knowledge of pre cons
    - Associated limit on committal for sentence (not implemented)
  - D request indication of sentence if MC keep the case
  - Little opposition in Parliament
    - Focus on trial by judge alone proposals
  - Only partially implemented
    - Seen as linked to Custody Plus

# Coalition continues reform agenda

- Allocation guidelines [etc.]
  - Fuller role for defence submission
  - Remind magistrates that committal for sentence available
- Implementation of reforms in Criminal Justice Act
  - Done as part of abolition of committal proceedings with no explanation as to why now

## Recent proposals

- Green Paper, 'Breaking the Cycle' (2010)
- Government briefings on removing right to elect?
  - 'Government "considers cutting defendant rights to jury trial"'; Guardian, 16/01/2012
  - 'Bashing trial by jury is pathetically predictable'. M Mansfield, Guardian, 17/01/2012
- 'Swift and Sure Justice' (2012)

# Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders

‘280. It is important that cases which come before a court are heard in the most appropriate place. The Crown Court is the right place for the most serious cases, and when a defendant has elected to be tried by jury, *but it does the justice system no good if it is used inappropriately*. Chapter 4 of this document explains why we want to see more cases dealt with summarily by magistrates and outlines how our plans to reduce the numbers of late guilty pleas will provide an important move in this direction.’

## Response to Coalition briefing

- P. Mendelle, The Guardian, 17/01/2012:

‘This is about depriving us – not just the guilty, but all of us – of a fundamental right to jury trial that can trace its history back more than 800 years, the “lamp that shows that freedom lives”, and for what? A barely perceptible sliver off a departmental budget?’

## Response to Coalition briefing

- D Raab, The Times, 17/01/2012:

‘The basic principle that a citizen charged with a serious imprisonable offence can opt to be judged by his peers is both steeped in British history and a modern shield against abuse of state power. That is why ministers should resist the proposal to remove the right to trial by jury in order to save money.’



## Swift and Sure Justice

'127. This is not about removing defendants' right to elect Crown Court trial. The Government is committed to defending trial by jury, and we have no plans to restrict the right to choose to be tried in that way.'

## Is removing the right to elect politically acceptable?

- Removing the right to elect is regarded as attacking jury trial
  - Opposition to James' Committees recommendations on theft
  - Mode of Trial Bills attacked in the Lords
  - Recent commentary (looked at earlier)
- Alternative reforms (CJA 2003) are not seen in this light

## Response to Report of the James' Committee

- Times leader, Jan 6, 1977:

'Trial by jury is deeply embedded in the national consciousness as a bulwark against tyranny, a safeguard for the individual against tyranny, a safeguard for the individual against oppression from the State and one of the distinguishing features of a free society.'

## Response to Mode of Trial Bills

- Helena Kennedy, Guardian, 20/01/2000:

‘People like me are appalled by this change to the jury system, but not through ritual adherence to tradition. It is concern about taking a fundamental right away from the citizen, giving the choice about jury trial to magistrates who are largely white and middle-class and not legally qualified.’

# What is left to do?

- Swift and Sure Justice

‘130. The result would be that a magistrates’ court would no longer be able to commit these offences [theft and handling] to the Crown Court where the value fell below a certain sum. The defendant, on the other hand, would retain the right to elect Crown Court trial.’

# Response to Swift and Sure Justice

