



The Bar Council

Law Reform Essay Competition 2024: Winner

A fiction of defendant participation: Single Justice Procedure offences should be moved to the civil jurisdiction by Hal McNulty

Introduction

The Single Justice Procedure (SJP) is a streamlined form of criminal trial used for certain summary only, non-imprisonable offences. It has become the “hidden site of most criminal prosecutions in England and Wales.”¹ In spite of the efficiency savings it makes for an overburdened court system, calls for a re-examination of the SJP have been gaining momentum in recent months.² A media campaign led by the journalist Tristan Kirk has brought to light a series of unfair rulings resulting from this method of “conveyor belt justice”,³ while the Magistrates’ Association (MA) has made twelve recommendations for reform.⁴ This essay will argue that proposals to fine-tune the SJP are unsatisfactory, however, since they fail to address the issue of defendant marginalisation that lies at the heart of this regime.

I will begin by explaining the legislative framework that supports the SJP and how it works from a defendant’s perspective. I will then make three criticisms of it and one proposal: to decriminalise all offences covered by the SJP and to subject offenders instead to a system of civil penalties.

Part 1: The SJP in Context

The legislative framework for the SJP is provided by Section 16A of the Magistrates Courts’ Act 1980,⁵ while Part 24.9 of the Criminal Procedural Rules sets out the detail

¹ Gibbs, P. Computer says yes – you will pay a fine and get a criminal record. (2021). Transform Justice. Available at: <https://www.transformjustice.org.uk/news-insight/computer-says-yes-you-will-pay-a-fine-and-get-a-criminal-record//> [Accessed 24 Oct. 2024].

² Wheeler, R. (2024). Justice Secretary to consider changes to single justice procedure. [online] The Independent. Available at: <https://www.independent.co.uk/news/uk/alex-chalk-sjp-justice-secretary-conservative-mps-b2518802.html> [Accessed 24 Oct. 2024].

³ Kirk, T. (2023). Serious flaws in ‘conveyor belt’ court system. [online] The Standard. Available at: <https://www.standard.co.uk/news/crime/secret-single-justice-procedure-prosecutions-covid-lockdown-fines-b1104910.html> [Accessed 24 Oct. 2024].

⁴ Magistrates’ Association. (2024). Single Justice Procedure - Magistrates’ Association. [online] Available at: <https://www.magistrates-association.org.uk/publication/single-justice-procedure-2/> [Accessed 24 Oct. 2024].

⁵ Inserted by Section 48 of the Criminal Justice and Courts Act 2015.

of how it works in practice. The accused receives a letter in the post containing the SJP notice, their charge, a summary of the evidence on which the prosecution case is based, and forms for the defendant to return to the court in which they can plead either guilty or not guilty.

One of three things then takes place. (1) The defendant pleads guilty, with the option of setting out mitigating circumstances they want the court to consider, and they can either request a court hearing or they can permit their case to be decided without their active involvement. (2) The defendant pleads not guilty, in which case they must attend a court hearing. (3) They do not respond to the letter 15 business days after service, in which case the court can try the case without a hearing.⁶

The great advantage of the SJP is its productivity. Previously, defendants were invited either to plead guilty by post or to attend a hearing in the magistrates' court that had already been allocated. Through the SJP, hearings are only scheduled if defendants have requested them or have pleaded not guilty, meaning court resources are better spent on claims the defendants will actually contest.⁷ If this does not happen, a magistrate reads the evidence in closed court, supported by a legal advisor but not the prosecutor. Since its rollout in 2015 as part of the government's efforts to streamline justice,⁸ the proportion of the criminal caseload the SJP handles has increased dramatically: 62% of all Magistrates' Court work is currently dealt with under its auspices.⁹ For context, this means that around 40,000 criminal cases pass through the SJP every month,¹⁰ with magistrates spending on average 90 seconds on each case.¹¹ For the very same reasons that the process is an efficient one, however, there are significant issues regarding defendant fairness and transparency.

Part 2: Criticisms of the SJP

⁶ 21 days including weekends. SJP defendants are not eligible for legal aid, so must pay for their own legal representation if they want it.

⁷ Jones, S. (2021). Explaining the Single Justice Procedure in the magistrates' court – Inside HMCTS. Blog.gov.uk. Available at: <https://insidehmcts.blog.gov.uk/2021/10/26/explaining-the-single-justice-procedure-in-the-magistrates-court> [Accessed 24 Oct. 2024].

⁸ See Welsh, L. (2022). Access to Justice in Magistrates' Courts. Bloomsbury Publishing.

⁹ Hymas, C. and Butcher, B. (2024). Almost two-thirds of magistrates' court cases held in secret. [online] The Telegraph. Available at: <https://www.telegraph.co.uk/news/2024/03/26/almost-two-thirds-magistrates-court-cases-held-in-secret> [Accessed 24 Oct. 2024].

¹⁰ Magistrates' Association. (2024). Single Justice Procedure needs reform, say magistrates - Magistrates' Association. [online] Available at: <https://www.magistrates-association.org.uk/blog/single-justice-procedure-needs-reform-say-magistrates/> [Accessed 24 Oct. 2024].

¹¹ Kirk, T. (2022). Magistrates handing out convictions in private court hearings. [online] The Standard. Available at: <https://www.standard.co.uk/news/crime/single-justice-procedure-magistrates-criminal-convictions-b1026894.html> [Accessed 24 Oct. 2024].

The SJP enables a rollback of the provisions designed to protect defendant rights that are normally in place for criminal trials. The justification is that these offences and their corresponding punishments are relatively minor.¹² SJP charges include the non-payment of TV licenses, fishing without a license, and fly-tipping; guilty defendants are typically awarded fines of a few hundred pounds and cannot be handed custodial sentences or community orders. McBarnet discussed the way in which an “ideology of triviality” permeates thinking about summary procedure, excusing streamlining measures that would otherwise be considered offensive to our principles of open and fair justice.¹³ It is not even entirely true that SJP sanctions are light. For Covid offences, which the SJP began processing in 2020, fines could be awarded of up to £10,000,¹⁴ and while it is true that nobody receives a prison sentence in an SJP trial, non-payment of criminal fines can lead to imprisonment.¹⁵ Above all, there is a social stigma and an ethical judgement associated with criminal sanctions, and so the state should be careful not to award them without making a proper inquiry into a defendant’s guilt.

The most important criticisms made of the SJP are that (a) the excessive efficiency of the process means crucial information is overlooked to the disadvantage of the defendant, that (b) cases are heard in closed court without real opportunity for public scrutiny, and that (c) defendants are not given adequate notice of impending trials.

a. Cursory Justice

A long-running investigation into the SJP conducted by the Standard has uncovered “a litany of shocking criminal cases [...] including elderly pensioners, cancer patients, and people with severe learning difficulties being convicted and fined behind closed-doors.”¹⁶ Kirk has reported on cases of obvious injustice such as that of a pensioner suffering with severe dementia being prosecuted for not paying his

¹² Jones, S. (2021). Exploring misconceptions about the Single Justice Procedure – Inside HMCTS. [online] Blog.gov.uk. Available at: <https://insidehmcts.blog.gov.uk/2021/11/02/exploring-misconceptions-about-the-single-justice-procedure> [Accessed 24 Oct. 2024].

¹³ McBarnet, D. (1981) Magistrates' Courts and the Ideology of Justice. *British Journal of Law and Society*, vol. 8, no. 2, pp. 181–197.

¹⁴ Parliament.uk. Covid-19 and the criminal law - Justice Committee - House of Commons, para. 55-61. [online] Available at: <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/71/7106.htm> [Accessed 24 Oct. 2024].

¹⁵ Casey, T. Poverty is not a crime: ending imprisonment for debt. CCJS. [online] Available at: <https://www.crimeandjustice.org.uk/resources/poverty-not-crime-ending-imprisonment-debt>. [Accessed 24 Oct. 2024].

¹⁶ Kirk, T. (2024). Single Justice Procedure: Magistrates demand changes to controversial fast-track courts. [online] The Standard. Available at: <https://www.standard.co.uk/news/uk/single-justice-procedure-fast-track-courts-magistrates-justice-system-b1147422.html> [Accessed 24 Oct. 2024].

car insurance despite the fact he had stopped driving and moved into a care home.¹⁷ In another blunder of “conveyor-belt” justice, a woman with Down’s Syndrome was convicted for non-payment of a TV license even though her finances were being managed by the local council.¹⁸

SJP defendants pleading guilty on their return form can set out the mitigating circumstances they want the court to consider when sentencing. The prosecuting authorities are not required to read these and therefore do not make the kind of assessment the CPS usually makes to decide, in consideration of the facts of a case and a defendant’s personal circumstances, whether a prosecution is ‘in the public interest.’¹⁹ This places heightened importance on the magistrates’ discretion to send cases back to the prosecutors when they think that the vulnerability of the defendant does not justify a conviction, but the evidence is that this rarely happens in practice and it did not in the two examples above.²⁰ The MA has recommended extra training on this front, but such a remedy seems unlikely to go to the source of the problem.²¹ If magistrates are expected to decide SJP cases in just 90 seconds, only a cursory review of each case is possible.

This is not just a problem for the mitigation section of the form. Recipients of SJP notices are also invited to set out their financial circumstances, which the court is supposed to consider when determining the appropriate fine.²² Magistrates clearly cannot do this in good faith if they are not given a reasonable length of time to make a decision. Indeed, there is abundant evidence of mistakes in the use of the SJP.²³ The prosecution of Covid-19 offences was consistently error-prone,²⁴ while the Chief

¹⁷ Kirk, T. (2024). Single Justice Procedure: Fresh controversy. [online] The Standard. Available at: <https://www.standard.co.uk/news/crime/single-justice-procedure-dvla-pensioner-dementia-conviction-court-b1139840.html> [Accessed 24 Oct. 2024].

¹⁸ Kirk, T. (2024). TV Licence conviction against woman with Down’s Syndrome overturned after The Standard reporting. The Standard. <https://www.standard.co.uk/news/crime/tv-licence-conviction-overturned-downs-syndrome-greenwich-single-justice-b1138609.html> [Accessed 24 Oct. 2024].

¹⁹ Crown Prosecution Service (2018). The Code for Crown Prosecutors. [online] Cps.gov.uk. Available at: <https://www.cps.gov.uk/publication/code-crown-prosecutors> [Accessed 24 Oct. 2024].

²⁰ Kirk, T. (2024). Minister: Magistrates can act on controversial Single Justice Procedure cases. [online] The Standard. Available at: <https://www.standard.co.uk/news/crime/single-justice-procedure-magistrates-minister-mike-freer-unfair-convictions-b1142751.html> [Accessed 24 Oct. 2024].

²¹ Magistrates’ Association. (2024). Single Justice Procedure - Magistrates’ Association, para. 5.1-4. [online] Available at: <https://www.magistrates-association.org.uk/publication/single-justice-procedure-2/> [Accessed 24 Oct. 2024].

²² Sentencing Act 2020, s.125(2) and (3).

²³ The Single Justice Procedure: What is it and why are there calls for reform? (2024) [online] ITV News. Available at: <https://www.itv.com/news/2024-09-18/the-single-justice-procedure-what-is-it-and-why-are-there-calls-for-reform> [Accessed 24 Oct. 2024].

²⁴ Parliament.uk. Covid-19 and the criminal law - Justice Committee - House of Commons, para. 62-70. [online] Available at: <https://publications.parliament.uk/pa/cm5802/cmselect/cmjust/71/7106.htm> [Accessed 24 Oct. 2024].

Magistrate recently declared thousands of prosecutions for rail fare evasion void because the prosecutors had incorrectly adopted the SJP.²⁵

b. Hidden Justice

Another issue concerns the closed-court nature of the proceedings. The Ministry of Justice provides information on listings and outcomes for SJP cases via its online public platform,²⁶ and more information such as defence mitigation is available on request for accredited journalists, but no details of a magistrate's reasoning are available, meaning that there is virtually no opportunity for accountability.²⁷ This is contrary to the principle that public scrutiny of a court's work is an essential feature of the rule of law.²⁸

The MA has called for changes to allow journalists to observe cases in person.²⁹ However, given the economic pressures on the dwindling practice of court journalism,³⁰ it seems unlikely that comprehensive media coverage of SJP hearings will be prioritised by news organisations even if Parliament legislated to permit it.³¹ We cannot look to journalists to correct the inadequacies of the SJP; it requires a more radical overhaul.

c. Defendant non-participation

The most important problem with the SJP, however, is the way it marginalises the role of the accused in their own criminal trials by permitting courts to proceed when defendants have not responded.

Effective defendant participation has long been recognised as a constituent element of Article 6 in ECHR caselaw; the defendant's rights, inter alia, to be present, to hear and to follow the proceedings are necessarily contained in the guarantees provided

²⁵ *Northern Trains Limited v Ballington* [2024] 8 WLUK 114.

²⁶ GOV.UK. (2024). What do you want to view from Single Justice Procedure? [online] Available at: <https://www.court-tribunal-hearings.service.gov.uk/summary-of-publications?locationId=9> [Accessed 24 Oct. 2024].

²⁷ GOV.UK. HMCTS staff guidance on supporting media access to courts and tribunals. [online] Available at: <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals> [Accessed 24 Oct. 2024].

²⁸ Duff, R.A. et al. (2007). *The Trial on Trial: Volume 3. Towards a Normative Theory of the Criminal Trial*, Oxford: Hart, pp. 3-4.

²⁹ Magistrates' Association. (2024). Single Justice Procedure - Magistrates' Association, para. 5.5. [online] Available at: <https://www.magistrates-association.org.uk/publication/single-justice-procedure-2/> [Accessed 24 Oct. 2024].

³⁰ Ellmhirst, S. (2024). Chortle chortle, scribble scribble: inside the Old Bailey with Britain's last court reporters. *The Guardian*. Available at: <https://www.theguardian.com/news/article/2024/jul/11/old-bailey-dying-art-court-reporter-justice> [Accessed 24 Oct. 2024].

³¹ Townend, J., and Welsh, L. (2023). *Observing Justice: Digital Transparency, Openness and Accountability in Criminal Courts*. Bristol University Press, pp. 62-95.

by sub-paragraphs (c), (d) and (e) in paragraph 3 as well as being implicit in the fundamental notion of an adversarial procedure.³² The practice of trials *in absentia* is not in itself incompatible with Article 6 and a defendant can waive their right to participate by not responding to an invitation, but this is circumscribed by important safeguards to ensure the fairness of proceedings.³³ Article 6 requires that a defendant has a general understanding of the trial process as well as its potential outcomes before they can waive their right to participate.³⁴

For trials on indictment in the Crown Court, the accused must be present at the commencement of proceedings in order to plead,³⁵ and the court cannot try them in their absence unless it is satisfied that the defendant has waived their right to attend and that the trial can be conducted fairly without them.³⁶ Such circumstances should be “rare and exceptional.”³⁷ For summary offences in the Magistrates’ Court, the position is reversed so that there is a presumption that the court must proceed in an adult defendant’s absence, “unless it appears to the court to be contrary to the interests of justice to do so.”³⁸ Where proceedings were commenced by written charge or requisition and the court is considering a custodial sentence, the court must adjourn the sentencing hearing if the defendant is absent.³⁹ For SJP offences, on the other hand, there is no such protection and courts can try and sentence defendants as long as they have not responded to the notice within 15 business days.⁴⁰

The logic behind grading the safeguards for defendant participation according to the severity of the offence is obvious. For more serious offences which carry, if proven, more serious penalties, the court should be obliged to carry out more stringent inquiries into whether a defendant’s non-engagement means that they have voluntarily waived this right or whether it is a mistake. On the other hand, the bar the court needs to reach to answer this question for the less serious offences covered by the SJP should not be as high, given the need to conserve resources and process the backlog of cases quickly.⁴¹

³² *Stanford v. the United Kingdom*, no. 16757/90, ECHR, 1994 [26]. See also *SC v. United Kingdom*, no. 40 EHRR 10, ECHR, 2005.

³³ *Hermi v Italy*, (2008) 46 EHRR 46.

³⁴ *SC v UK* (2004) 40 EHRR 226.

³⁵ Perry, D. (2025). *Blackstone’s Criminal Practice 2025*. Oxford University Press, para. D15.82-90.

³⁶ CrimPR 25.2(1)(b).

³⁷ *Haywood* (2001) EWCA Crim 168 [22].

³⁸ Magistrates’ Courts Act 1980, s.11(1)(b). See also Perry, D. (2025). *Blackstone’s Criminal Practice 2025*. Oxford University Press, para. D22.14–D22.17.

³⁹ Magistrates’ Courts Act 1980, s.11(3) to 5(A).

⁴⁰ CrimPR 24.9(4). The court can disregard a written submission served outside of the prescribed window: Magistrates’ Court Act 1980, s.16A(5).

⁴¹ Fair trial rights can be balanced against the legitimate needs of the state: *Jalloh v Germany* (2007) 44 EHRR 32 [97].

But the evidence suggests that defendant protections have been rolled back too far for SJP trials. This is revealed starkly by a statistic produced on analysis of Ministry of Justice reports:⁴² roughly 2/3 defendants do not respond to the SJP notice within the 15 business-day period.⁴³ This is in spite of the 1/3 discount offered to defendants who plead guilty in that time.⁴⁴ There can be only one interpretation of a situation in which most defendants are choosing neither to plead not guilty nor, by pleading guilty, to receive a smaller fine: they are not choosing at all.

The reason that most defendants do not respond is unclear. It may be to do with the weakened protections for defendant engagement in SJP trials, or because many defendants are not actually receiving the notice in the post, or because perpetrators of 'trivial' SJP offences do not realise they are committing a crime and therefore fail to pay sufficient regard to a corresponding criminal notice. One commentator has pointed out that some disabled defendants may be prevented from participating because the SJP form does not offer adequate reasonable adjustments.⁴⁵ Whatever the reason, the data demonstrates that the SJP results in a general collapse of defendant participation, calling into question the state's compliance with Article 6 of the ECHR.⁴⁶ Moreover, how can a court find a defendant who has not responded to their SJP notice guilty of a crime 'beyond all reasonable doubt' where significant doubts hang over the procedure of notification itself? If a defendant did not have adequate opportunity to respond to their charge, how can a court be sure of their guilt?

Part 3: The Civil Solution

By reframing the SJP as being in breach of the principle of defendant participation as well as of the standard of proof in the criminal courts, I hope to move the debate about how to reform the SJP away from the relatively minor adjustments recommended by the MA and media commentators towards a full-scale decriminalisation of the offences currently covered by the SJP. Given the current state of the court system, it is unrealistic to argue that significantly more time and money be spent protecting defendant rights for the low-level crimes that make up

⁴² See Parliament.uk. (2023). Written questions and answers - Written questions, answers and statements - UK Parliament. [online] Available at: <https://questions-statements.parliament.uk/written-questions/detail/2023-05-02/183405> [Accessed 24 Oct. 2024].

⁴³ For example, from January to December 2022, 28.6% entered a 'guilty' plea, 2.9% a 'not guilty' plea, and 68.3% did not reply to the notice.

⁴⁴ See Single-Justice-Procedure-Notice. Transform Justice, Available at: <https://www.transformjustice.org.uk/wp-content/uploads/2023/03/Single-Justice-Procedure-Notice-TfL-and-TV-Licensing.pdf> [Accessed 24 Oct. 2024].

⁴⁵ Gibbs, P. (2023). Computer says yes – you will pay a fine and get a criminal record. [online] Available at: <https://www.transformjustice.org.uk/news-insight/computer-says-yes-you-will-pay-a-fine-and-get-a-criminal-record/> [Accessed 24 Oct. 2024].

⁴⁶ Parliament Committees. Coronavirus Legislation and the Single Justice Procedure. Written Evidence from the charity Transform Justice. Available at: <https://committees.parliament.uk/writtenevidence/35335/pdf/> [Accessed 24 Oct. 2024].

the majority of the work in the Magistrates' Courts. If the state is unable to ensure adequate defendant engagement in these trials, however, it is unconscionable that the SJP should be used to award criminal convictions.

Instead, a civil monetary system should be instituted for these offences, modelled on that used for parking offences and traffic infractions. A Penalty Charge Notice (PCN) would be posted to the defendant's address, giving them 28 days to respond with a discount for early payment.⁴⁷ Instructions would be provided for those who want to challenge the charge, in which case a hearing in the county court would be scheduled. Unpaid PCNs would be passed on to private enforcement agents (bailiffs), or the prosecutor could apply to the court for enforcement through measures such as attachment of earnings, charging, or third-party debt orders.⁴⁸

Turning SJP offences over to the civil jurisdiction means that the state can continue to disincentivise lawbreaking without compromising the integrity of its criminal justice system by requiring magistrates to convict defendants where they cannot rationally be 'beyond reasonable doubt' of their guilt. In the civil courts, the standard of proof is 'on the balance of probabilities', so that the assumption that the accused's non-acknowledgment of the notice indicates they have waived their right to participate would be more justified. Moreover, there is evidence that a greater proportion of defendants engage in civil penalty procedures than in SJP trials. For example, data provided by Ealing Council for the enforcement of PCNs for parking infractions in the 2022-23 period reveals that the situation is almost exactly reversed:⁴⁹ 69% of defendants paid their fines within the 28 day limit (the vast majority within the 14 day discount period), as compared to the 68% of SJP defendants who do not respond to their notices.⁵⁰ Handing these offences over to the civil jurisdiction could therefore resolve the challenge to the state's compliance with Article 6 that is posed by the evidence of mass defendant non-participation in the SJP.

Indeed, there is no substantive reason the SJP offences should be processed in the criminal jurisdiction while offences like parking illegally or driving in a bus lane should be dealt with via a civil penalty charge, and other comparable offences like non-payment of a utility bill results in a money claim in the civil courts. These are all 'victimless' low-level acts of misconduct; treating them differently in the justice

⁴⁷ GOV.UK. Parking fines and penalty charge notices. [online] Available at: <https://www.gov.uk/parking-tickets> [Accessed: 24 October 2024].

⁴⁸ Perry, M. (2015) TV Licence Fee Enforcement Review, pp. 56-64. Available at: https://assets.publishing.service.gov.uk/media/5a809489e5274a2e8ab50f57/166926_Perry_Review_Text-L-PB.pdf [Accessed: 24 October 2024].

⁴⁹ Ealing Council. Parking services annual Report 2022/23, p. 9. Available at: https://www.ealing.gov.uk/downloads/download/659/parking_services_annual_reports [Accessed: 24 October 2024].

⁵⁰ The 69% figure is conservative as an estimate of defendant engagement because it does not those who appeal their charge.

system is arbitrary. For a few of these offences, there are pre-existing campaigns to decriminalise on the basis that criminal sanctions are too serious for such transgressions. Decriminalising the non-payment of a TV license has been a political football for a decade,⁵¹ and there are campaign groups that advocate vociferously against the SJP being used for offences like child truancy.⁵²

Against decriminalisation

The main argument against decriminalising these offences is that, to maintain the current level of evasion rates, the civil penalties would need to be higher. This is to do with increased administrative costs for civil procedures as well as the lessened deterrence factor that supposedly comes with moving away from a criminal sanction.⁵³

A hike in the fine needed to cover civil administrative costs is not inevitable (penalties for parking infractions are at similar levels to SJP fines) but, in any case, it would be justified as a price worth paying for protecting the rights of the accused. SJP convictions can appear in background checks for certain jobs, and other significant consequences can occur.⁵⁴ For example, research from the campaign group Women Against Rape found that hundreds of female victims of rape and sexual assault were being denied access to the Criminal Injuries Compensation Scheme because they had a record of minor criminal convictions such as those covered by the SJP.⁵⁵ Criminal sanctions are more serious than civil ones. They carry more social significance and practical consequences, and therefore should be reserved for offences that are particularly damaging to society and for offenders whose guilt is all but certain.

Conclusion

⁵¹ Woodhouse, J. (2020). TV licence fee non-payment: should it be decriminalised? [online] Available at: <https://commonslibrary.parliament.uk/research-briefings/sn06860/> [Accessed: 24 October 2024].

⁵² Team Square Peg. The 3 Asks Campaign. Available at: www.teamsquarepeg.co.uk/3asks [Accessed: 24 October 2024].

⁵³ See Perry, M. (2015) TV Licence Fee Enforcement Review, pp. 59-61. Available at: https://assets.publishing.service.gov.uk/media/5a809489e5274a2e8ab50f57/166926_Perry_Review_Text_-_L-PB.pdf [Accessed: 24 October 2024].

⁵⁴ Kimmons, A. (2022), "Conveyor Belt Justice", Transform Justice. [podcast] Available at: https://open.spotify.com/episode/6qoAbJ8x5Bi35l2SwgtToc?go=1&sp_cid=8d4174d6647b0440182f9049f26a4018&utm_source=embed_player_p&utm_medium=desktop&nd=1&dlsi=fa06d27ca16d42ee [Accessed at: 24 October 2024].

⁵⁵ Women Against Rape. (2020). Evidence to MoJ Review of Criminal Injuries Compensation Scheme. [online] Women Against Rape. Available at: <https://womenagainstrape.net/evidence-from-women-against-rape-to-ministry-of-justice-review-of-criminal-injuries-compensation-scheme-october-2020/> [Accessed 24 Oct. 2024].

I have argued for the decriminalisation of all offences currently handled by the SJP. Statistical evidence released by the Ministry of Justice reveals the extent to which this stripped-back trial process is facilitating an epidemic breach of our due process principles, while media coverage of individual experiences of injustice puts this analysis into context. I have recommended that all SJP offences be treated as civil infractions and processed using PCNs.

Moving these offences to the civil jurisdiction will not necessarily solve the crucial problem of defendant non-participation, however, and it will not solve the problems of cursory and hidden justice described above. The evidence suggests that defendants engage with civil penalty charges more readily than with SJP notices, but realistically there may always be difficulties achieving defendant participation for trials in which it is not proportionate for the courts to spend much time or money protecting defendants' rights. This proposal, therefore, is not a remedy, but palliative care. It is a way of moderating the unavoidable injustice of sanctioning innocent defendants who have not realised they are being prosecuted. It also makes the use of cursory procedure and hidden courts more palatable. Where the court cannot adequately protect a defendant's rights, it should not be empowered to issue a criminal conviction, and the offence should be handled through civil enforcement.

Word count: 2,981.